



Council of the European Union
General Secretariat

**Interinstitutional files:
2020/0277 (COD)**

Brussels, 25 January 2024

WK 1028/2024 INIT

LIMITE

ASILE

MIGR

CODEC

JAI

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° prev. doc.:	WK 864/2024 INIT; WK 865/2024 INIT
N° Cion doc.:	ST 11207/20 (COM (2020) 613 final)
Subject:	Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum – Recitals

Delegations will find in annex recitals on the above proposal.

As agreed during the trilogues, the Legal Services of the EP and the Council are working to jointly present a technical solution for variable geometry, which does not have an impact on the content of the concerned provisions and recitals as provisionally agreed in the trilogues. The columns table in its current version does not take into account and include yet the outcome of that legal/technical assessment, which will be discussed in a separate meeting in COMIX-format.

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

2020/0277(COD)

Non-versioned [LATEST TEXT]

25-01-2024 at 20h17

Draft Agreement		
Formula		
1		
Proposal Title		
2	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum	
Formula		
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	
Citation 1		
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) and (e) and Article 79(2)(c) thereof,	
Citation 2		
5	Having regard to the proposal from the European Commission,	
Citation 3		
6		

Draft Agreement

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

Citation 4

7

Having regard to the opinion of the European Economic and Social Committee¹,

¹ OJ C , , p. .

Citation 5

8

Having regard to the opinion of the Committee of the Regions¹,

¹ OJ C , , p. .

Citation 6

9

Acting in accordance with the ordinary legislative procedure,

Formula

10

Whereas:

Recital 1

10a

(1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons and frame a common policy on asylum and migration, external border control and returns as well as prevent unauthorized movements between Member States, based on solidarity and fair sharing of responsibility between Member States, which is also fair towards third-country nationals and stateless persons and in full respect of fundamental rights.

Recital 2

10b

Draft Agreement

(2) To this end, a comprehensive approach is required, with the objective of reinforcing mutual trust between Member States, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and implemented in an integrated manner.

Recital 3

(3) The EU and its Member States may be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations. The comprehensive approach as outlined in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], including through partnerships with relevant third countries, should ensure that the Union has at its disposal specific rules to effectively manage migration, in particular the triggering of a mandatory solidarity mechanism and that all the necessary measures are put in place to prevent crisis to happen. This Regulation sets out rules that are complementary to this approach as well as the rules set out in Council Directive 2001/55/EC, which may be used at the same time.

Recital 4

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

Recital 5

(5) This Regulation intends to enhance the preparedness and resilience of the Union to manage situations of crisis and to facilitate operational coordination, capacity support and the availability of funding in situations of crisis.

Recital 6

Draft Agreement

10f	(6) This Regulation ensures the effective application of the principle of solidarity and fair sharing of responsibility between Member States and the adaptation of the relevant rules on asylum and return procedures, including the application of expedited procedure so that the Member States and the Union have the necessary legal tools at their disposal to react swiftly to situations of crisis and force majeure, including the adaptation of the timelines to carry out all procedures.
Recital 7	
10g	(7) This Regulation ensures that Member States receive full support in situations of crisis and force majeure, including through the solidarity mechanism that ensures a fair sharing of responsibility and a balance of efforts between Member States in case of crisis.
Recital 8	
10h	<p>(8) This Regulation respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular respect and protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition, as well as the Geneva Convention Relating to the Status of Refugees of 28 July of 1951, as amended by the New York Protocol of 31 January 1967 ('Geneva Convention').</p> <p>The Regulation should be implemented in compliance with the Charter and general principles of Union law as well as international law.</p> <p>In order to reflect the primary consideration that must be given to the best interests of the child, in line with the 1989 United Nations Convention on the Rights of the Child, and the need to respect family life, as well as to ensure the protection of the health of the persons concerned, safeguards should be applied in respect of minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] should continue to apply in respect of persons subject to the derogations foreseen in this Regulation, except where this Regulation provides otherwise. The rules set out in Directive XXX/XXX [Reception Conditions Directive recast], including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made.</p>
Recital 9	
10i	(9) This Regulation does not provide derogations from the rules and guarantees, including related to material reception conditions, under Directive XXX/XXX/EU [Reception Conditions Directive]. The Member State in a situation of crisis shall provide for additional and sufficient human and material resources to be able to meet its obligations under Directive XXX/XXX/EU [Reception Conditions Directive].
Recital 10	

Draft Agreement

G	10j	(10) The rules and guarantees set out in Regulation (EU) XXX/XXX [Screening Regulation], Regulation (EU) XXX/XXX [Eurodac Regulation], Directive (EU) XXX/XXX [Trafficking in Human Beings] and Regulation (EU) XXX/XXX [Qualifications Regulation] should continue to apply irrespective of derogations under this Regulation. Member States may only apply the measures provided for in this Regulation under the conditions established thereto, to the extent provided in the Council Implementing Decision foreseen therein and where it is strictly necessary and proportionate.	G
	Recital 11		
G	10k	(11) The adoption of measures in respect of a particular Member State should be without prejudice to the possibility to apply Article 78(3) of the Treaty on the Functioning of the European Union.	G
	Recital 12		
G	10l	(12) Since the objectives of this Regulation, namely to provide for the necessary adaptation of the rules on asylum procedures and where relevant those on solidarity in order to ensure that Member States are able to address situations of crisis in the field of asylum and migration management within the Union and force majeure, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.	G
	Recital 13		
G	10m	(13) Mass arrivals of third-country nationals or stateless persons may lead to a situation where a Member State is not in a position to process the applications for international protection of third-country nationals and stateless persons in accordance with the rules set out in Regulation XXX/XXX [Asylum and Migration Management Regulation] and Regulation XXX/XXX [Asylum Procedure Regulation], having consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole. Therefore, it is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.	G
	Recital 14		
G	10n	(14) Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States to ensure their asylum, reception, including child protection services, or return system is well prepared, including preparedness and contingency	G

Draft Agreement

planning and that each component has sufficient capacity.

Recital 15

10o (15) A situation of instrumentalisation may arise where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, where such actions are indicative of an intention of a third country or a hostile non-state actor to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security. [The Member State facing a situation of instrumentalisation of migrants, where third-country nationals or stateless persons attempt to force entry en masse by using violent means, take the necessary proportional measures, in accordance with their national law, to preserve security, law and order and ensure the effective application of this Regulation.]

Recital 16

10p (16) Situations in which non-state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

Recital 17

10q (17) [Humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.]

Recital 18

10r (18) Without prejudice to measures applicable under other policy fields and legal instruments, to ensure an immediate and appropriate response to hybrid threats in line with Union law and international obligations, this Regulation focuses on the specific measures applicable in the area of migration aimed at addressing the situations of instrumentalisation.

Recital 19

10s (19) In a situation of instrumentalisation, third-country nationals and stateless persons may apply for international protection at the external border or in a transit zone of a Member State, often being persons apprehended in connection with unauthorised crossings of the external border by land, sea or air or who are disembarked following search and rescue operations. This may particularly lead to an unexpected significant increased caseload of applications for

Draft Agreement

international protection at the external borders. In this regard, effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention.

Recital 20

10t

(20) As regards Cyprus, Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Although the line does not constitute an external border, it follows that a situation where a third country or hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to cross the line should be considered as instrumentalisation, when all the other elements of the definition of instrumentalisation are present.

Recital 21

10u

(21) A Member State may be also faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of force majeure could prevent the Member State to comply with obligations under Union law and could have consequences not only in that Member State but in the Union as a whole. Examples of a situation of force majeure include, among others, pandemic or natural disasters.

Recital 22

10v

(22) Where a Member State considers itself to be in a situation of crisis or force majeure, that Member State may request for authorisation of the derogations and solidarity measures contained in this Regulation. This request should include the description of the situation, the measures requested to address the specific situation and the reasons why the situation requires to resort to the said measures and where relevant, the measures already taken to address the situation.

Recital 23

10w

(23) The use of measures comprised in the Permanent EU Migration Toolbox as established by Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] Article 5(3)] should not be a precondition to benefit from solidarity measures under this Regulation.

Recital 24

Draft Agreement

10x	(24) In a situation of crisis, the Member State facing such a situation should have the possibility to request from other Member States solidarity and support measures that are most suited to its needs to manage that situation and that call for enhanced solidarity compared to that provided for in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] in alleviating the responsibility for handling a situation of crisis. The enhanced solidarity and support measures could take the form of relocations, financial contributions, alternative solidarity measures or a combination of the above.
Recital 25	
10y	(25) In a situation of crisis and force majeure, the Member State facing such a situation should have the possibility to request the authorisation to apply derogations from relevant rules on the asylum procedure, including the asylum border procedure, and the return border procedure. Where relevant, this request should also include the choice of the Member State concerned as regard either the exclusion or the cessation of the border procedure for specific categories of applicants. Together with this request, the Member State concerned may notify the Commission of its intention to apply the derogation from the registration deadline before it is authorised in the Council Implementing Decision as well as the precise reasons for which an immediate action is required, which should not exceed 10 days from the day following the request, unless authorised in the Council Implementing Decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to limit the time gap between the end of such period and the adoption of the corresponding Council Implementing Decision.
Recital 26	
10z	(26) Considering that it may happen that a Member State faces several of the situations described in this Regulation at the same time, it should be possible for that Member State to request and be authorised concomitantly to apply or benefit from the measures set out in this Regulation, which are conceived as complementary.
Recital 27	
10aa	(27) In order to allow for the proper management of a situation of crisis, including instrumentalisation, or force majeure, and ensure predictability and a proper adaptation of the relevant rules on the asylum procedure, including the asylum border procedure, and the return border procedure, the Commission should be conferred the power to assess the situation, upon the reasoned request by the Member State concerned, and determine, by way of an implementing decision, whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or force majeure.
Recital 28	
10ab	(28) In a situation of crisis, the solidarity measures to address such a situation should go beyond those provided for in Regulation (EU) XXX/XXX

Draft Agreement

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

Recital 29

10ac

(29) To ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is a relevant consideration whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

Recital 30

10ad

(30) In order to provide for an appropriate response that is proportionate and necessary to address the situation, the Commission proposal should identify, where relevant, the specific derogations that Member States should be authorised to apply. In a situation of instrumentalisation, the persons subject to instrumentalisation to whom the relevant derogations may be applied should be clearly identified.
In a situation of crisis, where appropriate and after consultation with the Member State facing the situation of crisis, the Commission should include in its proposal a draft Solidarity Response Plan indicating the relevant solidarity measures and their level required for the specific situation, including the total amount of relocations, financial contributions or alternative solidarity measures and their level, and recognising that the various types of solidarity are of equal value and respecting the full discretion of Member States in choosing the solidarity measures.

Recital 31

10ae

(31) Whereas in a situation of migratory pressure relocation or responsibility offsets should cover 60% of the relocation needs under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], in a situation of crisis, it is important that all solidarity needs of the Member State concerned are addressed. For this reason, when the Council Implementing Decision establishes the Solidarity Response Plan, the Member State facing the situation of crisis should have priority to use the unallocated solidarity pledges or those that have not been implemented yet and are available in the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]. If that is not possible, or if the Solidarity Pool does not contain

Draft Agreement

sufficient pledges to cover the identified needs, the Member State facing the situation of crisis should also make use of the contributions contained in the Council Implementing Decision, recognising that the various types of solidarity are of equal value. With a view to addressing all the needs of the Member State concerned, if the combination of the relocation pledges available in the Solidarity Pool and in the Council Implementing Decision is not sufficient, responsibility offsets should become mandatory to cover the needs set out in the Solidarity Response Plan. For this to happen, there need to be persons present on the territory of the contributing Member State to whom the offsets apply.

Recital 32

10af

(32) Situations of crisis or force majeure are also liable to put at risk the essential functions of a Member State. In order to strengthen mutual trust between the Member States, to ensure their better coordination at EU level, implementing powers should be conferred upon the Council to adopt an Implementing Decision authorising a Member State to apply the derogations and the solidarity measures provided for by this Regulation where the conditions laid down are met.

The time period for the application of the measures authorised by the initial Implementing Decision should be 3 months, which can be extended to further three months upon confirmation by the Commission of the persistence of the situation of crisis or force majeure.

The Council should be empowered to further prolong the authorisation to apply the derogations and the solidarity measures, by up to three months on the basis of a Commission proposal depending on whether the circumstances justifying the prolongation of the derogations and solidarity measures persist, which can be extended to further three months upon confirmation by the Commission. The Council should be empowered to repeal the application of the measures on the basis of a Commission proposal when the circumstances justifying the application of the derogations and solidarity measures have come to an end.

The prolongation decision may include an amendment of the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principles of proportionality and necessity are respected.

Recital 33

10ag

(33) The Council Implementing Decision should include, where appropriate, an authorisation of the specific derogations that the Member State facing a situation of crisis or force majeure could apply, depending on the nature of each derogation, and set the date from which they could be applied. Moreover, the Decision should state the grounds on which it is based and the personal scope of the derogations.

Recital 34

10ah

(34) The Council Implementing Decision should establish, where appropriate, the said Solidarity Response Plan, indicating the specific solidarity and support measures required and their levels, as well as the pledges made by the contributing Member States. To that end, the pledging exercise should take place in the framework of the adoption of the Council Implementing Decision. It is important to ensure the full discretion of the contributing Member State to choose between the types of solidarity and support measures.

Draft Agreement

Recital 35

10ai

(35) Given the importance of applying the measures set out in this Regulation only for as long and to the extent strictly necessary, the Commission and the Council should keep the situation under constant monitoring and review as regards the necessity and proportionality. In this context, the Commission should pay particular attention to compliance with fundamental rights and humanitarian standards and may request the European Union Asylum Agency to initiate a monitoring exercise of the concerned Member State's asylum or reception system pursuant to Article 15(2) of Regulation 2021/2303/EU.

Recital 36

10aj

(36) The procedural rules set out in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] for carrying out relocation should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, taking into account the gravity and urgency of that situation.

Recital 37

10ak

(37) To ensure a smooth implementation of the solidarity mechanism under this Regulation, further to the tasks mentioned in Regulation (EU) XXX/XXX [Asylum and Migration Management], the EU Solidarity Coordinator, should support relocation activities and promote a culture of preparedness, cooperation and resilience among Member States.
In a situation of crisis, the EU Solidarity Coordinator should, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism.
The office of the Solidarity Coordinator should be provided with sufficient staff and resources to effectively fulfil this role.
When implementing relocation, primary consideration should be given to vulnerable persons.

Recital 38

10al

(38) Vulnerable persons in particular when they have special reception needs within the meaning of [Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive)], or in need of special procedural guarantees as referred to in Articles 19 to 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] should be given primary consideration for relocation.
According to Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive), applicants falling within any of the following categories are more likely to have special reception needs: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders including post traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or

Draft Agreement

sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

Recital 39

G

10am

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

G

Recital 40

G

10an

(40) When confronted with a situation of crisis or force majeure, the Member State concerned might need to divert resources to manage the influx of third-country nationals and stateless persons arriving at its borders. As a result, the Member State concerned may need time to reorganise its resources and increase its capacity, including with the support of the relevant EU agencies. The Member State facing a situation of crisis or force majeure may need more time to be able to take decisions on their applications without allowing entry into the territory. In such situation, it should be possible for the Member State concerned to derogate from deadlines for registration and border procedure.

G

Recital 41

G

10ao

(41) Where a Member State applies one or more of the measures in this Regulation, the Member State should inform third-country nationals and stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the derogations applied and the duration of the measures. Member States are obliged to address special procedural and special reception needs of the applicants that may arise and provide information by an appropriate manner accordingly. Moreover [Article 8 on provision of information and Article 35(2a) with regard to the information on the possibility to appeal the decision on the application, of the Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] should apply.

G

Recital 42

G

10ap

Draft Agreement

(42) Where derogations from the asylum procedure are applied, the safeguards for applicants with special procedural and special reception needs, including medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of crisis or force majeure should not apply or should cease to apply the derogations from the asylum procedure in cases where there are medical reasons for not applying the border procedure in line with [Article 41e(2)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] or where the necessary support cannot be provided to applicants with special procedural needs in line with [Article 41e(2)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive XXX/XXX [Reception Conditions Directive]. The Member State concerned should prioritise the examination of applications from persons with special procedural needs in line with Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and with special reception needs as defined in [Article 2(13) of Directive XXX/XXX [Reception Conditions Directive recast]], especially minors and their family members.

Recital 43

10aq

(43) In situations of crisis and force majeure, the Member State should be authorised to apply derogatory rules for registering the applications for international protection no later than within four weeks after they are made. Such an extension should be without prejudice to the rights of asylum applicants guaranteed by the Charter of Fundamental Rights of the European Union, Regulation (EU) XXX/XXX [Asylum Procedures Regulation] and Directive (EU) XXX/XXX [Reception Conditions Directive].
Without prejudice to the exception provided for during the period between the request and the adoption of the Council implementing decision, in a situation of crisis, characterised by mass arrivals of third-country nationals and stateless persons, the extension of the registration period may only be applied during the time period set out in the initial Council implementing decision.

Recital 44

10ar

(44) When confronted with a situation of crisis or force majeure, it should be possible for the Member State concerned to extend the examination of applications for international protection at the border with an additional period of six weeks. The extension may not be used in addition to the period referred to in Article 41(c)(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] third sub-paragraph.

Recital 45

10as

(45) In situations of crisis or force majeure, the Member State concerned should be able to request from among several options with regard to the application of the border procedure, taking into account the composition of the flows and their diverse nature depending on the precise situation of crisis.

Recital 46

10at

Draft Agreement

(46) In situations of crisis, characterised by a mass arrivals of third-country nationals and stateless persons, or force majeure, it could be necessary to allow Member States not to apply the border procedure in respect of persons who come from third countries where the EU-wide average recognition rate is below 20%. In order to apply this derogation, the Council Implementing Decision should assess that the measures contained in the contingency plan of the concerned Member State referred to in [Article 28 of Directive (EU) XXX/XXX [Reception Conditions Directive]] are not sufficient to address that situation. In any event, Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 40(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]].

Recital 47

(47) In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to allow Member States to lower the threshold for the mandatory application of the border procedure foreseen in [Article 40(1)(i) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]]. In any event, the reduced threshold should not go below 5%. Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 40(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]].

Recital 48

(48) In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to broaden the scope of the application of the border procedure, established by [Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] and to allow Member States to take a decision in the framework of a border procedure also on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection Union-wide is 50 % or lower. As a result, in the application of the crisis border procedure, Member States should continue applying the border procedure as provided by [Articles 41 to 41h of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] but could extend the application of the border procedure to third-country nationals or stateless persons who come from third countries where the EU-wide average recognition rate is above 20% but under 50%, taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in quarterly updates of Eurostat data.

This broadening of the scope of the border procedure should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation XXX/XXX [Asylum Procedure Regulation]. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to [Article 41bb] or counted for the application of the annual cap pursuant to [Article 41be of Regulation XXX/XXX [Asylum Procedure Regulation]].

Recital 49

(49) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with

Draft Agreement

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

Recital 50

10ax

(50) In a situation of instrumentalisation and in order to avoid that a hostile third country or non-state actor targets specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible to derogate from the asylum procedure set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in [Articles 41 to 41h of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] on the merits of all applications for international protection. The principles and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] have to be respected. The Council Implementing Decision authorising the Member State to apply the referred derogations should specify the third-country nationals or stateless persons subject to the situation of instrumentalisation.

Where applying this derogation, specific attention should be given to certain categories of third-country nationals and stateless persons who have been subject to instrumentalisation, in particular minors under the age of 12 and their family members, and vulnerable persons with special procedural or special reception needs. These groups should therefore either be excluded from the border procedure, or, when an individual assessment concludes that their applications would likely to be well-founded, this procedure should cease to apply to them. The choice between these alternatives remains at the discretion of the Member State requesting the application of this derogation. The choice indicated in the request should be reflected in the Council implementing decision authorising the application of this derogation.

The broadening of the scope of the border procedure in a situation of instrumentalisation should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation XXX/XXX [Asylum Procedure Regulation]. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to [Article 41bb] or counted for the application of the annual cap pursuant to [Article 41be of Regulation XXX/XXX [Asylum Procedure Regulation]].

Recital 51

10ay

(51) In order to support the Member State concerned in providing the necessary assistance to third-country nationals and stateless persons falling under the scope of this Regulation, United Nations agencies, and the United Nations High Commissioner for Refugees in particular, and other relevant partner organisations entrusted with specific tasks by Member States, should have effective access to the border under the conditions set out in the Directive (EU) XXX/XXX [Reception Conditions Directive recast] and Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. The United Nations High

Draft Agreement

Commissioner for Refugees should be allowed access to applicants for international protection, including to those at the border. To this end, the Member State concerned should maintain cooperation with these organisations.

Recital 52

10az

(52) Specific rules should be set out for situations of crisis, characterised by mass arrivals, or force majeure, to allow Member States to extend the time limits set out in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply simultaneously to the time limits set out for sending and replying to take charge requests and take back notifications as well as the time limit to transfer an applicant to the Member State responsible. The time limits should be extended irrespective of whether Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] provides for shorter time limits for certain situations.

Recital 53

10ba

(53) In order to ensure effective access to the procedure for granting international protection, where the transfer does not take place due to the persistence of the situation of crisis characterised by a mass influx, or force majeure or the transferring Member State does not implement the transfer when the applicant is available to the competent authorities of the transferring Member State, a maximum time limit to carry out the transfer to a Member State facing that situation should be set out. That time limit should not be longer than one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with [Article 33(3) of Regulation (EU) No XXX/XXX [Asylum and Migration Management Regulation]]. This is without prejudice to the possibility to extend the time limits pursuant to [Article 35(2) of Regulation XXX/XXX [Asylum and Migration Management Regulation]] for carrying out a transfer.

Recital 54

10bb

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

Recital 55

Draft Agreement

10bc

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

Recital 56

10bd

(56) Where, in line with Regulation (EU) XXX/XXX [Qualification Regulation], objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from Regulation (EU) XXX/XXX [Qualification Regulation] could be well-founded, it is in the interest of both the determining authorities and the applicants concerned to have the examination of the merits of the application concluded as soon as possible and allow for a swift and efficient granting of international protection in a situation of crisis.

Recital 57

10be

(57) Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation should enjoy all of the rights and guarantees, to which applicants are entitled in accordance with Regulation (EU) XXX/XXX [Asylum Procedures Regulation], including the right to information and to an effective remedy.

Recital 58

10bf

(58) When applying the Commission Recommendation on expedited procedure, there should be no interview on the merits, but if there are doubts whether the applicant belongs to the category (ies) of persons identified in the Commission Recommendation or whether the exclusion grounds apply, an interview might be needed. In all cases, the procedure should not last longer than four weeks from the date of the lodging of the application. Where a Member State has established that an applicant for international protection is a threat to internal security, that Member State should be able not to apply the expedited procedure in respect of that applicant. In such circumstances, the application should be examined in accordance with Articles 34 and 37 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation].

Recital 59

Draft Agreement

10bg	(59) Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation, should, in accordance with Article 29 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], receive a document certifying their status in a language they can understand or can reasonably be expected to understand.
Recital 60	
10bh	(60) The relevant Union Agencies, UNHCR and other relevant organisations may be consulted at the different stages of the application of the expedited procedure.
Recital 61	
10bi	(61) To ensure a sufficient level of preparedness for a situation of crisis, Members States should include in their contingency plans measures needed to respond to and resolve a situation of crisis, including measures needed to overcome challenges in the functioning of the Common European Asylum System and to protect the rights of applicants for and beneficiaries of international protection as well as foster future resilience in the Member State concerned. Member States should also use all the tools available under national and Union law, including making use of anticipation and early warning tools under the EU mechanism for preparedness and management of crises related to migration foreseen in Commission Recommendation (EU) 2020/1366 of 23 September 2020.
Recital 62	
10bj	(62) Without prejudice to the above and where relevant, in a situation of crisis, all mechanisms for crisis foreseen in the Permanent EU Migration Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with their respective legislation. Thereafter, the Commission should, in the context of the Technical-Level Migration Forum, ensure coordination and exchange of information with other platforms that are relevant to manage the crisis situation, including the EU Migration Preparedness and Crisis Management Network in accordance with Commission Recommendation (EU) 2020/1366, and the Integrated Political Crisis Response ('IPCR') arrangements.
Recital 63	
10bk	(63) A Member State facing a situation of crisis or force majeure may request support from the EU Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. In addition and as appropriate, the EU Asylum Agency may propose assistance on its own initiative in accordance with Article 16(1)(d) of Regulation 2021/2303 ('EUAA Regulation'), whereas the European Border and Coast Guard Agency may propose

Draft Agreement

assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned and Europol may propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794.

Recital 64

10bl (64) To support Member States that undertake relocation as a solidarity measure, financial support from the EU budget should be provided, including from the thematic facility as set out in Regulation 2021/1147.

Recital 65

10bm (65) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU) TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention¹, 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.

Recital 66

10bn (66) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified their wish to take part in the adoption and application of this Regulation]

-

10bo or

Recital 67

10bp (67) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

Draft Agreement	
Recital 68	
10bq	(68) As regards Iceland and Norway, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway
Recital 69	
10br	(69) As regards Switzerland, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.
Recital 70	
10bs	(70) As regards Liechtenstein, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland ¹ refers.