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From:	General Secretariat of the Council
To:	Asylum Working Party
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] (Articles 45 and 50-56) - Comments from the delegations

Following the informal videoconferences of the members of Asylum Working Party on 7 and 13 January 2021, delegations will find attached a revised compilation of replies received from Member States on the abovementioned subject. In this fourth revised version, the contribution by Spain has been modified.

Written comments submitted by the Member States**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]

following informal videoconferences of the members of Asylum Working Party on 7 and 13 January 2021

Articles 45 and 50-56

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AUSTRIA

Please find below targeted amendments to the provisions covered by the meetings of the AWP on 7 and 13 January accompanied by explanatory comments.

Article 45 Solidarity contributions

Explanatory comments:

As already brought forward, Austria maintains a general reservation on the proposed solidarity mechanisms, especially on a separate and permanent mechanism for S&R, as well as Relocation as the key solidarity contribution. The general focus on relocation and return sponsorship as the – in some cases – sole (and in some cases mandatory) solidarity contribution is problematic and should be extended to other effective forms of solidarity.

Art. 45 para. 1 (a): According to the explicit wording of Art. 45 para. 1 (a) AMR, “applicants who are not subject to the border procedure” pursuant to Art. 41 APR are subject to relocation. As the legal text stands in conjunction with the numerous and extensive exceptions foreseen in Art. 41 APR, this provision would lead to peculiar and undesirable situations where also applicants arriving from countries with a very low – even 0% -recognition rate would be relocated from one MS to another. In the meeting of the Asylum Working Party on 7 January, COM emphasised that it had not been intended to cover this group of applicants by relocation. Moreover, recital 26 AMR states that only persons who are more likely to have a right to stay in the Union should be relocated. Consequently, AT deems it essential to clarify this in the pertinent provisions and to exclude applicants from countries with a low recognition rate and who are not likely to have a right to stay from relocation. Relocation should be only an option for those persons who are really in need of international protection.

For example: A family who is not likely to have a right to stay and is not considered as a danger to the national security or public order of a Member State applies for international protection. According to Art. 41 para. 5 APR the border procedure may not be applied to the family.

Austria proposes to change the wording of Art. 45 para. 1 (a) accordingly in order to make sure that only those applicants who do not fall in the scope of the compulsory border procedure and of the exceptions of the border procedure are relocated. As a consequence, Art. 45 para. 1 (a) should not be applied to applicants who fall in the scope of the exceptions of the border procedure. The last sentence of Art. 41 para. 9 applies to these persons.

Additional solidarity contributions:

Austria proposes to add additional solidarity contributions:

- Recognizing challenges faced by “destination Member States” related to secondary movements (which lead to “de facto” Relocation of asylum applicants to other EU Member States).
- Introducing “protection sponsorships”. A separate concept paper will follow.

Art. 45 para. 1 (c): In the context of this provision, there are legal questions which need to be clarified. At present there is no mutual recognition of asylum decisions within the EU. How would this work out in practice? It is not clear if it would be necessary to conduct a new asylum procedure.

Art. 45 para. 1 (d): AT welcomes that capacity building measures are part of solidarity contributions. However, there is a strong need for a more flexible approach. New and innovative solidarity contributions should be introduced, for example in the external dimension. Therefore, AT suggests to extend the list of alternative solidarity contributions by the targeted amendments below.

Art. 45 para. 2 (b): Although this is a voluntary measure, Austria maintains concerns regarding the relocation of illegally staying third country nationals.

Text proposal: Art. 45

1. Solidarity contributions for the benefit of a Member State under migratory pressure ~~or subject to disembarkations following search and rescue operations~~ shall consist of the following types:

(a) relocation of applicants where the circumstances referred to in Article 40(1), point (c), (f) or (i) XXX/XXX [Asylum Procedure Regulation] do not apply ~~who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];~~

(b) return sponsorship of illegally staying third-country nationals;

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(d) taking over responsibility where the benefitting Member States would be responsible in line with the criteria laid down in this Regulation, also in cases where a transfer is not possible or indicated due to legal or practical reasons related to the situation in the benefitting Member State.

(e) protection sponsorships pursuant to Art. 56;

(f) capacity-building measures and support in the field of asylum and migration management

- in the benefitting Member State, including joint processing of cases, reception, border protection and return

- or operational support and measures in third countries such as integrated border management, disembarkation following SAR, combatting human smuggling, strengthening protection capacities as well as fostering perspectives in regions of origin aimed at responding to and preventing illegal migration flows towards the European Union.

2. Such contributions may, pursuant to Article ~~56~~**57**, also consist of: ~~(a)~~ relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];.

~~(b) relocation of illegally staying third-country nationals~~

Article 50 Assessment of migratory pressure

Explanatory comments:

Art. 50 para. 1: The Member State in question shall be sufficiently involved in the assessment of the migratory situation. Therefore, Austria proposes to insert the amendments below in Art. 50 para. 1 (a) and (b).

Art. 50 para. 3: The period of six months is too short, as there are many Member States who have been confronted with migratory pressure for years. Therefore, Austria proposes to take account of the preceding five years. Moreover, it is not clear how the assessment of the data listed in para. 3 will actually work out in practice. In this context, predictability as well as flexibility is needed. It is also necessary to extend the list of data to the number of persons disembarked in the respective Member State following a SAR operation and to the number of persons being granted an international protection status, because these are major challenges for Member States. In addition, Austria

proposes to add the number of persons, who have absconded during an asylum procedure in order to take account of the common phenomenon of secondary movements.

Text proposal: Art. 50

1. The Commission shall, in close cooperation with the Member State in question, assess the migratory situation in a Member State where:

(a) that Member State has informed the Commission and the Council that it considers itself to be under migratory pressure and supports this self-assessment with well-founded substantiations;

(b) on the basis of available information in line with par. 3 and 4, the Commission and the Council considers that a Member State may be under migratory pressure.

2. (...)

3. The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding ~~five months~~ years, compared to the overall situation in the Union, and shall be based in particular on the following information:

(a) the number of applications for international protection by third-country nationals and the nationality of the applicants;

(b) the number of third-country nationals who have been detected by Member State 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)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council⁵⁸;

(c) the number of return decisions that respect Directive 2008/115/EC;

(d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC;

(e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes;

(f) the number of incoming and outgoing take charge requests and take back notifications in accordance with Articles 34 and 36;

(g) the number of transfers carried out in accordance with Article 31;

(h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border;

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

(j) the number and nationality of third-country nationals disembarked following search and rescue operations, including the number of applications for international protection;

(k) the number of unaccompanied minors;

(m) the number of persons being granted an international protection status;

(n) the number of persons that have absconded during an asylum procedure

4. The assessment of migratory pressure shall also take into account the following:

(...)

Explanatory comments:

AT calls for a stronger role of the Council concerning the assessment of the migratory situation and the report on migratory pressure. The Council should be able to make the final decision in this regard, because the Member States are the ones who are highly affected by the outcome of such decision processes.

In order to reflect these considerations in the current text of the AMR, AT proposes to introduce the amendments below into Art. 51.

Text proposal: Art. 51

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1).

The Commission shall submit the report on migratory pressure to the European Parliament and to the Council **for discussion and consideration pursuant to paragraph 4** within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

2. In the report, the Commission shall ~~state~~ **evaluate** whether **it considers that** the Member State concerned is under migratory pressure.

3. Where the Commission's ~~evaluation~~ **concludes** **indicates** that the Member State concerned is under migratory pressure, the report shall identify **appropriate measures to mitigate the migratory pressure**:

(a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum and return as well as its overall needs in managing its asylum and return caseload;

(b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, as appropriate, of:

(i) measures that the Member State under migratory pressure should take in the field of migration management, and in particular in the field of asylum and return;

(ii) measures referred to in Article 45(1), points (a), (b) ~~and (c)~~, **(d) and (e)** to be taken by other Member States;

(iii) measures referred to in Article 45(1), point ~~(d)~~ **(f)** to be taken by other Member States.

4. The Commission shall submit its evaluation to the Council pursuant to paragraph 1 of this Article, where the Member States shall discuss and, where necessary, amend the Commission report. The Council shall, based on qualified majority voting, decide at its subsequent convening:

(a) on whether the Commission's evaluation regarding the migratory situation can be confirmed as a situation of migratory pressure;

(b) on whether the support measures identified by the Commission are proportionate and appropriate.

5. Where the Council decides that the migratory situation in the Member State cannot be confirmed as a situation of migratory pressure, the Commission may adapt its report by identifying further measures pursuant to paragraph 3 (b) (i)

6. Where the Commission considers that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment in order to commence an accelerated assessment and confirmation procedure of the Commission evaluation in the Council pursuant to paragraph 4.

Article 52 Solidarity Response Plans in situations of migratory pressure

Explanatory comments:

Art. 52 para. 1: Austria proposes to make a reference to other solidarity contributions in order to avoid that only relocation and return sponsorship can be applied by Member States. It should be possible that Member States are able to choose their contributions. Notwithstanding AT's critical position towards a solidarity mechanism for SAR, it should be clarified in Art. 52 para 1 that MS, who are benefitting from the solidarity measures for disembarkation following SAR, are not excluded from contributing by means of the solidarity contributions referred to in Article 45(1) since this is also foreseen for "normal" situations. This is necessary because of the wording of the definition of benefitting MS in Art. 2 lit r AMR.

Art. 52 para. 2: Due to Austria's position that other solidarity contributions shall be equal to relocation and return sponsorship, the last sentence concerning the threshold of 30% should be deleted.

Art. 53 para. 3: Austria proposes the amendments below in order to reflect a stronger role of the Council concerning the report on migratory pressure. Moreover, it should be made clear in the text that the Solidarity Response Plan also includes other solidarity contributions as well as the timeframe for implementation.

Art. 53 para. 5: A deduction of the share of 10% is not appropriate for Member States which were confronted with a high influx of applicants in the preceding years. Moreover, in this context, the number of the first instance recognitions of international protection should be relevant for the deduction. For Austria a deduction of 50% would be necessary.

Text proposal: Art. 52

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, **and the Council has confirmed the Commission's evaluation pursuant to Article 51 (4), the other Member States which are not themselves benefitting Member States in situations of migratory pressure shall contribute by means of the choosing** solidarity contributions referred to in Article 45(1), points (a), (b), and **(c), (d), (e) or (f)**. ~~Member States shall prioritise the relocation of unaccompanied minors.~~

2. Where the report referred to in Article 51 identifies measures referred to in paragraph 3, point (b)(iii) of that Article, other Member States may contribute by means of those measures instead of measures referred to in Article 51(3)(b)(ii). ~~Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report on migratory pressure under Article 51(3)(b)(ii).~~

3. Within two weeks from the adoption of the report referred to in Article 51, Member States shall **have concluded discussions in the Council to confirm or amend the report pursuant to Article 51 (4) and shall** submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of contributions from among those set out in Article 51(3)(b)(ii) **and shall also indicate the detailed arrangements and the timeframe for their implementation** ~~or, where relevant as well as~~ the measures set out in Article 51(3)(b)(iii) that Member States propose to take. Where Member States propose more than one type of contribution set out in Article 51(3)(b)(ii), they shall indicate the share of each.

Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals present on the territory of the Member State concerned that they intend to sponsor.

~~Where Member States indicate measures set out in Article 51(3)(b)(iii) in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time frame for their implementation.~~

4. Where the Commission considers that the solidarity contributions indicated in the Solidarity Response Plans do not correspond to the needs identified in the report on migratory pressure provided for in Article 51, it shall convene the Solidarity Forum. In such cases, the Commission shall invite Member States to adjust the type of contributions in their Solidarity Response Plans in the course of the Solidarity Forum by submitting revised Solidarity Response Plans.

5. A Member State proposing solidarity contributions set out in Article 51(3)(b)(ii), ~~may request~~ **shall be given** a deduction of **10%-50%** of its share calculated according to the distribution key set out in Article 54, where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications **first instance recognitions of** for international protection.

Article 53 Commission implementing acts on solidarity in situations of migratory pressure

Explanatory comments:

Art. 53 para. 2 and 5: As already brought forward, AT calls for strengthening the role of the Council in assessing the situation and in taking decisions on appropriate measures. We suggest to add that the Commission should also consult the Council before adopting immediately applicable implementing acts in accordance with the urgency procedure.

Due to our position concerning Art. 45 and the structure of solidarity measures, we propose to delete subparagraphs 2, 3 and 4 of Art. 53 para. 2, notably because of the current wording in subpara. 3 and the “correction mechanism”.

Art. 53 para. 3: We refer to our comments on Art. 45. The proposed changes should be reflected in this paragraph (extended to further solidarity contributions apart from relocation and return sponsorship).

Concerning the last subpara of para 3, we would like to emphasise that ongoing secondary movements have to be considered and rather first instance asylum decisions should be taken into account instead of applications for international protection. Moreover, the percentage of deduction, which is currently 10%, should be increased. The previous burden of each Member State of the preceding years should be adequately reflected and lead to a deduction of the calculated share.

Text proposal: Art. 53

1. (...)

2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure **as confirmed by the Council**.

~~Where the type of contribution indicated by Member States in their solidarity response plans is that referred to in Article 45(1), point (d), the Commission shall assess whether the measures proposed are in proportion to the contributions that the Member States would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c) as a result of the application of the distribution key set out in Article 54.~~

~~Where the measures proposed are not in proportion to the contributions that the contributing Member State would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c), the Commission shall set out in the implementing act the measures proposed while adjusting their level.~~

~~Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 51(3)(b)(ii). The Commission shall adjust measures referred to in Article 51(3)(b)(iii) indicated by those Member States accordingly.~~

3. The implementing act shall set out:

(a) (...)

(b) (...)

(c) (...)

(d) ~~the measures indicated by Member States pursuant to second, third and fourth subparagraph of paragraph 2~~ **the number of cases deducted according to Art 45 (1) (d)**

(e) the number of protection sponsorships according to Art. 45 (1) (e) and 56

The distribution referred to in paragraph 3 point (c), **(d) and (e)** shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has been responsible for twice the Union average per capita of **first instance asylum decisions** applications for of international protection. In such cases the Member State shall receive a deduction of ~~40~~**50**% of its share calculated according to the distribution key set out in Article 54. This deduction shall be distributed proportionately among the Member States making contributions referred to in Article 45(1) points (a), (b) and (c), **(d) and (e)**;

4. (...)

5. On duly justified imperative grounds of urgency due to the migratory pressure present in a benefitting Member State, the Commission shall **consult the Council and** adopt immediately applicable implementing acts in accordance with the urgency procedure referred to in Article 67(3).

Those acts shall remain in force for a period not exceeding 1 year.

6. (...)

Article 54 Distribution key

Explanatory comments:

In order to determine the share of solidarity contributions in a fair and balanced way, AT considers it as essential to add another criterion reflecting the pressure on national asylum and migration systems in the past, which is taken into account in an appropriate way.

Text proposals: Art. 54

The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State in accordance with Articles 48 and 53 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~~**25**% weighting).

(c) the number of first instance decisions as an outcome of asylum procedures over the preceding 5 years (25% weighting)

Article 56 Other solidarity contributions

If a Member State makes solidarity contributions according to Art. 56, these contributions shall be taken into account by Commission assessments and Council discussions on the assessments pursuant to Article 51.

Text proposal: Art. 5[67] [As indicated above, a separate concept paper on protection sponsorship set out in a new Art. 56 will follow.]

1. (...)

2. Any Member State may, at any time, in response to a request for solidarity support by a Member State, or on its own initiative, including in agreement with another Member State, make contributions by means of the measures referred to in Article 45 for the benefit of the Member State concerned and with its agreement. Contributions referred to in article 45, point (ef) shall be in accordance with the objectives of Regulation (EU) XXX/XXX [Asylum Migration Fund].

3. Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on its own initiative, shall notify the Commission, thereof by completing the Solidarity Support Plan form set out in Annex IV. The Solidarity Response Plan shall include, where relevant, verifiable information, including on the scope and nature of the measures and their implementation. **These contributions shall be taken into account by Commission assessments and Council discussions on the assessments pursuant to Article 51.**

Definitions

Art 2 (g) (v): AT opposes the inclusion of siblings into the term “family members”. We call to maintain the definition of the current Dublin-Regulation. Therefore, Art. 2 (g) (v) should be deleted.

Art 2 (w): AT is concerned that the current wording of the definition “migratory pressure” could be interpreted in a way that MS, which are not located at the external borders would be excluded from receiving solidarity contributions.

Text proposal: Art. 2

(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:

[...]

(v)the sibling or siblings of the applicant;

[...]

(w)‘migratory pressure’ means a situation 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 arrivals following search and rescue operations, as a result of **the geographical location of a Member State and** the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;

PUBLIC

BELGIUM

Written comments on some of the articles of the AMMR proposal discussed during the previous AWP meetings.

1. Article 45, §1, d), AMMR:

This subparagraph was unclear to us. At first we thought that the intention of the Commission was to differentiate between internal and external measures. During the AWP, we heard that the Commission considers that there are three types of measures: 1° measures in the field of asylum, reception and return; 2° operational support; 3° measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries. As operational support can address both internal and external situations, we would suggest to make it clearer.

Therefore, we would suggest the following drafting with a new subparagraph (e):

“Art. 45, §1

(d) capacity measures and operational support not yet covered by EU agencies operation in the field of asylum, reception and return in the benefitting Member State;

(e) measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries and operational support not yet covered by EU agencies operation.”

This proposal is merely a request for more clarity and does not, in any case, prejudice Belgium's position on the content of solidarity. As stated in the AWP of 07/01, Belgium has a scrutiny reservation on the whole proposal.

2. Article 50 AMMR:

In order to provide for more predictability while giving flexibility to assess the situation of migratory pressure, we could support the German proposal to find a good balance between qualitative and quantitative criteria's by determining certain situations that should automatically be considered as being a situation of migratory pressure.

BULGARIA

General comments

We keep our reservation on the draft Regulation and raise a reservation on Part IV Solidarity. We're still in the process of scrutinizing the **draft** Regulation thus our comments do not claim exhaustiveness.

General Comments on the Balance between Responsibility and Solidarity

We're considering the proposal within the overall concept of the Pact, which further deepens the imbalance for the countries on EU external borders, that will have to implement a huge part of the duties for processing applications for international protection. The suggested solidarity measures cannot compensate for the initially disproportionate responsibilities imposed on the EU Member States on external borders, from screening and mandatory border procedures to practically the perpetual responsibility for applicants and beneficiaries.

Moreover, the solidarity measures foreseen in the proposal are activated in specific situations, but in practice the management of asylum processes to a very large extent is assigned to the countries at EU external borders.

The solidarity mechanism is mandatory, but indeed optional, as the specific support measures are left at the discretion of the supporting Member States. A number of conditionalities are in place regarding the relocation and return sponsorship - e.g. persons who are a security threat are not subject to relocation, and in the case of return sponsorship, the supporting States have the option to select nationalities.

In practice, it could be concluded that a frontline Member State facing disproportionate migratory pressure would not be granted solidarity that is proportionate to the responsibility assumed and corresponding to its real needs.

Art.45 Solidarity contributions

It's essential that the solidarity contributions for the benefit of a Member State under migratory pressure are well targeted and corresponding to the real needs. The support measures applied should offer real solutions to a complex asylum situation in a specific national context. It should be avoided to establish a solidarity pool encompassing a large scope of measures designed mostly to be suitable for the contributing Member States. When regulating the eligible solidarity measures we should not miss the main point – they should serve the genuine needs of a Member State under migratory pressure.

In par. 1(b) we can support the wording “*illegally staying third-country nationals*” as this is indeed the status of third country nationals that have been refused international protection or have never applied for such and a subject to return.

Art.50 Assessment of migratory pressure

The Member State subject to migratory pressure should have essential role in the process of determining the migratory pressure. A coordination mechanism with the Member State concerned should be clearly outlined, something that is missing in the current proposal.

Concerning par. 4 we cannot agree with the reference to Article 15 of Council Regulation (EU) No 1053/2019 and to Regulation (EU) XXX/XXX [European Union Asylum Agency].

The Schengen evaluation and monitoring mechanism should not relate to the asylum situation in a Member State and the migratory pressure assessment. The draft Regulation for European Union Asylum Agency is a text that is not agreed, thus the Agency functions in the mentioned articles (13, 14 and 22) are still subject to debate.

It is our general consideration that there should be more focus on the info provided by the requesting MS in the process of assessment.

Art. 51 Report on migratory pressure

In par. 1, second subparagraph to introduce the phrase „*agreed in advance with the Requesting Member State*“ between „migratory pressure“ and „to the European Parliament“.

The point is a draft of the Report should be presented in advance to the Member State concerned for comments and a final version should be agreed between the Commission and the Member State.

Art. 52 Solidarity Response Plans in Situations of Migratory Pressure

Paragraph 2

Regarding par. 2, our general consideration is the measures under Art. 45(1), points (a)(b)(c), which already permit quite a lot of “optionality” could not be comparable and equivalent in terms of expected impact in a situation of migratory pressure to the measures under Art. 45(1), point (d). If measures under Art. 45(1), point (d) are applicable and present in a Solidarity Plan of a contributing Member State, they should be aligned with explicitly defined needs of the benefitting Member State.

Paragraph 3

We are in favor of deleting subparagraph 2 of paragraph 3. Indicating the nationality of the third country nationals that a sponsoring Member State intends to return is a conditionality that would make this support measure practically pointless. A sponsoring Member State should target the nationalities present at the benefitting Member State so that the real needs for support of the benefitting Member States are covered.

If the nationalities of the third country nationals to be returned are “optional”, this might lead to permanent shortfall of returns for certain nationalities that are indeed present on the territory of a benefitting Member State/s.

Art.53 Commission implementing acts on solidarity in situations of migratory pressure

The overall impression is that the solidarity mechanism suggested is weak and inefficient. The calculation of 100% of the support measures also includes the shares of the countries that are supported. However, they are not supposed to participate in the support measures, so their shares are subsequently deducted. In practice, the supported Member State could never benefit of 100% of the support needed.

Another deficiency factor is that up to 30% shortage of the measures under Art. 45(1), points (a)(b)(c) is generally allowed.

Art. 54 Distribution key

Our consideration is that the same distribution key could not apply to States that are not, in principle, placed in the same starting position in terms of commitments and duties in the management of migration and asylum. Based on what is foreseen in the Pact, the frontline MS would be expected to implement significant share of the migration management processes in the EU, will at the same time have to plan and apply solidarity measures and to protect EU's external borders. The protection of EU's external borders should be considered a form of solidarity and to be taken into account when designing the distribution key.

It is pretty clear that protection of EU's external border could not be included in a mathematical formula but this extra responsibility of EU frontline Member States shall not be neglected when considering the fair share and distribution key.

CROATIA

The Republic of Croatia makes a scrutiny reserve on the entire text, given that it is thoroughly examining it.

Considering the complex structure of the chapter on Solidarity and the connectedness with other legislative proposals, we suggest that exhaustive and quality simulations of the mechanism be made, based on specific numbers and linked with other parts of the Pact.

Article 45 (Solidarity contributions)

The Republic of Croatia makes a scrutiny reserve on this Article. **We support both the mandatory and the flexible mechanism of solidarity that is predictable, since we believe that the burden of migration, which falls primarily on the Member States on the external border, will spread evenly to all Member States only, and if, all Member States participate in the said mechanism with complete faith. In addition to the proposed solidarity contributions, we suggest that the efforts invested by MS in the management of the external border be equally valued.**

However, the proposed solidarity mechanism is very complex and its functioning in practice is uncertain. Sponsored returns are innovative, but its implementation and added value from a practical standpoint are questionable. More precisely, previous discussions made it evident that many MS are opposed to the relocation of those third-country nationals who have failed to return within 8 months and for whom, ultimately, that MS takes responsibility.

Likewise, we would like to ask for an explanation from the European Commission about the **possibility of funding all solidarity measures under AMIF, given the Fund's priorities.**

Article 46 (Solidarity Forum)

It is not yet clear from the proposed text what level of MS (political/expert) would the Forum be comprised of, given that the Commission stated, during the meeting on 7 January, that this is not a decision-making body. Furthermore, the role of the Forum is not clear with regard to Article 47 either, which states that the Commission will invite MS, through the Forum, to adjust the number and, as needed, type of contributions, due to which a different level of participants would also have to be ensured.

We propose that a time frame be determined within which the Solidarity Forum would be convened.

Article 50 (Assessment of migratory pressure)

We believe that the **most important and key thing** in this Article is **exclusively and precisely the role of the MS** which alone can ask the Commission to carry out an assessment of the situation with the aim of assessing migratory pressure. **Only the actual MS is able assess the migratory pressure which it faces,** given that reports from various other authorities and sources of information

(other than the MS in question) on the existence of migratory pressure or a lack thereof, will not provide a real situational picture.

Likewise, we believe that the assessment period of 6 months is too short to obtain a real situational picture in the MS.

As regards paragraph 3, some of the said criteria may be influenced by various factors, thus, for example, the number of transfers carried out under item g) may depend on cooperation with another MS and similar (as well as on emergency situations such as the COVID-19 pandemic); as regards paragraph 4, what is taken into consideration, *inter alia*, is the report on migration management drafted by the Commission each year. The report makes a projection of the development of migratory situation and of Union preparedness, so it is clear that it will not always be relevant (suppose the report is made in December on the basis of the data collected during that calendar year, and the assessment of the migratory pressure for a certain Member State is carried out in August next year, for example, therefore prior to the drafting of the subsequent report).

Article 51 (Report on migratory pressure)

MS must play a key and exclusive role in determining whether or not it is under migratory pressure, and not only an advisory one.

Article 52 (Solidarity Response Plans in situations of migratory pressure)

As regards paragraph 5 and the possibility of a 10% deduction of MS contribution, we propose that not only the number of applicants for international protection per capita is taken into account since migratory pressure does not have to be manifested only through this criteria, given the list of criteria referred to in Article 50, paragraph 3 on the basis of which migratory pressure is assessed, and which are much broader.

We therefore propose that a deduction for a particular Member State be increased to 15% and that the efforts invested by Member States in the protection of the external EU border be also taken into account.

Article 53 (Commission implementing acts on solidarity in situations of migratory pressure)

We propose that this Article be supplemented in such a way that, once the contributions of Member States are determined, the implementing act needs to be consulted with the Member State under migratory pressure, that is, the Member State to which the solidarity measures refer to.

As regards paragraph 2, subparagraph 2, it is still not clear on which basis a comparison or a conversion of a Member State's contribution related to capacity building and external dimension is made.

As regards paragraph 3, item b), as we have pointed out on earlier occasions, return sponsorship is a new institute which will not ensure prompt relief of pressure on MS capacities and the system of

return. Rather, it takes a certain amount of time to distribute the burden of MS under pressure and to facilitate the relocation of persons to the territory of another MS. We are afraid that the “soft” measures foreseen by the return sponsorship concept cannot be equivalent to other solidarity measures.

In paragraph 3, item c), we propose that, in order to release the pressure on MS and to respond to the situation in MS more effectively, in a situation of migratory pressure, the distribution key, or the “fair share” that this MS would still be responsible for, be appropriately addressed as there may be situations in which a Member State is continuously under pressure and increased burden and the “fair share” would be based on first estimates and calculations, whereas it actually involves a “moving target”. We would therefore like some clarification as to how this situation is planned to be addressed.

As regards paragraph 4, the amount/percentage of deduction is not clear considering the participation in other solidarity contributions referred to in Article 56. We therefore propose that for reasons of predictability and clarity it is indicated how this will be taken into account. We propose that the participation in other solidarity contributions be evaluated appropriately.

Article 54 (Distribution key)

The Republic of Croatia believes that the GDP and the size of the population alone are not sufficient. Although we are aware that by adding more criteria the calculation becomes more complex, it is also necessary to take into account other elements, such as the length and the activities taken on the protection of the external border, the unemployment rate, the number of asylum applications/the number of applicants for international protection and the number of return decisions, MS integration and reception capacities, as well as the contribution to legal migration and legal pathways for the arrival of persons who are in need of international protection.

In addition to this, we would like to point out that not all MS bear the burden equally or have the same starting position - MS on the external EU border make a great contribution to the protection of the external border. Without prejudice to the discussions on other parts of the Pact, we would particularly like to emphasise that legislative proposals place a burden of mixed migration management significantly on MS on the external border, in particular when it comes to the introduction of new procedures on the border (screening and mandatory border procedures).

Likewise, as it is stated in paragraph 1 that the share of solidarity contributions is calculated on the basis of contributions made by each MS, we would like to once again refer to our comment related to Article 53, paragraph 3. In order to release the pressure on MS and to respond to the situation in MS more effectively, in a situation of migratory pressure, we are particularly concerned by the application and calculation of the distribution key, or the “fair share” that this MS would still be responsible for, which should be appropriately addressed as there may be situations in which a Member State is continuously under pressure and increased burden and the “fair share” would be based on first estimates and calculations, whereas it actually involves a “moving target”.

Article 56 Other solidarity contributions

We propose that the Commission proposes a broader scope of “other solidarity measures”.

Article 2 (Definitions)

In general, we would like to point out that it is essential that all definitions extending over several legislative proposals in this package be mutually aligned.

Furthermore, as regards item s) - “contributing Member State”, the Republic of Croatia would like to have a stronger guarantee that all MS will participate in the solidarity mechanism, and we therefore propose that the following part of the sentence be deleted: “or is obliged to contribute to the solidarity measures”.

CYPRUS

The Republic of Cyprus maintains its scrutiny reservation on all of the articles, as well as the preamble. We hereby wish to submit our preliminary observations while the content of the proposal is still being scrutinized.

Being a front line Member State, registering the highest number of asylum seekers in proportion to our population for four years in a row, we consider the equal application of the principle of solidarity and responsibility to be a fundamental element of an effective asylum and migration system.

In this context, it is of paramount importance to guarantee that, similarly to the fulfilment of the principle of responsibility and the obligations deriving thereof, the system contains a solid mechanism to safeguard the notion of fair burden sharing. The new system should guarantee the swift implementation of measures with a view to effectively alleviate the disproportionate responsibilities arising from our geographical position and the increased influx of migrants.

While we do not object the inclusion of alternative means of assistance, it is essential that the new system caters for the equal distribution of responsibilities. We remain flexible on further examining the way return sponsorship could serve as an effective tool. Notwithstanding our readiness to demonstrate a spirit of compromise, we maintain our position on the need to use relocation as the main tool of fair burden sharing through a, to the extent possible, swift and automated procedure.

With the principle of solidarity remaining too vague to be effective, the additional responsibilities foreseen in the proposal will put additional pressure on the already strained asylum and reception systems, as well as administration, of front line Member States.

Article 45

Solidarity measures should duly take into consideration the particularities of each case, with the needs identified by the requesting Member State to serve as the main guideline. Solidarity measures should genuinely aim at alleviating disproportionate migratory pressure, and should include a certain percentage of mandatory relocation, if deemed appropriate by the requesting Member State. Should a relocation scheme be applied, all asylum seekers should be subject to relocation, regardless of the procedure they fall under. Asylum seekers arriving by land and not only by sea as a result of a search and rescue operation should also fall under this process. It is crucial that the overall number of persons is considered, when analyzing the actual pressures.

We support the mandatory nature of both relocation and return sponsorship tools as well as the efforts to ensure a certain percentage of each Member State's contribution with regards

to relocation and sponsored returns. We suggest that a minimum percentage of 60% of this contribution relates to relocation and sponsored returns. It should be clear how these two main solidarity tools are activated for both the MS providing the support and the MS receiving this support.

Furthermore, once a MS exceeds the number of asylum applications for which it is responsible, the relocation mechanism should be automatically activated.

Articles 50-56

Cyprus reiterates its position on the need of the requesting Member State to be the main provider of information, both in terms of pressures, as well as in terms of needs (art. 50+51). In relation to the content of article 52, we maintain our position that the current wording does not cater for the concerns of front line Member States, with the process being too vague, to the point that it clearly limits the capacity of the system to predict the effective support provided.

Similarly, the content of articles 53 and 54, need to be adjusted to the ultimate aim of providing for a truly fair and effective system. In our opinion, it goes without saying that the distribution of persons identified for relocation or return sponsorship, should exclude the benefitting Member States. The MS which is the recipient of the aid should not be counted in the sharing of obligations.

Concerning the criteria for calculating the contribution attributable to each MS (Article 54), the number of asylum applications received by the Member State in relation to its population should also be taken into consideration.

Concerning the arrangement of cases where capacity building measures will be applied instead of relocation measures and sponsored returns (Article 53(2)) we would like to raise the question of how to assess the proportionality of capacity-building measures vis-à-vis relocation measures and sponsored returns.

Concerning the adoption of implementing acts (Article 53): it is an extremely complex mechanism. Following clarifications are requested:

(a) Whether the adoption of the implementing acts will be assisted by the Committee referred to in Article 67 and whether the decision will be taken on the basis of the examination procedure provided for in Article 5 of Regulation No 182/2011.

(b) Whether the MSs will be able, if they do not agree with the type of contribution that the Commission has included in the text of the implementing acts (as it is not in line with national solidarity response plans) will be able to prevent the adoption of the implementing act at the committee level.

(c) The various stages provided for in Article 53 are very complex and we have doubts whether this is the appropriate procedure. A simulation of the procedure by the Commission can be proposed.

CZECH REPUBLIC

General comments:

The Czech Republic ("CZ") welcomes the discussions on the text of AMMR itself and would like to participate actively in further discussions.

CZ raises scrutiny reservation towards the whole proposal. Moreover CZ has the substantial reservations regarding all parts of the proposal which enable direct or indirect mandatory redistribution of the foreigners among Member states.

Article 45

CZ is of the opinion that the catalogue of the solidarity contributions is quite narrow. The list of solidarity contributions should be extended, for example, by financial support or support in protection of external borders. The other options such as the wider use of discretionary clauses ("Dublin Regulation") should also be explored and considered.

Paragraph 1

- **Letter a)** As regards the wide scope of the asylum applicants eligible for relocation, we are of the opinion that the wide scope would create a high risk of pull factors.
- **Letter b)** – return sponsorship – The concept of the return sponsorship should be updated and/or modified. We should in particular focused on logistical support during returns.
- **Letter c)** – redistribution of the beneficiaries of the international protection - we are not convinced that the redistribution of persons who have been resided in a benefiting Member State for a quite a long time would support significantly the Member State under migratory pressure.

Moreover, we have doubts regarding the future practical implementation of this solidarity contribution. We are wondering whether beneficiary of international protection already integrated in the benefiting Member State will consent to be subject of relocation to another Member State.

There are also concerns regarding legal consequences as it is necessary to mention that there is no mutual recognition of positive decisions on international protection.

- **Letter d)** we should divide this point into two letters. One letter should be the support in the capacity building and second point should be the support in the external dimension. We would like to emphasize that the external dimension should be more prioritised.

The text should be amended for example as follows.

*(d) capacity-building measures in the field of asylum, reception and return, **including** operational support ~~and~~*

(e) measures aimed at responding to migratory trends affecting the benefiting Member State through cooperation with third countries.

Article 50

We welcome the wide range of information which should be taken into account in the assessment of the migratory pressure.

Nevertheless, the assessment process itself is unclear. For example, will any piece of information more important than the other for assessment of the migratory pressure?

The assessment of the migratory pressure should be predictable. So previous assessments should also be taken into account in order to compare various situations.

CZ is further of the opinion that the process of the assessment should be covered directly in the text of the Regulation.

Paragraph 1

CZ prefers wider role of the Member State concerned. Therefore, the deletion of the letter b) is suggested.

Paragraph 3

letter g) we are not sure if outgoing as well as incoming transfers are covered in this provision.

letter k) CZ is of the opinion that this provision should be added in order to specify the categories of unaccompanied minors.

Moreover, we should include the numbers of the first instance decisions as well as second instances decisions.

Article 51 –report on migratory pressure

As it has already been mentioned, the exact role of the Member State concerned is unclear. What happens if, despite the consultations, the Member State concerned does not agree with the assessment that its migration system is under migratory pressure?

CZ has a substantial reservation regarding paragraph 3 due to the fact that obligatory redistribution of the persons is presumed in this paragraph.

Member States should be covered in the assessment of the situation as well as in the decision making for example through the solidarity forum.

Article 52 – solidarity response plans

The main problem of this Article is the prioritisation of relocation of different groups of third country nationals. CZ advocates for mandatory solidarity among Member States. Nevertheless, the flexibility should be preserved, therefore CZ cannot accept the mechanism where contributing Member State cannot choose a form of solidarity contributions.

We should also explore the possibility to convene the Solidarity Forum in all cases.

The time limit of 14 days we find to short when taking into account the range of information which contributing Member State is obliged to provide.

Article 53

CZ opposes the automatic adoption of implementing act without participation of the Council. We should be able to evaluate capacities and possibilities of the Member States offered the solidarity contributions.

There is a lack of a mechanism how to compare if proposed solidarity contributions are proportional to the other solidarity contributions.

There is scrutiny reservation regarding paragraph 5. CZ prefers to explore other options how to adopt an implementing act or other legal instrument.

Article 45 Solidarity contributions

Explanatory comments:

As already brought forward, Austria maintains a general reservation on the proposed solidarity mechanisms, especially on a separate and permanent mechanism for S&R, as well as Relocation as the key solidarity contribution. The general focus on relocation and return sponsorship as the – in some cases – sole (and in some cases mandatory) solidarity contribution is problematic and should be extended to other effective forms of solidarity.

Art. 45 para. 1 (a): According to the explicit wording of Art. 45 para. 1 (a) AMR, “applicants who are not subject to the border procedure” pursuant to Art. 41 APR are subject to relocation. As the legal text stands in conjunction with the numerous and extensive exceptions foreseen in Art. 41 APR, this provision would lead to peculiar and undesirable situations where also applicants arriving from countries with a very low – even 0% -recognition rate would be relocated from one MS to another. In the meeting of the Asylum Working Party on 7 January, COM emphasised that it had not been intended to cover this group of applicants by relocation. Moreover, recital 26 AMR states that only persons who are more likely to have a right to stay in the Union should be relocated. Consequently, AT deems it essential to clarify this in the pertinent provisions and to exclude applicants from countries with a low recognition rate and who are not likely to have a right to stay from relocation. Relocation should be only an option for those persons who are really in need of international protection.

For example: A family who is not likely to have a right to stay and is not considered as a danger to the national security or public order of a Member State applies for international protection. According to Art. 41 para. 5 APR the border procedure may not be applied to the family.

Austria proposes to change the wording of Art. 45 para. 1 (a) accordingly in order to make sure that only those applicants who do not fall in the scope of the compulsory border procedure and of the exceptions of the border procedure are relocated. As a consequence, Art. 45 para. 1 (a) should not be applied to applicants who fall in the scope of the exceptions of the border procedure. The last sentence of Art. 41 para. 9 applies to these persons.

Additional solidarity contributions:

Austria proposes to add additional solidarity contributions:

- Recognizing challenges faced by “destination Member States” related to secondary movements (which lead to “de facto” Relocation of asylum applicants to other EU Member States).
- Introducing “protection sponsorships”. A separate concept paper will follow.

Art. 45 para. 1 (c): In the context of this provision, there are legal questions which need to be clarified. At present there is no mutual recognition of asylum decisions within the EU. How would this work out in practice? It is not clear if it would be necessary to conduct a new asylum procedure.

Art. 45 para. 1 (d): AT welcomes that capacity building measures are part of solidarity contributions. However, there is a strong need for a more flexible approach. New and innovative solidarity contributions should be introduced, for example in the external dimension. Therefore, AT suggests to extend the list of alternative solidarity contributions by the targeted amendments below.

Art. 45 para. 2 (b): Although this is a voluntary measure, Austria maintains concerns regarding the relocation of illegally staying third country nationals.

Text proposal: Art. 45

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:

(a) relocation of applicants where the circumstances referred to in Article 40(1), point (c), (f) or (i) XXX/XXX [Asylum Procedure Regulation] do not apply who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

(b) return sponsorship of illegally staying third-country nationals;

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(d) taking over responsibility where the benefitting Member States would be responsible in line with the criteria laid down in this Regulation, also in cases where a transfer is not possible or indicated due to legal or practical reasons related to the situation in the benefitting Member State.

(e) protection sponsorships pursuant to Art. 56;

(f) capacity-building measures and support in the field of asylum and migration management

- in the benefitting Member State, including joint processing of cases, reception, border protection and return

- or operational support and measures in third countries such as integrated border management, disembarkation following SAR, combatting human smuggling, strengthening protection capacities as well as fostering perspectives in regions of origin aimed at responding to and preventing illegal migration flows towards the European Union.

2. Such contributions may, pursuant to Article 56~~57~~, also consist of: (a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

(b) relocation of illegally staying third-country nationals

DKs additional proposed changes in yellow font to AMMR, Part IV, Chapter I,

Solidarity mechanisms related to article 45. 1 litra d based on Austrian proposal

AMR - Comments by Austria

Please find below targeted amendments to the provisions covered by the meetings of the AWP on 7 and 13 January accompanied by explanatory comments.

Article 45 Solidarity contributions

Explanatory comments:

As already brought forward, Austria maintains a general reservation on the proposed solidarity mechanisms, especially on a separate and permanent mechanism for S&R, as well as Relocation as

the key solidarity contribution The general focus on relocation and return sponsorship as the – in some cases - sole (and in some cases mandatory) solidarity contribution is problematic and should be extended to other effective forms of solidarity.

Art. 45 para. 1 (a): According to the explicit wording of Art. 45 para. 1 (a) AMR, “applicants who are not subject to the border procedure” pursuant to Art. 41 APR are subject to relocation. As the legal text stands in conjunction with the numerous and extensive exceptions foreseen in Art. 41 APR, this provision would lead to peculiar and undesirable situations where also applicants arriving from countries with a very low – even 0% -recognition rate would be relocated from one MS to another. In the meeting of the Asylum Working Party on 7 January, COM emphasised that it had not been intended to cover this group of applicants by relocation. Moreover, recital 26 AMR states that only persons who are more likely to have a right to stay in the Union should be relocated. Consequently, AT deems it essential to clarify this in the pertinent provisions and to exclude applicants from countries with a low recognition rate and who are not likely to have a right to stay from relocation. Relocation should be only an option for those persons who are really in need of international protection.

For example: A family who is not likely to have a right to stay and is not considered as a danger to the national security or public order of a Member State applies for international protection. According to Art. 41 para. 5 APR the border procedure may not be applied to the family.

Austria proposes to change the wording of Art. 45 para. 1 (a) accordingly in order to make sure that only those applicants who do not fall in the scope of the compulsory border procedure and of the exceptions of the border procedure are relocated. As a consequence, Art. 45 para. 1 (a) should not be applied to applicants who fall in the scope of the exceptions of the border procedure. The last sentence of Art. 41 para. 9 applies to these persons.

Additional solidarity contributions:

Austria proposes to add additional solidarity contributions:

- Recognizing challenges faced by “destination Member States” related to secondary movements (which lead to “de facto” Relocation of asylum applicants to other EU Member States).
- Introducing “protection sponsorships”. A separate concept paper will follow.

Art. 45 para. 1 (c): In the context of this provision, there are legal questions which need to be clarified. At present there is no mutual recognition of asylum decisions within the EU. How would this work out in practice? It is not clear if it would be necessary to conduct a new asylum procedure.

Art. 45 para. 1 (d): AT welcomes that capacity building measures are part of solidarity contributions. However, there is a strong need for a more flexible approach. New and innovative solidarity contributions should be introduced, for example in the external dimension. Therefore, AT suggests to extend the list of alternative solidarity contributions by the targeted amendments below.

Art. 45 para. 2 (b): Although this is a voluntary measure, Austria maintains concerns regarding the relocation of illegally staying third country nationals.

Text proposal: Art. 45

Article 45

Solidarity contributions

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types: (DK: While recognizing special challenges relating to SAR where frontline member states should receive support to these challenges, Denmark would advise against risking making the most dangerous routes to Europe more attractive with additional prospects for relocation after SAR as compared with other modes of arrival.)

(a) relocation of applicants who are **do not fall in the scope** of not subject to the border procedure for the examination of an application for international protection established by Article 41 **paragraph 3** of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

(b) return sponsorship of illegally staying third-country nationals;

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(d) taking over responsibility where the benefitting Member States would be responsible in line with the criteria laid down in this Regulation, also in cases where a transfer is not possible, or indicated due to legal or practical reasons related to the situation in the benefitting Member State.

(e) protection sponsorships pursuant to Art. 56.

(f) capacity-building measures and operational support aimed at reducing irregular migration flows to the benefitting MS, in the field of:

- **integrated border management**
- **asylum management including joint processing, including fast tracking, of cases and reception**
- **countering human smuggling and trafficking**
- **return and readmission, including assisted voluntary return and reintegration**
- **financial and technical support to Search and Rescue operations**

(g) capacity-building measures and operational support aimed at reducing irregular flows to the benefitting MS, in regions of origin, transit and countries neighboring the EU, in the field of:

- **integrated border management, including Search and Rescue operations in countries neighbouring the EU.**
- **asylum management and reception**
- **access to education, health services, jobs and self-employment opportunities in countries of first asylum, transit- and neighbouring countries**
- **countering human smuggling and trafficking**
- **return and readmission, including assisted voluntary return and reintegration**
- **strategic resettlement, including in combination with readmission**

(h) solidarity measures according to 45(f) and (g) could be accompanied with measures of and support to strategic communication and focused communication and information campaigns to ensure adequate access to information and to counter disinformation.

2. Such contributions may, pursuant to Article ~~56~~57, also consist of: (a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

~~(b) relocation of illegally staying third-country nationals~~



ESTONIA

Please also allow me to note that as the Government has not yet adopted its positions on the new pact, our proposals and comments are of preliminary nature.

Estonia's proposals following the 07.01.2021 and 13.01.2021 AWP meetings.

1. General scrutiny reservation on the proposal as a whole inclusive of the part IV. Please kindly note that expressed views are still preliminary, as the Government's position on the pact, has not yet been adopted.
2. **Article 45** (Solidarity contributions)

Proposal 1: to amend paragraph 1 by deleting the reference to the SAR as follows:

"1. Solidarity contributions for the benefit of a Member State under migratory pressure ~~or subject to disembarkations following search and rescue operations~~ shall consist of the following types:"

Reasoning: We cannot support SAR as a separate category in the context of AMMR. In our opinion by creating a separate mechanism to one specific *modus operandi* of crossing borders illegally would result creating an additional pull factor and would possibly consequently result of more migrants suffering.

Proposal 2:

- to clarify paragraph 1 point d, for example by restructuring it in 3 separate points
- to unite paragraphs 1 and 2
- to delete point b in paragraph 2

Reasoning: It is important to us that relocation is not prioritized among all types of solidarity contributions. Contributing MS should be able to choose the type of contribution among those assessed as needed by the MS under pressure. All types of contributions should be seen as of equal value, without prioritizing relocation or transfer of persons.

Relocation of illegally staying migrants should not be possible in any circumstances. Return sponsorship should not result in transferring returnees. Such measures would not make returns more effective and would possibly create additional secondary movements and pull factors.

3. Article 50 (Assessment of migratory pressure)

Proposal: to amend paragraph 3 point h as follows:

"(h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border, in particular the number of disembarked migrants following a search and rescue operation,"

Reasoning: As it is not possible for us to support the SAR as a separate category in the context of AMMR then we will make further suggestion to delete the Articles of 46 to 49 in their entirety. However, the number of disembarked migrants is an important factor when assessing the migratory pressure, therefore our suggestion is to underline its importance, if possible.

4. Article 51 (Report on migratory pressure)

Proposal 1: we support of strengthening the role of the Council.

Reasoning: we understand the need for the effectiveness of the mechanism and inclusion of the MS in comitology by the 182/2011 however in questions of deciding upon the situation in the MS and the measures needed, the Councils role should be stronger.

Proposal 2: to amend paragraph 3 point b by deleting the words “as appropriate” as follows:

“(b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, ~~as appropriate,~~ of.”

Reasoning: In this wording, this sentence would give legal basis to identify relocation and transfer of persons as the only appropriate measure to act in response to a migratory pressure. As a principle, all types of solidarity contributions should be seen as of equal value, without prioritizing relocation or transfer of persons. The report should identify all possible measures which aim to address the situation and thus enable the other Member States to help the Member State under migratory pressure by all the measures the other Member States are able to. All measures described in art 51 para 3 point b should always be considered as appropriate when chosen by the MS.

5. Article 52 (Solidarity Response Plans in situations of migratory pressure)

Proposal: to amend paragraph 2 as follows:

~~“2. Where the report referred to in Article 51 identifies measures referred to in paragraph 3, point (b)(iii) of that Article, other Member States may contribute by means of those measures instead of measures referred to in Article 51(3)(b)(ii). Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report on migratory pressure under Article 51(3)(b)(ii).”~~

By way of derogation from paragraph 1 Member States may contribute by measures referred to in Article 45(1) point (d) if such measures are of comparable proportion with the share of total solidarity contributions referred to in the Article 45(1), points (a), (b) or (c) as a result of the application of the distribution key set out in Article 54.”

Reasoning: Please also see the reasoning in Article 45. All types of solidarity contributions should be seen as of equal value, without prioritizing relocation or transfer of persons. Correction mechanism could involve correcting the amount of the contribution if needed but not the type of the contribution.

6. Article 53 (Commission implementing acts on solidarity in situations of migratory pressure)

Proposal 1: to amend the first subparagraph of paragraph 2 as follows:

“The types and amount of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans.”

Reasoning: please see the reasoning for Articles 45 and 52.

Proposal 2: to amend the fourth subparagraph of paragraph 2 as follows:

~~“Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 51(3)(b)(ii). The Commission shall adjust measures referred to in Article 51(3)(b)(iii) indicated by those Member States accordingly.”~~

Reasoning: please see the reasoning for the Articles 45 and 52.

7. Article 54 (Distribution key)

Comment: we cannot support mandatory relocation and distribution of returnees.

8. Article 56 (Other solidarity contributions)

Comment: we are ok with the wording

FINLAND

Written comments from Finland on the AMMR, part IV, pressure mechanism

Kindly note that all our comments are preliminary at this stage, and we may later submit further comments and/or specification on these articles.

We would see it highly valuable if the presidency could, when possible, share the written comments submitted by MSs.

Article 45: Solidarity contributions

Para 1 (a)

Kindly note that we do not yet have a formal position as to what the scope of para. 1 (a) should be and have a scrutiny reservation on article 45. Therefore, the latter seeks to confirm the narrative instead of stating our position regarding the scope of relocations.

In the meeting of 7 January COM referred to recital 26 and noted, that only those who are likely to be in need for international protection would be subject to relocation under paragraph 1 point a). However, this is not stated in the recital or in the article. Under recital, only those who are more likely to have a right to stay in the union should be relocated and that therefore relocation could take place if the applicant is not subject to the border procedure. We see that not being subject to border procedure is not equivalent to being likely in need of international protection if we look at the fairly narrow scope of the border procedure in general (those not entered legally, i.e. ruling out those entered visa free and those having a valid visa) and it's mandatory scope in particular. Getting a thorough understanding on the COM's intention is crucial as the group of persons eligible for relocation is highly relevant in terms of both the effectiveness and clarity of the system.

Article 50: Assessment of migratory pressure

Para 3

We suggest adding the number of asylum decisions to the list. We see that at a given time, the number of applications could be high but still manageable if the MS has an efficient asylum process. The number of asylum decisions could be used as an indicator to assess the effectiveness of the national asylum system.

Article 51: Report on migratory pressure

We would suggest adding a following new paragraph in Article 51 (as, for example, para 3a):

The report shall also set out the share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State as well as indicators on how those contributions would be weighted against measures referred to in Article 45(1) point (d) in case a Member State chooses to contribute through such measures.

If this kind of a paragraph is added, it would seem that in Art. 54, the reference to Art. 53 should be changed to refer to Art. 51.

As we noted in the meeting of 13 January, it is unclear when the share of solidarity contributions is determined for each MS in accordance with article 54. We now suggest stating this clearly in article 51.

Furthermore, referring to the discussion on art. 53(2) subparagraphs 3 and 4, some kind of a conversion key seems necessary to show how the "people solidarity measures" (art. 45(1) points (a)-(c)) are weighted against other measures (point (d)). Such a key would help the MS to assess, when submitting its solidarity response plans, whether the capacity-building measures it plans to provide are in proportion with its share, and to ensure more transparency regarding the assessment referred to in art. 53(2) subpara 3 as well as the application of the correction mechanism. However, we understand that it is difficult to predetermine any such key, as the type and amount of the capacity measures may vary depending on the needs of the MS facing pressure. For this reason, we suggest that the key is determined in the report, when it can be situation-specific.

Article 52: Solidarity Response Plans in situations of migratory pressure

Para 2

In our opinion, in order to allow a maximum degree of flexibility, the MS should be able to contribute both by people solidarity measures and other measures, not either/or. We would suggest relevant change to be made to para 2.

Para 4

Regarding solidarity forum, based on the discussion in the meetings, some clarification is needed as to how long it can be convened and what if no conclusion is found during forum.

The mandate of the solidarity forum should be as wide as possible. Referring to our suggestion regarding para 2, MSs should be able to adjust both the type and the number of their solidarity contributions, taking into account their share calculated in accordance with art. 54.

As raised by Sweden in the meeting of 7 January, what if there is a difference between the COM estimated needs for solidarity measures and the actual measures MSs are willing to take? For example, if MSs are willing to show solidarity through return sponsorship, but COM has estimated that there is no need for those measures?

We would suggest adding "*or submit the plan if not already done so.*" at the end of the last sentence of para 4. We would thus explicitly give MS a chance to submit the plan before applying the procedure described in Article 53(2) first subparagraph.

Para 5

There seems to be a contradiction between art. 52(5) and the art. 53(3) subpara 2.

Under art. 52(5), the MS may benefit from the deduction if "...it has examined twice the union average per capita of applications for international protection". However, under art. 53(3) subpara. 2, the distribution would be adjusted if "...it has been responsible for twice the Union average per capita of applications..." In our opinion, similar wording should be used in both paragraphs.

We would suggest using the reference to the number of applications the MS has been responsible for, as this information may be received from Eurodac once the new regulation has become applicable. If we count the number of decisions, we would need to use the statistics submitted by the MS.

We find the 5 years reference period rather long, as a sudden peak in a number of applications may well place a considerable burden to a MS and affect its capacity to relocate applicants. However, such a long reference period would dilute this. Furthermore, if we choose to receive the information on the numbers from Eurodac, we would need to wait for 5 years from the start of the application of the new regulation before receiving this information for the first time.

Artikla 53: Commission implementing acts on solidarity in situations of migratory pressure

Para 3

In para 3, both terms *benefitting* and *requesting* MS are used in points (a) to (c). Is there a specific reason to using two different terms referring to the same country?

We would suggest systematic use of *benefitting* MS in this connection, unless there is a specific reason to use the term requesting instead of benefitting.

Para 5

During the meeting of 13 January the COM noted that in a pressure situation the implementing act is always made in accordance with art. 8 of the regulation 182/2011. We would suggest stating this more clearly; the current wording raises a question "what if there are no such imperative grounds?". This could be done, for example, the following way:

"The migratory pressure present in the benefitting Member State constituting the duly justified imperative ground, the Commission shall adopt immediately..."

We see that a clarification is needed on what will happen if the period of validity of the implementing act ends but all relocations are not carried out, or in cases of return sponsorship, if the return has not been carried out. We would suggest adding a clear rule on this issue in either this paragraph/article or in Chapter II.



FRANCE

1) Articles étudiés lors de la réunion du groupe asile du 7 janvier 2021 (45 et 50 à 52)

Sur l'article 45 relatif aux contributions de solidarité

- La relocalisation des demandeurs d'asile hors procédure d'asile à la frontière doit demeurer la première des modalités de solidarité et doit être encouragée. Les alternatives à celle-ci ne peuvent être envisagées qu'à la condition qu'elles soient substantielles et équivalentes à la relocalisation en termes d'effort de solidarité.
- La relocalisation de demandeurs d'asile qui ne sont pas soumis à la procédure à la frontière est indissociable de la mise en place de cette procédure et de son caractère obligatoire dans certaines hypothèses, tout en limitant les exceptions.
- Des commentaires complémentaires seront apportés concernant la procédure de relocalisation telle qu'envisagée par les articles 57 et 58, notamment en ce qui concerne l'évaluation de la menace pour l'ordre public.
- La France accueille favorablement la possibilité d'offrir des contributions de solidarité par le biais de mesures de renforcement capacitaire, bien que l'appréciation de la pertinence de ces mesures par la Commission, tant dans son évaluation initiale des besoins de solidarité que dans la supervision des contributions des Etats membres nous semble lui conférer un pouvoir très important. De manière générale, le Conseil nous semble devoir être d'avantage associé dans la mise en œuvre du mécanisme de solidarité obligatoire afin d'offrir aux États membres un plus grand contrôle et une meilleure prévisibilité des contributions à fournir.
- La relocalisation de bénéficiaires d'une protection internationale devrait être limitée à ceux qui se sont vus reconnaître cette protection depuis moins d'un an pour être en cohérence avec la situation de pression migratoire récente rencontrée par l'État membre et ne pas interrompre un processus d'intégration déjà enclenché.
- Les dispositions prévues à l'article 45, paragraphe 2, doivent conserver un caractère optionnel en ce qu'elles prévoient la relocalisation de ressortissants de pays tiers en séjour irrégulier. La relocalisation nous semble en effet devoir s'adresser en premier lieu à des personnes en besoin de protection.

Sur l'article 50 relatif à l'évaluation de la pression migratoire

- Les critères et les méthodes d'évaluation de la pression migratoire préconisés par la Commission et fondés sur un faisceau d'indices constituent une bonne base qui devra être approfondie.
- La participation de l'État membre dont la situation est évaluée par la Commission devra être renforcée pour qu'il puisse être associé étroitement à celle-ci.
- De même, au regard des conséquences du rapport sur l'évaluation de la pression migratoire, le Parlement, le Conseil et les États membres devraient être informés durant le processus d'évaluation par la Commission afin de d'anticiper les implications de cette évaluation et permettre ainsi une réponse rapide.

Nous proposons l'amendement suivant au paragraphe 2, deuxième phrase :

***The Commission shall inform the European Parliament, the Council and the Member States, without delay, that it is undertaking an assessment, and inform them of the main developments regarding this evaluation**".*

- La France a une préférence pour une durée d'évaluation de six mois. Toutefois, dans un souci de compromis avec nos partenaires estimant qu'une évaluation plus longue permettrait une meilleure prévisibilité, nous pouvons accepter un allongement de la durée de cette évaluation.

Sur l'article 51 relatif au rapport sur la pression migratoire

- En écho à nos commentaires concernant l'article 50 sur le renforcement de la participation de l'État membre dont la situation est évaluée : le terme « *consulté* » pourrait être remplacé par « *associé* » afin de renforcer la participation de l'État membre concerné dans le processus d'évaluation de sa situation mené par la Commission.

Sur l'article 52 relatif aux plans de réaction de solidarité dans les situations de pression migratoire

- Pour que l'équilibre entre les contributions de natures diverses soit assuré et prévisible, il apparaît nécessaire qu'une clef de conversion soit proposée par la Commission. Cette clef permettrait de comparer les différentes mesures de solidarité entre elles afin que chaque contribution soit évaluée à sa juste valeur. Une discussion devrait être organisée à ce sujet. Si la France entend la Commission sur le fait que les mesures de solidarité ne sont pas toujours comparables entre elles (notamment les mesures de solidarité « humaines » d'un côté, et « capacitaires » de l'autre), il n'en reste pas moins qu'une clef d'équivalence pourrait être imaginée de manière théorique. A défaut, la Commission pourrait présenter la méthodologie « au cas par cas » qu'elle entend utiliser dans la comparaison des contributions des États membres. De même, un exercice de simulation détaillé, apparaît

comme un préalable nécessaire pour permettre une meilleure prévisibilité du mécanisme de solidarité discuté.

- La déduction de 10 % pourrait être inscrite à l'article 54 afin qu'elle s'applique à l'ensemble des contributions et des formes de solidarité prévues. Actuellement, n'étant inscrite qu'aux articles 52, paragraphe 5 et 53, paragraphe 3, 2nd alinéa, elle n'est prévue qu'en cas de pression migratoire.
- Le rôle du forum des solidarités devrait être précisé, notamment concernant ses modalités de fonctionnement. À cet effet, l'article 46 pourrait être développé afin que le champ d'intervention de ce forum d'États membres et son fonctionnement soient rassemblés et présentés en un seul article et non pas dispersés comme actuellement. En l'état du texte, il est difficile d'évaluer la capacité de cette instance à trouver un consensus rapide dans les contributions des États membres contributeurs.

2) Articles étudiés dans le groupe asile du 13 janvier 2021 (2, 53, 54 et 56)

Sur l'article 2 relatif aux définitions

- Il conviendrait de faire apparaître dans la définition de la notion de « pression migratoire » l'idée de charge disproportionnée venant plus spécialement peser sur un ou plusieurs États membres en comparaison avec la situation des autres États membres. De plus, la mention de la situation géographique nous semble devoir être limitée par un « notamment », ou supprimée.

Proposition d'amendement :

*migratory pressure' means a situation 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 arrivals following search and rescue operations, **notably** as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a **disproportionate** burden, **in relation to the situation of other Member States**, even on well-prepared asylum and reception systems and requires immediate action;*

Sur l'article 53 relatifs aux actes d'exécution de la Commission en matière de solidarité dans les situations de pression migratoire

- Si des actes d'exécution de la Commission apparaissent nécessaires pour la mise en œuvre des plans de solidarité, il convient de veiller à l'équilibre des compétences et des responsabilités qui incombent aux différentes institutions et aux États membres.
- Dans la même logique que les commentaires pour l'article 52, il faudrait que les États disposent d'une clef d'équivalence entre les différentes mesures de solidarité, afin de rendre le mécanisme de correction (prévu au paragraphe 53, paragraphe 2) plus prévisible.
- Des précisions pourraient être apportées par la Commission sur le contenu du rapport sur la mise en œuvre de l'acte d'exécution.

Sur l'article 54 relatif à la clé de répartition

- La clef de distribution basée sur la population et le PIB peut constituer une base de réflexion, mais elle doit être affinée et complétée notamment pour prendre en compte un critère tiré du nombre de demandeurs d'asile accueillis par les États membres, tenant compte ainsi des efforts déjà consentis en matière d'accueil de demandeurs d'asile (en lien avec l'article 52, paragraphe 5).
- La déduction de 10 % prévue aux articles 52, paragraphe 5, et 53, paragraphe 3, pourrait être déplacée à l'article 54 afin qu'elle s'applique à l'ensemble des contributions et des formes de solidarité.

Sur l'article 56 sur les autres contributions de solidarité

- La prise en compte, sous certaines conditions, de la solidarité volontaire, et notamment quand l'État membre bénéficiaire est reconnu en situation de pression migratoire, nous semble un point positif. Cela permet en effet de prendre en compte le soutien que certains États membres apportent régulièrement et dans un cadre bilatéral aux États membres de premières entrées, notamment à travers des relocalisations.

GERMANY

Allgemeine Vorbemerkung zur DEU Position:

Die Meinungsbildung innerhalb der Bundesregierung dauert im Einzelnen noch an, nicht zuletzt aufgrund unserer neutralen Rolle als PRÄS im letzten Halbjahr. Wir müssen deshalb Prüfvorbehalt zur AMMR insgesamt und zu allen Artikeln anmelden. Auch weitere Anmerkungen behalten wir uns vor diesem Hintergrund ausdrücklich vor.

DEU setzt sich weiterhin für ein faires, funktionsfähiges, effizientes und krisenfestes Gemeinsames Europäisches Asylsystem (GEAS) ein. Dabei hält DEU an seiner im Konzeptpapier vom 4. Februar 2020 dargelegten Position fest ("Concept paper of the German Federal Government on Reorientation of the Common European Asylum System"). D.h.: Um die bestehenden Defizite des gegenwärtigen Systems zu beheben, wäre es aus unserer Sicht nach wie vor am besten, eine Neuausrichtung des GEAS anhand der im Konzeptpapier spezifizierten drei Eckpunkte vorzunehmen:

1. schnelle Vorprüfung von Asylanträgen an den EU-Außengrenzen, um Anträge, die offensichtlich keinen Erfolg haben können, frühzeitig zu identifizieren und zeitnah einer Entscheidung zuzuführen
2. Zuständigkeitsentscheidung auf Grundlage eines fairen Zuständigkeitsregimes (anhand von Bevölkerungszahl und Wirtschaftskraft („GDP“) der MS)
3. effektive Maßnahmen zur Verhinderung von irregulärer Sekundärmigration, einschließlich einer grundsätzlich dauerhaften Zuständigkeit eines Mitgliedstaats und „Dublin-Überstellungen“ in Notifizierungsverfahren.

Alle Verfahrensschritte müssen rechtsstaatlichen Grundsätzen folgen (u.a. Rechtsschutz gegen getroffene Entscheidungen). Die besonderen Belange und Rechte von Familien mit Minderjährigen und weiterer vulnerablen Gruppen mit besonderem Bedarf an Schutz und Verfahrensgarantien sind bei der Ausgestaltung aller Eckpunkte zu berücksichtigen.

Dieser von uns nach wie vor verfolgte Ansatz ist von einem sehr hohen Maß an Verantwortlichkeit und Solidarität gekennzeichnet.

Die KOM-Entwürfe bleiben hinter diesen Vorschlägen zurück. Gleichzeitig erkennen wir aber an, dass auch die KOM eine gute Balance zwischen Verantwortlichkeit und Solidarität anstrebt und in ihren Vorschlägen versucht, einen Kompromiss zwischen sich gegenüberstehenden Positionen der MS herzustellen. Ohne unsere Position aufzugeben, sind wir daher bereit, uns auch auf Grundlage der KOM-Vorschläge konstruktiv an den weiteren Verhandlungen des Reformpakets zu beteiligen.

DEU strebt auch innerhalb der von KOM vorgelegten Vorschläge für Rechtstexte eine Balance zwischen Verantwortung und Solidarität auf möglichst hohem Niveau an. Das heißt unter anderem auch: Wenn wir uns für ein hohes, verpflichtendes und vorhersehbares Maß an Solidarität aussprechen, geschieht dies unter der Voraussetzung, dass auch bei der Verhinderung von irregulärer

Sekundärmigration und zum Verfahren vor Einreise deutlich bessere Lösungen als im aktuellen Acquis gefunden werden.

Vorbemerkung und allgemeine Linie zur Solidarität:

Solidarität ist und bleibt aus DEU Sicht zentral für die Neuausrichtung des GEAS. Asymmetrien in der Verteilung der mit der Durchführung der Asylverfahren verbundenen Belastungen sind soweit wie möglich zu vermeiden. Entsprechend unserem Konzeptionspapier vom Februar 2020 halten wir ein „fair share“-basiertes (i.e. an von Bevölkerungszahl und BIP ausgerichtetes) Zuständigkeitsregime für den besten Weg. Ein solches Zuständigkeitsregime muss auch durchgesetzt werden können und Maßnahmen zur effektiven Verhinderung von irregulärer Sekundärmigration vorsehen (durch Schaffung von positiven Anreizen für die Schutzsuchenden bzw. Schutzberechtigten sowie für die Mitgliedstaaten, unbürokratische Verfahren und soweit erforderlich Sanktionen). Es ist aus unserer Sicht kaum nachvollziehbar, weshalb in einem „gemeinsamen europäischen“ Asylsystem einige MS dauerhaft überlastet sein sollen, während andere MS deutlich unterhalb ihres fair share-Anteils bleiben.

Die Neuausrichtung des GEAS braucht einen starken Solidaritätsmechanismus. Dieser Solidaritätsmechanismus muss insbesondere bei Migrationsdruck schnelle, verlässliche und effektive Solidarität vorsehen, einschließlich einer verpflichtenden Umverteilung. Ziel des Mechanismus muss es sein, die belasteten MS – unter Berücksichtigung bestehender flüchtlings- und menschenrechtlicher Verpflichtungen – auch tatsächlich zu entlasten. Das mag in manchen Fällen durch capacity building, Maßnahmen in der externen Dimension, etc. möglich sein. Oftmals wird es nur durch eine Umverteilung von Personen funktionieren, also durch Relocation.

Artikel 45 (Solidaritätsbeiträge)

Wir begrüßen deshalb, dass Art. 45 schwerpunktmäßig Solidaritätsformen vorsieht, die den auf einem MS lastenden Druck abbauen, indem sie die Zahl der darin aufhältigen Personen verringern.

Es bestehen keine grundlegenden Bedenken gegen Absatz 1, allerdings bedarf dies im Hinblick auf die Ausgestaltung noch näherer Prüfung. Grundsätzlich stimmen wir zu, dass im Grenzverfahren befindliche Personen nach Möglichkeit nicht umverteilt werden sollten. Damit wird ein vom Grenzverfahren ausgehendes wichtiges Signal nach außen gesandt. Eine verpflichtende Umverteilung dieser Personen würde diese Signalwirkung abschwächen.

Dass Absatz 2 (i.V.m. Art. 56) auf freiwilliger Basis weitere Formen der Solidarität ermöglicht, begrüßen wir grundsätzlich.

Artikel 50

Wir verstehen, dass einem flexiblen, maßgeschneiderten Solidaritätsansatz ein gründliches Assessment des Migrationsdrucks vorausgehen muss. Wir stimmen auch zu, dass die genannten

Kriterien grundsätzlich geeignet sind, Migrationsdruck einzelfallbezogen zu bemessen und möglichst genau zu spezifizieren. Die zu diesem Zweck eingeräumten, sehr weiten Beurteilungsspielräume bergen aber nach erster Einschätzung auch Gefahren, z.B.

- dass einem einzelnen Akteur, der KOM, sehr viel Macht eingeräumt wird,
- dass die Ergebnisse des Assessment schwer vorhersehbar sind,
- dass darunter die Akzeptanz der Assessment-Ergebnisse und vor allem auch die Verlässlichkeit des Solidaritätsmechanismus insgesamt leidet.

Zur Verbesserung des Textes gehen unsere Überlegungen derzeit in zwei Richtungen:

1. (Wie) Lässt sich das Assessment transparenter, vorhersehbarer und damit verlässlicher ausgestalten?
2. Ist es sinnvoll, Artikel 50 um eine Regelung zu ergänzen, die – z.B. in Anknüpfung an die in Absatz 3 genannten, konkret messbaren Zahlen – Situationen benennt, in denen immer oder zumindest im Regelfall von Migrationsdruck auszugehen ist?

Artikel 51

Vorbehaltlich einer näheren Prüfung finden wir Artikel 51 innerhalb des von KOM vorgeschlagenen Solidaritätssystems gelungen. Insbesondere begrüßen wir grundsätzlich

- den in Absatz 3 genannten Regelinhalt des Report on Migratory Pressure, wobei wir uns weiteren Konkretisierungen nicht verschließen würden,
- dass in Absatz 3 auch Maßnahmen genannt werden, die der benefiting MS ergreifen soll
- die in Absatz 4 vorgesehene Verkürzung der Frist auf 2 Wochen, wenn eine schnelle Reaktion erforderlich ist. Allerdings sollte hier objektiver formuliert werden und diese Verkürzung nicht der Einschätzung der KOM als Adressat der Frist überlassen bleiben.

Artikel 52

Ähnlich wie zu den vorangegangenen Artikeln und vorbehaltlich einer näheren Prüfung gilt: Wir erkennen den Sinn von Artikel 52 innerhalb des von KOM vorgeschlagenen Systems einer flexiblen, maßgeschneiderten Solidarität. Das dürfte in vielen Konstellationen richtig und hilfreich sein. Ebenso erscheint es uns sinnvoll, soweit möglich, in einem ersten Schritt innerhalb klarer Fristen (die wir begrüßen) zunächst auf freiwillige Solidaritätsbeiträge zu setzen, in einem zweiten Schritt im Solidaritätsforum gemeinsam nach Lösungen zu suchen und erst dann in einem dritten Schritt eine entsprechende Verpflichtung per Implementierungsakt zu schaffen. Das ermöglicht maßgeschneiderte Lösungen für den Einzelfall.

Es ist gleichzeitig nicht ausgeschlossen, dass es auch Situationen geben kann, in denen dieser Mechanismus nicht die erforderliche effektive Lösung bietet. Dies können insbesondere Konstellationen sein, in denen infolge starken Migrationsdrucks eine schnelle Umverteilung

erforderlich ist. In einer solchen Fallkonstellation könnte sich ein bürokratisches Verfahren als zu langsam erweisen.

Entgegen Artikel 52 (1) sollten sich auch MS, die eine seenotrettungsspezifische Solidarität erfahren, obwohl sie nicht unter Migrationsdruck stehen, ihrerseits an Solidaritätsleistungen zugunsten anderer, unter Migrationsdruck stehender MS beteiligen: Artikel 52 (1) geht diesbezüglich zu weit und privilegiert pauschal alle „benefitting MS“. Von der Solidaritätspflicht sollten aber nur jene „benefitting MS“ ausgeschlossen sein, die auch selbst unter Migrationsdruck stehen.

Weitere Einzelheiten von Artikel 52 müssen wir erst noch prüfen. Wir begrüßen aber grundsätzlich, dass vergangene Belastungen, welche sich bis in die Gegenwart auswirken können, in Absatz 5 erwähnt werden.

Artikel 53

Grundsätzlich begrüßen wir, dass bei Erreichen der erforderlichen Mehrheiten alle MS auf Grundlage ihres fair share zu personenbezogener Solidarität verpflichtet werden. Das entspricht dem gesamteuropäischen Charakter des GEAS. Ob hierbei das Komitologieverfahren das geeignete Verfahren ist, wird gegenwärtig noch geprüft.

Wir würden uns insgesamt eine verlässlichere Auslösung von Solidaritätsverpflichtungen und Umverteilungen wünschen. Wir sehen aber auch, dass der Vorschlag der KOM jedenfalls besser ist als der aktuelle Status Quo und setzen uns daher für seine praxistaugliche Anwendbarkeit ein.

Artikel 54

Wir begrüßen, dass auf den fair share abgestellt und wie der distribution key berechnet wird. Neben Population und BIP (GDP) sollten, wie von KOM vorgeschlagen, bei der Berechnung keine weiteren Kriterien berücksichtigt werden.

Artikel 55

Wir begrüßen grundsätzlich die Idee des return sponsorship, weil dieses Konzept auf die Entlastung der unter Migrationsdruck stehenden Mitgliedstaaten abzielt. Rückkehrpatenschaften können daher als eine sinnvolle Unterstützungsmaßnahme betrachtet werden und einen Beitrag zu einer stärkeren Kooperation der Mitgliedstaaten im Bereich der Rückkehr leisten.

Aus unserer Sicht sind jedoch noch einige Fragen offen. Ob und wie unter anderem die praktische Umsetzung der Rückkehrpatenschaften am besten gelingen kann und inwieweit dazu noch Regelungen bzw. Änderungen in der AMMR erforderlich sind, prüfen wir noch. Die Prüfung der rechtlichen Auswirkungen ist zudem noch nicht abgeschlossen. Wichtig wäre aus unserer Sicht zum Beispiel, die asylrechtliche Zuständigkeit der beteiligten MS zu regeln, gerade auch mit Blick auf Folge-Anträge für den Fall der Überstellung an den sponsoring MS nach Ablauf der achtmonatigen Frist aber vor der Rückführung in den Herkunftsstaat. Für den Fall der Antragstellung während der

achtmonatigen Frist ist klarzustellen, ob der Fristlauf durch einen Folgeantrag gehemmt wird oder neu beginnt. Zudem sollte aus unserer Sicht klargestellt werden, welche Konsequenzen ein Untertauchen im Rahmen der Rückkehrpatenschaften hat, insbesondere, wie sich dies auf die 8-Monatsfrist nach Art. 55 Abs. 2 auswirkt.

Die Fragen der praktischen Umsetzung der Rückkehrpatenschaften sollten aus unserer Sicht in der RAG IMEX (Expulsion) weiter behandelt werden.

Artikel 56

Dass Art. 45 Absatz 2 i.V.m. Art. 56 auf freiwilliger Basis und bilateral weitere Formen der Solidarität ermöglicht, begrüßen wir grundsätzlich.

General preliminary remark on Germany's position:

Opinions within the Federal Government are still being formed in detail, not least because of our neutral role as the Presidency in the last six months. We must therefore enter a scrutiny reservation for AMMR as a whole and for all its articles. Against this background, we also expressly reserve the right to make further comments.

Germany continues to be committed to a fair, functioning, efficient and resilient Common European Asylum System (CEAS). Germany adheres to its position presented in the concept paper of 4 February 2020 ("Concept paper of the German Federal Government on Reorientation of the Common European Asylum System"). This means: in order to address the existing shortcomings of the current system, we believe it would still be best to reorient the CEAS on the basis of the three key points set out in the concept paper:

4. rapid screening and border procedure in order to identify at an early stage applications which clearly cannot succeed and to decide on them within a short time;
5. determination of the Member State responsible according to a fair-share-based regime (population and GDP);
6. effective measures to prevent irregular secondary movements, including, in principle, permanent responsibility of a member state and "Dublin transfers" in notification procedures.

All procedural steps must comply with rule-of-law principles (including legal remedies against decisions taken). The special concerns and rights of families with minors and other vulnerable groups with a particular need for protection and procedural guarantees must be taken into account when drafting all key points.

This approach, which we continue to pursue, is characterised by a very high level of responsibility and solidarity.

The Commission's drafts fall short of these proposals. At the same time, however, we recognise that the Commission, too, strives to strike a good balance between responsibility and solidarity and in its proposals tries to reach a compromise between the opposing positions of the member states. Without abandoning our position, we are therefore prepared to play a constructive role in the further negotiations on the reform package, also on the basis of the Commission's proposals.

Within the Commission's legislative proposals, Germany is striving to strike a balance between responsibility and solidarity at the highest possible level. This also means, among other things: we will advocate a high, binding and predictable level of solidarity, provided that significantly better solutions than in the current *acquis* are also found with regard to preventing irregular secondary migration and to the pre-entry procedure.

Preliminary remark and general approach to solidarity:

In Germany's view, solidarity is and will remain central to the reorientation of the CEAS. Imbalances in the distribution of the burdens associated with carrying out asylum procedures should be avoided as far as possible. In line with our concept paper of February 2020, we consider a fair-share-based (i.e. in terms of population and GDP) responsibility regime to be the best way forward. Such a regime must also be enforceable and include effective measures to prevent irregular secondary movements (by creating positive incentives for those seeking protection and those entitled to protection as well as for member states, unbureaucratic transfer procedures and, where necessary, sanctions). In our view, it is hard to understand why some member states should be permanently overburdened in a "common European" asylum system while others contribute much less than their fair share.

The reorientation of the CEAS requires a strong solidarity mechanism. This solidarity mechanism must provide for rapid, reliable and effective solidarity, including mandatory relocation, in particular when there is migratory pressure. The aim of the mechanism must be to actually ease the burden on the affected member states, taking into account existing refugee and human rights obligations. In some cases, this may be possible through capacity building, external dimension measures, etc. Often it will only work by redistributing people, i.e. by relocation.

Article 45 (solidarity contributions)

We therefore welcome the fact that Article 45 focuses on forms of solidarity that reduce the pressure on a member state by reducing the number of persons staying there.

We have no fundamental objections to paragraph 1, but the details need to be examined further. We agree that generally, persons subject to the border procedure should not be relocated, if possible. The border procedure would thus send an important message to third countries. A mandatory redistribution of these persons would diminish this message.

We welcome the fact that paragraph 2 (in conjunction with Article 56) allows for further forms of solidarity on a voluntary basis.

Article 50

We understand that a flexible, tailor-made approach to solidarity must be preceded by a thorough assessment of migratory pressure. We also agree that the listed criteria are in principle suitable for measuring migratory pressure on a case-by-case basis and specifying it as precisely as possible. However, the very broad discretion granted for this purpose also entails risks, such as the fact

- that a single actor, the Commission, is given very much power;
- that the results of the assessment are difficult to predict;

- that this may affect the acceptance of the assessment results and, above all, the reliability of the solidarity mechanism as a whole.

To improve the text, we are currently thinking in two directions:

3. Can the assessment be made more transparent, predictable and thus reliable, and if so, how?
4. Does it make sense to add a provision to Article 50 that specifies situations in which migratory pressure can be assumed in any case or at least as a rule, for example based on the specific quantifiable figures referred to in paragraph 3?

Article 51

Subject to closer examination, we find Article 51 well made within the solidarity system proposed by the Commission. In particular, we welcome

- the regulatory content of the Report on Migratory Pressure referred to in paragraph 3, although we would be open to specifying further details;
- the fact that paragraph 3 also mentions measures to be taken by the benefitting member state;
- the reduction of the time limit to two weeks provided for in paragraph 4 where a rapid response is required. However, this should be worded more objectively and should not be left to the Commission's assessment as the addressee of the deadline.

Article 52

Similar to the previous articles and subject to further examination, we recognise the usefulness of Article 52 within the system of flexible, tailor-made solidarity proposed by the Commission. This is likely to be right and helpful in many scenarios. Similarly, we feel it would make sense, as far as possible, to start by relying on voluntary solidarity contributions within clear deadlines (which we welcome), to seek solutions together in the Solidarity Forum as a second step, and then, in a third step, to create an obligation to do so by means of an implementing act. This helps find tailor-made solutions on a case-by-case basis.

At the same time, we cannot rule out the fact that there may also be situations in which this mechanism does not provide the effective solution needed. These may include, in particular, situations where rapid relocation is required as a result of severe migratory pressure. In such a case, a bureaucratic procedure could prove too slow.

Contrary to Article 52 (1), member states which experience solidarity in terms of maritime SAR even though they are not under migratory pressure should themselves contribute to solidarity benefits for other member states under migratory pressure: Article 52 (1) goes too far in this regard and gives

blanket priority to all “benefitting member states”. However, only those “benefitting member states” that are themselves under migratory pressure should be excluded from the obligation of solidarity.

We still need to examine further details of Article 52. However, we welcome the fact that paragraph 5 mentions past burdens that may have an impact right up to the present.

Article 53

In principle, we welcome the fact that if the necessary majorities are reached, all member states will be obliged to show solidarity – in terms of persons to be relocated or returned – on the basis of their fair share. This is in line with the pan-European nature of the CEAS. We are still examining whether the comitology procedure is the appropriate instrument to take the political decision on solidarity obligations.

Overall, we would like to see a more reliable way of triggering solidarity obligations and relocations. However, we also see that the Commission’s proposal is at any rate better than the current status quo and therefore seek to make it work in practice.

Article 54

We welcome the fair-share approach and the way the distribution key is calculated. Apart from population and GDP, no other criteria should be taken into account in the calculation, as proposed by the Commission.

Article 55

We welcome the idea of return sponsorship because this approach aims to ease the burden on member states facing migratory pressure. Return sponsorship can therefore be considered a useful supporting measure and help increase cooperation between member states in the field of return.

In our view, however, some questions have not yet been resolved. We are still examining whether and how, among other things, the practical implementation of return sponsorship can be best achieved and to what extent provisions or amendments are still required in the AMMR. Moreover, we have not yet fully examined the legal impact. In our view, it would be important, for example, to regulate the responsibility of the participating member states for asylum matters, especially with regard to subsequent applications in the event of transfer to the sponsoring member state after the eight-month deadline but before returning the person concerned to the country of origin. If a subsequent application is submitted during the eight-month period, it must be clarified whether the deadline is suspended or restarts. In our view, it is also important to clarify the consequences of absconding in the context of return sponsorship, in particular how this affects the eight-month period referred to in Article 55 (2).

In our view, the practical implementation of return sponsorship should be further addressed in the IMEX (Expulsion) Working Party.

Article 56

We welcome the fact that Article 45 (2) in conjunction with Article 56 allows for further forms of solidarity on a voluntary and bilateral basis.



GREECE

EL has a general scrutiny reservation on the whole proposal, since the balance between solidarity and responsibility as foreseen in AMMR and the other legal proposals of the New Asylum Pact does not satisfy the needs of MS at the external border of EU.

Article 45

EL has a substantive reservation on point (a) and is of the opinion that the pool of relocation, should comprise all applicants regardless of the procedure they fall under.

A MS facing recurring arrivals should receive the timely assistance of the other MS in order to prevent a situation from develop into crisis. Furthermore, we would like to reiterate our scrutiny reservation to the mandatory border procedure as foreseen in art (41) of the APR, and raise once again our concern in “keeping” persons in the proximity of the external borders for a long period.

Par 1(a)

1. (a) *relocation of applicants for international protection ~~who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];~~*

Par 2

The same provision should be reflected in art 56, therefore we propose deletion of point a of par 2

2. *Such contributions may, pursuant to Article 56, also consist of:*

(a) *relocation of applicants for international ~~protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];~~*

(b) *relocation of illegally staying third-country nationals.*

Article 50

EL is of the position that the assessment of migratory pressure should take place jointly between the Commission and MS concerned. Thus, under Article 50 the conditions for the proprio motu assessment by the Commission need to be specified with due consideration for the competence of the State to inform the Commission of its situation as a state under migratory pressure.

On the methodology of the assessment, more clarity is called for as regards the interplay between paras 3 and 4. The criteria under para. 3 are numerical so to speak, whereas under para. 4 they comprise assessments of an operational/ political nature. Also, what is the method for assessing the 'level of cooperation' with third countries?

Article 51

Par 1

In light with our comment in art 50 we propose the following redrafting in art 51.1 :

1. *The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1).*

The Commission shall submit the report on migratory pressure upon agreement of the Member State under pressure to the European Parliament and to the Council within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

Par. 2

What happens when the Commission refuses to find a State under migratory pressure?

Par 3

We would like to raise our concerns in respect with point (b) alinea (i) and (iii).

A MS under pressure needs measures for the fast and smooth support in order to prevent a situation from developing into crisis. The wording as it stands in the text implies long term measures.

Par 4

We reiterate our comment as in par 1 and propose the following addition in the text

4. *Where the Commission considers on the basis of the information presented by the Member State that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.*

Article 53 and 54

EL is of the position that the solidarity measures in terms of relocations and return sponsorship should be covered by Member States, who are not affected by flows generating a situation of migratory pressure. In that aspect the share of the benefitting Member State should not be taken into account in the calculations of the fair share, since this could actually lead to a significant shortfall in relocations and/or return sponsorship.

In addition we would like to raise our concerns, if the comitology procedure is the appropriate instrument to take timely decisions on solidarity measures.

In respect with the correction mechanism detailed simulations and examples are needed to clarify how the mechanism would work in practice and how and to what extend the actual needs of the benefitting MS will be met, since as the text stands now there is a possibility that only 50% of the measures referred to as people solidarity are met.

We propose the following redrafting in par 3 of art 53 (c)

- (c) *the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States with the exception of the benefitting Member State, on the basis of the distribution key set out in Article 54;*

Article 54

We propose the following redrafting :

*The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State, **with the exception of the benefitting Member State** in accordance with Articles 48 and 53 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).*



HUNGARY

General comments

We make a scrutiny reservation on the whole proposal and refer to our substantive reservation along the lines of our concerns indicated at ministerial and SCIFA level. We also indicate that the Hungarian Parliament, in its Decision No 40/2020 (XII. 16.) OGY, laid down that the principle of subsidiarity had been infringed in relation to the five draft regulations of the new Pact on Migration and Asylum.

Article 45

For Hungary, it is not acceptable to establish a solidarity mechanism requiring mandatory relocation or return sponsorship. We agree to establish a mandatory solidarity mechanism, but it should be based on voluntary choice, tailored to the individual capabilities of the Member States, taking into account their national specificities. We can only accept relocation as a voluntary measure and only for those who are entitled to international protection, otherwise it will become a pull factor that will only increase the pressure. The real solution can be provided by preventing primary inflows, such as the EU-Turkey Statement. We cannot accept a separate solidarity mechanism for persons disembarked following search and rescue operations in any form, as the phenomenon can be considered essentially as a form of illegal migration.

Any solidarity mechanism can be accepted if the border protection efforts of the Member States and their efforts in the external dimension of migration are also considered as solidarity instruments and relocation remains only a voluntary instrument of solidarity. Accordingly, we are missing additional elements of the forms of solidarity contributions listed in Article 45. We ask for a more detailed specification of the provisions on capacity building for each type of measures.

Article 50

When assessing the migratory situation under Article 50, we also consider it important to take into account the border protection actions at the external borders and the financial and human expenditures spent on them, in order to assess the real extent of the pressure at each border section and its comparison.

Article 51

In our view, instead of the Commission, the Council should adopt the report declaring migratory pressure and laying down the necessary measures, and the Commission's findings can only serve as a proposal. We also consider it important to define not only the solidarity measures, but also the necessary actions to be taken by the benefitting Member State.

Article 52

In Article 52(1), we propose to use the term „which are not themselves Member States under pressure” instead of „which are not themselves benefitting Member States”. There may be a situation where a Member State, although it is under migratory pressure, does not yet need to make use of

solidarity measures, but at the same time its obligation to show solidarity with another Member State would overburden its situation to such an extent that would jeopardize the proper management of its own situation under pressure. We do not agree with prioritizing relocation (including of unaccompanied minors), as there may be more important needs for action in order to decrease pressure.

The capacity-building measures should be given much more space than it is proposed, so we ask for the last sentence of Article 52(2) to be deleted.

The solidarity plan provided for in Article 52(3) may only foresee the instruments set out in Article 45(1)(a), (b) and (c). In line with our position on Article 45, we do not consider it appropriate to limit the actions solely to these instruments.

Article 53

We believe that solidarity measures should not be defined by the Commission, but by the Council. Moreover, the range of solidarity instruments indicated is not one that helps to reduce the pressure, so we ask for a wider set of instruments. We also reject the use of the distribution key and the correction mechanism, and the value of capacity-building pledges is completely uncertain. Not knowing what value the offered capacity-building would have and consequently exactly how much capacity-building contribution the Member State's fair share would require in its solidarity plan, and the extent to which the capacity-building pledges would be taken into account, makes the planning by the governments practically impossible.

There are also a number of practical issues, some of which we have already indicated. It is not clear how the preferences of all the Member States concerned will be met when several of them intend to undertake return sponsorship of persons of the same nationality. Furthermore, the question arises regarding the implementation of the specific solidarity measures in light of the fact that the temporal scope of the Commission implementing act is maximum 1 year. In this regard it is important to see how the implementation of relocation/return sponsorship obligations relate to this temporary period, especially e.g. if the 8 months have not elapsed yet. Furthermore, given the fact that capacity building projects may also take longer to implement, it is unclear how they will be taken into account within the maximum 1-year time frame.

Article 54

We completely reject the application of the distribution key provided for in Article 54, which only creates a new quota system as this enforced form of solidarity cannot be effective. We still cannot support a proposal that envisages a quota-based distribution of the expelled persons within the European Union.

Article 55

We are concerned that, although the proposal provides for a choice between the relocation and the return sponsorship, in practice, the return sponsorship provided for in Article 55 can only be considered as a delayed relocation, which is clearly supported by the reference to Articles 57 and 58

in Article 55(2). It is also questionable whether individual Member States can successfully engage with the countries of origin concerned, especially as the proposed EU incentives have so far had little effect. Thus, there may be a high chance that the return sponsorship will fail, which in turn creates a relocation obligation regarding the illegally staying third-country national. It is unacceptable that, if the third-country national concerned does not return within 8 months, the Member State sponsoring the person concerned is obliged to transfer that person to its territory from the Member State of first entry and to proceed with the removal there. On this basis, we request the deletion of paragraphs 2 and 3.

Article 56

We agree that our primary objective should not be to manage migratory pressures, but to prevent them, and to this end, these voluntary measures should be allowed and counted much more widely. It is not clear what the exact conditions for the application and evaluability of these measures are. Furthermore, other instruments of solidarity also need to be set out in more details, so this chapter needs to be expanded accordingly with additional articles.

IRELAND

General Comment on the Proposal: As referred to by the Council Legal Service we also have concerns about the mixed legal basis of the proposal and how we could participate in it as Member State that is not part of the Schengen acquis.

Article 45

Paragraph 1(a): It is our position that only applicants who are likely to be in need of protection should be relocated. As currently drafted Article 45(1)(a) would allow for the relocation of applications who have a recognition rate of just 20% and in some circumstances those with a recognition rate of less than 20% could also be relocated. We note the response of the Commission that those with a recognition rate of less than 20% would not necessarily be relocated and referred MS to Recital 26 which states that only persons who are more likely to have a right to stay in the Union should be relocated. However, we would like to see this better reflected in the legal part of the text. We also consider that the threshold of 20% is too low.

Article 50

We have concerns about the inclusion of so many elements in assessing migratory pressure which makes it very unclear as to when a situation of migratory pressure might exist. We would also question if these criteria are consistent with the definition of “migratory pressure” in Article 2(w) which only defines migratory pressure in terms of large numbers of arrivals of third-country nationals or stateless persons.

Article 51 to 53

The procedure as set out in the proposal is very complex and it would be very useful to have a simulation as to how it would be applied in practice.

Article 53(2) Second sub paragraph. We would like more clarity on how the Commission will assess whether capacity building measures are in proportion to relocation/return sponsorship. Clear weighting criteria should be set out.

Article 53(3) second sub-paragraph. For the purpose of calculating whether a Member State shall receive a deduction of 10% of its share the number of persons admitted under resettlement or humanitarian admission should also be included.

Article 54

It is our view that the distribution key used to calculate each Member State's fair share should be based on GNI and Population instead of GDP and Population as GNI is a better and more accurate economic indicator.

Article 2

(w) See comments above in relation to Article 50. We have concerns that this definition which defines migration pressure as a situation where there is a large number of arrivals or a risk of such arrivals is much narrower than the criteria the Commission will assess under Article 50 when determining if a MS is under pressure.

ITALY

Article 45

Solidarity contributions

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:
 - (a) relocation of applicants whether subject or not to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], unless applicants pose a danger to national security and public order;
 - (b) return sponsorship of illegally staying third-country nationals;
 - (c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);
 - (d) capacity-building measures in the field of asylum, reception and return, operational support and measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries.
2. Such contributions may, pursuant to Article 56, also consist of:
 - (a)
 - (b) relocation of illegally staying third-country nationals.

Art. 46

Solidarity Forum

[...]

Article 50

Assessment of migratory pressure

1. The Commission shall assess the migratory situation in a Member State following information by a
 - (a) Member State that considers itself to be under migratory pressure;
- 2.
3. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in drawing up the assessment of migratory pressure. The Commission shall inform the European Parliament, the Council and the Member States, without delay, that it is undertaking an assessment.
4. The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding six months, compared to the overall situation in the Union, and shall be based in particular on the following information:
 - (a) the number of applications for international protection by third-country nationals and the nationality of the applicants;
 - (b) the number of third-country nationals who have been detected by Member State 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)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council;
 - (c) the number of return decisions that respect Directive 2008/115/EC;

- (d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC;
 - (e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes;
 - (f) the number of incoming and outgoing take charge requests and take back notifications in accordance with Articles 34 and 36;
 - (g) the number of transfers carried out in accordance with Article 31;
 - (h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border;
 - (i) the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399;
 - (j) the number and nationality of third-country nationals disembarked following search and rescue operations, including the number of applications for international protection;
 - (k) the number of unaccompanied minors.
5. The assessment of migratory pressure shall also take into account the following:
- (a) ;
 - (b) the level of cooperation on migration 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*];
 - (c) the geopolitical situation in relevant third countries that may affect migratory movements;
 - (d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013 59, Article 13, 14 and 22 of Regulation (EU) XXX/XXX [European Union Asylum Agency] and Article 32(7) of Regulation (EU) 2019/1896;
 - (e) information gathered pursuant to Commission Recommendation of XXX on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint);
 - (f) the Migration Management Report referred to in Article 6(4);
 - (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;
 - (j) the support provided by Union Agencies to the benefitting Member State.

Article 51

Report on migratory pressure

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1). The information presented by the Member State may be updated until the adoption of the report, in order to better capture a developing situation.
The Commission shall submit the report on migratory pressure to the European Parliament and to the Council within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).
2. In the report, the Commission shall illustrate the elements connected to the migratory pressure.
3. The report shall identify:
 - (a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum and return as well as its overall needs in managing its asylum and return caseload;
 - (b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, as appropriate, of:
 - (i) measures that the Member State under migratory pressure should take in the field of migration management, and in particular in the field of asylum and return;
 - (ii) measures referred to in Article 45(1), points (a), (b) and (c) to be taken by other Member States;
 - (iii) measures referred to in Article 45(1), point (d) to be taken by other Member States.
4. Where the Commission considers that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.

Article 52

Solidarity Response Plans in situations of migratory pressure

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, the other Member States which are not themselves benefitting Member States shall contribute by means of the solidarity contributions referred to in Article 45(1), point (a) in proportion of at least 50% of their share, calculated in accordance with article 54. Member States shall prioritise the relocation of unaccompanied minors.
2. Where the report referred to in Article 51 also identifies measures referred to in article 45(1), points (b), (c) and (d), other Member States may contribute by means of those measures, instead of measures referred to in Article 45(1)(a), only in proportion of 50% of their share, calculated in accordance with article 54.
3. Within two weeks from the adoption of the report referred to in Article 51, Member States shall submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of contributions from among those set out in Article 51(3)(b)(ii) or, where relevant, the measures set out in Article 51(3)(b)(iii) that Member States propose to take. Where Member States propose more than one type of contribution set out in Article 51(3)(b)(ii), they shall indicate the share of each.

Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals present on the territory of the Member State concerned that they intend to sponsor.

Where Member States indicate measures set out in Article 51(3)(b)(iii) in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time-frame for their

implementation. The reference amount for such measures is the one set in AMF regulation, article 17.1.

4..

5. A Member State proposing solidarity contributions set out in Article 51(3)(b)(ii), may request a deduction of 10% of its share calculated according to the distribution key set out in Article 54 where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications for international protection.

Article 53

Commission implementing acts on solidarity in situations of migratory pressure

1. Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum, the Commission shall adopt an implementing act laying down the solidarity contributions for the benefit of the Member State under migratory pressure to be taken by the other Member States and the timeframe for their implementation.
2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure.

The types of contribution identified by the Commission in the report on migratory pressure, according to Article 45(1), shall be reflected by Member States in their solidarity response plans as a combination of measures in proportion to the distribution key set out in Article 54. Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 45.1(a).

Where the measures proposed are not in proportion, as foreseen in the previous subparagraph, the Commission shall set out in the implementing act the measures proposed while adjusting their level.

3. The implementing act shall set out:
 - (a) the total number of persons to be relocated from the requesting Member State pursuant to Article 45(1), points (a) or (c), taking into account the capacity and needs of the requesting Member States in the area of asylum identified in the report referred to in Article 51(3)(b)(ii);
 - (b) the total number of persons to be subject to return sponsorship from the requesting Member State pursuant to Article 45(1), point (b), taking into account the capacity and needs of the requesting Member States on return identified in the report referred to in Article 51(3)(b)(ii);
 - (c) the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States including the benefitting Member State, on the basis of the distribution key set out in Article 54;
 - (d) the measures indicated by Member States pursuant to second and third subparagraph of paragraph 2.

The distribution referred to in paragraph 3 point (c) shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has been responsible for twice the Union average per capita of applications for international protection. In such cases the Member State shall receive a deduction of 10/% of its share calculated according to the distribution key set out in Article 54. This deduction shall be distributed proportionately among the other contributing Member States ;

4. Where contributions have been made in response to a request by a Member State for solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure pursuant to Article 56(1) within the preceding year, the Commission shall deduct these contributions from the corresponding contributions set out in the implementing act.

5. The implementing act referred to in paragraph 1 shall be adopted in accordance with the urgency procedure referred to in Article 67(3) on duly justified imperative grounds of urgency due to the migratory pressure present in a benefitting Member State, That act shall remain in force for a period not exceeding 1 year.

6. The Commission shall report on the implementation of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

Art. 54

Distribution key

The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State in accordance with Articles 48 and 53 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).
- (c)

The length of external border shall be weighted in order to adjust the share of the MS concerned.

Art. 56

Other solidarity contributions

1. Where a Member State requests solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure, it shall notify the Commission of that request.
2. Any Member State may, at any time, in response to a request for solidarity support by a Member State, or on its own initiative, including in agreement with another Member State, make contributions by means of the measures referred to in Article 45 for the benefit of the Member State concerned and with its agreement. Contributions referred to in article 45, point (d) shall be in accordance with the objectives of Regulation (EU) XXX/XXX [Asylum Migration Fund].
3. Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on its own initiative, shall notify the Commission, thereof by completing the Solidarity Support Plan form set out in Annex IV. The Solidarity Response Plan shall include, where relevant, verifiable information, including on the scope and nature of the measures and their implementation.

Art. 2

Definitions

...

(r) 'benefitting Member State' means the Member State benefitting from the solidarity measures in situations of migratory pressure and/or for disembarkations following search and rescue operations as set out in Chapters I-III of Part IV of this Regulation;

(s) 'contributing Member State' means a Member State that contributes or is obliged to contribute to the solidarity measures to a benefitting Member State set out in Chapters I-III of Part IV of this Regulation;

(t) 'sponsoring Member State' means a Member State that commits to return illegally staying third-country nationals to the benefit of another Member State, providing the return sponsorship referred to in Article 55 of this Regulation;

(u) 'relocation' means the transfer of a third-country national or a stateless person 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;

(w) 'migratory pressure' means a situation 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 arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on wellprepared asylum and reception systems and requires immediate action;

MALTA

General remarks

MT reiterates the need to ensure that once a Member State exceeds the fair share of applications for which it should be responsible (the fair share is to be determined on the basis of a key with 50% GDP and 50% population), an automatic relocation mechanism should kick in wherein all asylum seekers are promptly relocated to other Member States.

MT has a general scrutiny reservation on the whole proposal.

Article 45

- Paragraph 1(a)

MT has a substantive reservation on point (a) and is of the opinion that this should be amended as follows:

relocation of applicants for international protection ~~who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]~~;

Justification: In order to properly ease the burden on front line Member States and ensure a fair share of responsibility amongst all Member States, all asylum seekers should be subject to relocation, regardless of the procedure they fall under. Furthermore, MT would once again highlight the fact that it is opposed to the mandatory nature of the border procedure as envisaged under Article 41 of the amended proposal for the APR.

- Paragraph 1 (b)

MT has a substantive reservation on point (b) and is of the opinion that this should be amended as follows:

return sponsorship of ~~illegally staying third-country nationals~~ third country nationals or stateless persons whose application has been rejected following a final decision;

Justification: The current wording is too wide and does not necessarily alleviate the burden on front line Member States. Therefore, return sponsorship should be limited to failed asylum seekers.

- Paragraph 1(c)

MT, while not opposed to the provision in point (c), considers that priority should be duly given to those individuals who were granted international protection less than 1 year prior to adoption of an implementing act pursuant to Article 53(1).

- Paragraph 2

MT calls for this paragraph to be re-worded as follows:

Such contributions may, pursuant to Article 56, also consist of:

~~(a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];~~

~~(b) relocation of illegally staying third-country nationals~~ third country nationals or stateless persons whose application has been rejected following a final decision.

Justification: This is an amendment in view of our general position and suggested amendment to paragraph 1(a) and (b).

Article 50

- Paragraph 1

Paragraph 1 should be amended as follows:

The Commission shall assess the migratory situation in a Member State where:

- ~~(a) that Member State has informed the Commission that it considers itself to be under migratory pressure;~~
- ~~(b) on the basis of available information, it considers that a Member State may be under migratory pressure.~~

Justification: Member States are best placed to determine whether or not they are under migratory pressure. Therefore, this assessment should only be triggered following the information provided by the Member State in need, and not on the basis of available information.

- Paragraph 3

Paragraph 3 should be amended as follows:

*The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding ~~six~~ **twelve** months, compared to the overall situation in the Union, and shall be based in particular on the following information:*

Justification: The assessment should be based on the situation in the preceding 12 months since a 6 months' timeframe might not necessarily give the full picture of the pressure faced by Member States.

MT has a scrutiny reservation on point (f) since we are still analysing the ramifications of the changes in the timeframes pertaining to take charge/back requests as well as the change from take back requests to take back notifications.

- Paragraph 4

Paragraph 4(a) should be amended as follows:

the information presented by the Member State, ~~where the assessment is carried out pursuant to paragraph 1, point (a);~~

Justification: This amendment follows our comment on paragraph 1.

Article 51

- Paragraph 1

MT stresses the need to ensure that before the report is submitted to the EP and the Council, the Member State concerned should have the possibility to comment on the draft report within a stipulated timeframe (e.g. 1 week). Those comments should be duly taken into account by the CION prior submission of the report to the EP and Council.

- Paragraph 4

Paragraph 4 should be amended as follows:

*Where the Commission considers, **on the basis of the information presented by a Member State**, that a rapid response is required due to a developing situation in ~~a~~ **that** Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.*

Justification: Member States are best placed to determine whether or not they are under migratory pressure. Therefore, this assessment should only be triggered following the information provided by the Member State in need, and not on the basis of available information.

Furthermore, akin to our comment on paragraph 1, before the report is submitted to the EP and the Council, the Member State concerned should have the possibility to comment on the draft report within a stipulated timeframe (e.g. 3 days). Those comments should be duly taken into account by the CION prior submission of the report to the EP and Council.

Article 52

Second sub-paragraph of paragraph 3 should be amended as follows:

*Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of ~~the illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** present on the territory of the Member State concerned that they intend to sponsor.*

Justification: Amendment in view of our substantive concerns pertaining to Article 45(1)(b).

Article 53

- Paragraph 3

Point (c) should be amended as follows:

*the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States **with the exception of including** the benefitting Member State, on the basis of the distribution key set out in Article 54;*

Justification: The distribution of all persons identified for relocation or return sponsorship should be covered by all Member States with the exception of the benefitting Member States. MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation or return, since this could lead to a significant shortfall in the number of persons who will actually be relocated or returned.

Article 54

The chapeau should be amended as follows:

*The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State, **with the exception of the benefitting Member State**, in accordance with Articles 48 and 53 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:*

Justification: The distribution of all persons identified for relocation or return sponsorship should be covered by all Member States with the exception of the benefitting Member States. MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation or return, since this could lead to a significant shortfall in the number of persons who will actually be relocated or returned.

Article 55

- Paragraph 1

Paragraph 1 should be amended as follows:

*A Member State may commit to support a Member State to return ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** by means of return sponsorship whereby, acting in close coordination with the benefitting Member State, it shall take measures to carry out the return of those third-country nationals **or stateless persons** from the territory of the benefitting Member State.*

Justification: Amendment in view of our substantive concerns pertaining to Article 45(1)(b).

- Paragraph 2

Paragraph 2 should be amended as follows:

*Where a Member State commits to provide return sponsorship and the ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decisions and** who are subject to a return decision issued by the benefitting Member State do not return or are not removed within ~~8~~ **6** months, the Member State providing return sponsorship shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, in Article 49(2).*

Justification: Amendment in view of our substantive concerns pertaining to Article 45(1)(b). Furthermore, considering the fact that while return proceedings are taking place the illegally staying third-country national is still on the territory of the benefitting Member State, the 8 months' timeframe is too long and should be shortened to 6 months.

MT has a scrutiny reservation on paragraph 3(b). The decision rejecting an application for international protection and a return decision are currently issued by two separate authorities and at different points in time. Therefore, internal consultations are still ongoing regarding Article 35a of the APR.

- Paragraph 4

Points (a) and (b) should be amended as follows:

- (a) providing counselling on return and reintegration to ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision**;
- (b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** willing to depart voluntarily;

Justification – amendment in view of our substantive concerns pertaining to Article 45(1)(b).

General remarks and crucial elements:

- General scrutiny reservation to the whole AMMR proposal and substantial reservation to the solidarity mechanism including the situation of migratory pressure and disembarkation as a result of SAR operations due to the lack of consensus on political level on full flexibility in choosing supportive measures, going beyond the redistribution of migrants.
- Reservation to the correction mechanism within AMMR proposal (part IV). All supportive measures should be treated equally and free choice of them by MS participating in the solidarity mechanism must be guaranteed.
- PL strongly opposes to any solution resulting in compulsory admission of migrants as part of solidarity. (On return sponsorships procedure we will reflect in detail after discussion on art. 55.)
- Any kind of redistribution or relocation should cover only those that are more likely eligible for protection/ right to stay in the EU.
- Objection to any separate, obligatory solidarity mechanism dedicated to SAR.
- The role of the Council should be strengthened within the solidarity mechanism.

PL remarks to the concrete provisions:

Article 45 Solidarity contribution

Para 1a – The EC explained during AWP on 7th January that the goal is to cover by the relocation only those who are the most eligible for protection (recital 26 says: only persons who are more likely to have a right to stay in the EU). We agree with other MSs that excluding applicants that are not the subject to the border procedure is not enough to assure this approach (in APR proposed recognition rate for application the border procedure is 20%). Therefore we suggest alternative wording:

a) relocation of applicants who are more likely eligible for international protection including in particular applicants of nationalities for which recognition rate in the EU is at least 75%

Para 1c – PL suggests to reduce **3 years to 6 months or less**. Otherwise it may lead to a significant waste of integration efforts and measures already implemented in benefiting MS.

Para 1d – It is important to add border protection component here. We suggest the following wording:

*d) capacity building measures in the field of asylum, reception, **border protection** and return, operational support **in this regard** and measures aimed at responding (...)*

Listening others colleagues we believe it might have an added value to have an open list of different kinds of support at least provided in annex to give a bit more light on what kind of support could be taken into account in each type of measures mentioned in letter d (capacity building, operational support, cooperation with third countries).

Para 2 – Objection to the relocation of illegally staying TCN and persons who are subject to the border procedure. It is important to keep priority on relocation of those who have most likely right to stay in the EU – also within the voluntary support. We don't mind any such bilateral cooperation of MSs but this regulation and solidarity mechanism as a systemic solution should promote and constitutes legal basis for all initiatives that are in line with an overall logic of the holistic approach

to migration and asylum in particular consisting on strengthening returns, limiting irregular migration and secondary movements.

Article 50 Assessment of migratory pressure

Para 1b – We are in favor of removing this point. Para 1a would be sufficient. It is important that the MS being potentially under pressure recognizes the need for additional support. The assessment of migratory pressure made by the EC on its own initiative when the MS doesn't find necessary to receive any support could be simply pointless.

Para 3 and 4 – Although PL is in favor of a broad approach and comprehensive assessment of the migratory pressure as provided in the proposal, we believe that more transparency as to what criteria/indicators the EC will refer to when assessing the migratory pressure is needed. One of the key elements that should be identified is *the large number of arrivals* (with reference to proposed wording of art.2 w) not only in the MS concerned but also in compare to the situation in the EU. Then additional elements that can alleviate the pressure or strengthening the migratory inflows should be taken into account as well as overall migratory situation in concerned MS.

Article 51 Report on migratory pressure

All MSs including especially those directly concerned should have possibility to comment on the report that at the end should be adopted by the Council as its results are crucial for all further steps within the solidarity mechanism.

Article 53 Implementing acts on solidarity in situation of migratory pressure

The Council should play a decisive role in the process of activating the solidarity mechanism and determining the solidarity contributions. These elements should be established in the Council's decision. We should reflect on the proportion between the role of the Council and the EC as provided in art. 78.3 TFUE. According to this art. *when it comes to emergency situation it is Council that on the proposal of the EC may adopt provisional measures*. We should assure the same approach within the solidarity mechanism proposed in AMMR. TFUE provides that such procedure is reasonable for emergency case so there is no reason to assume that similar procedure of decision making within solidarity mechanism in case of migratory pressure become ineffective and too slow.

We have some additional questions at this point:

- From the proposed wording is difficult to deduce when fair share will be calculated? If it will be calculated once or few times within the solidarity mechanism- e.g. when reduction of 10% of fair share of the MS will be applicable? It requires further explanation.
- What will be the consequence for the implementation of the various solidarity measures when an implementing act become expired (e.g. after one year).

Paragraph 2

Moreover with reference to the correction mechanism we see strong need to assure that all solidarity measures are equally treated. During assessment and in the report concerning migratory pressure the EC proposes only such measures that are in line with the needs of the MSs under pressure therefore it

should be assumed that all actions undertaken according to art. 45. 1 mentioned in the report constitutes equally tangible and valuable support.

Thanks to the EC explanation on bilateral level we understand how 30%/ 70% will be calculated without any conversion key but at the same time 2 element might be important for the implementation:

- There might be a need to check proportionality between solidarity measures as all of them requires financial engagement (not only proportion between relocation and others measures but also within so called alternative measures)
- It would be also important to have at least overall idea of costs concerned with different kinds of support including through use of EU funds. Predictability in this regard is of great importance for MSs.

Article 54 Distribution key

There is a broad agreement between MSs that distribution key should be further developed and at least capacities and migratory situation in MS of relocation should be taken into account. PL is in favor of more ambitious and comprehensive approach. The key is a proper place to reflect on a balance between responsibility and solidarity and it should take into account also efforts undertaken by MSs within asylum and migration policy (border protection, legal migration, external dimension of migration). These elements might be included in the migration management report and evaluated.

Article 2 r w

r - benefiting Member State – PL is against of introduction any separate and obligatory mechanism dedicated for disembarkation following SAR operations. Therefore we suggest to delete this part of the definition.

w- migratory pressure – key element that remain further analyses. Large number of arrivals – important to explain the meaning or provide indicators that make it possible to define it. For PL it is crucial to delete wording: *or a risk of such arrivals*. We strongly oppose to include any hypothetical risk of occurrence of migratory pressure in the definition. It shouldn't raise any interpretation doubts as it triggers specific measures and actions.

ROMANIA

Article 45 - we introduce scrutiny reservation, with the request for clarifications regarding the three-year term indicated at art. 45 para. 1 letter c.

General observations

- We appreciate the intention to create a predictable framework to support MS under concrete pressure by finding a balance towards the application of solidarity principle.
- In our view, the proposed mechanisms should take into account a number of factors, namely accommodation capacity, asylum applications processing capacity, integration prospects, including historical maximum of asylum applications in each MS. In this way, we prevent additional pressure on the national asylum systems of other EU MS.
- At the same time, Member States' efforts to protect the external border should be quantified as migration management efforts.
- We mention that our previous concerns with regard to the automatic and mandatory relocation remain valid. We argue that solidarity cannot be expressed on the basis of imposed indicators and calculation formulas, which do not take into account the real capabilities of each individual MS.

Article 46 - scrutiny reservation

50, 51, 52, 53, 54, 56 - we introduce scrutiny reservation with the following observations:

General observations

- The suggestion to determine MS quotas on the basis of population and GDP is to the detriment of those who, although they have a large population or a large GDP, have a low history of asylum applications and therefore limited capacities in the management of asylum applications, which could lead to imbalances at national level.
- In addition, although appreciated, the flexibility offered by the possibility of return sponsorship for MS under pressure requires concrete and immediate developments in cooperation with third parties (building large, personalized and balanced migration partnerships).
- At the same time, in order to avoid additional pressure on national return systems, we must take into account the existence of diplomatic representations of third countries in the MS that provide support, otherwise taking responsibility for returning aliens who do not want to leave MS territory will not achieve the envisaged goal.
- Last but not least, we consider that there is a need for more details on the modality of quantification of the contribution of MS by capacity building measure in the field of asylum, reception and return, as well as the external dimension of migration.

As for **paragraph 3 of Article 50** we propose that the assessment of migratory pressure should cover the situation in the MS concerned during the preceding 12 months, instead of just 6, thus achieving a more clear overview of the migratory evolution in that MS.

With regard to **Article 50 paragraph 3 letter g)**, we suggest that the transfers which could be carried out according to Article 31 in the following 6 months after the assessment should also be taken into account when assessing the migratory pressure. The transfers in question here are those pursuant to the take charge requests.

As for **Article 51 paragraph 1**, so as to achieve a quick response in the event of a migratory pressure, we suggest that the report be submitted to the European Parliament and to the Council within two weeks, instead of a month. The same goes with the period of two weeks, stipulated in para. 4. We believe it should be reduced to one week.

Regarding **art. 52**, we believe that **para. 1 and para. 2** should be connected in order to reflect in a single stage the possibility of MS to contribute through all the measures provided in art. 45 letter. a) -d).

Art. 52 para. 5 - we suggest that the deduction take into account the accommodation capacity of an MS and the examination capacity of the last year.

Art. 53 para. 3 - we support the alignment of the provisions in accordance with the proposal formulated above at art. 52 para. 5.

Article 56- we appreciate in a positive way the provisions of this article, for we believe that the voluntary solidarity of Member States should come first, thus preventing subsequent pressure on other Member States' asylum systems.

With regard to Article 2 (w) - we ask for clarifications on the way '*a large number of arrivals*' is to be interpreted.

SLOVAKIA

Art. 2 (g) – same substantial reservation as we have raised during the negotiations on the Qualification Regulation, where we are against the extension of the definition beyond the family that existed in the country of origin.

We are of the opinion that extension of this notion will lead to marriages of convenience with the aim to avoid expulsion from the EU. We have substantial reservation to the extension of the definition to siblings of the applicant, as well.

Art. 2 (w) - Reservation. We consider the definition of migratory pressure too vague. It is based solely on general notions, which might undermine objectivity of assessment of the situation in Member State under pressure. Definition should be further specified, taking into account for example some of the objective criteria listed in Article 50.

Art. 45 – as regards the solidarity contributions, in general, we are of the opinion that all forms of solidarity measures should be perceived as equal and contributing Member States should have a real possibility of choice, in what way they would like to contribute.

We also agree that the list of contributions is narrow and should be broadened. In our opinion, support/assistance in protection of external borders should be considered as solidarity contribution.

Art. 45 (1) (b) - substantial reservation regarding the reference to return sponsorship. In certain way we perceive this concept as innovative form of solidarity. However, we do not agree that the person who is not returned within the 8 months period, should be relocated to the Member State providing return sponsorship.

Art. 50 - scrutiny reservation to this Article as regards the definition of migratory pressure. We agree with other delegations that activation of the solidarity measures should be predictable. Therefore, we think that the criteria for the assessment of the migratory pressure, and notably their evaluation, should be objectively and precisely defined in this Regulation. In the current proposal, the methodology of assessment to be used by the Commission is not defined at all. We are afraid that this unclear process in conjunction with the vague definition of migratory pressure in Art. 2, will lead to subjective assessment whether or not the Member State is under migratory pressure. This, together with insufficient involvement of Member States, might undermine the effectiveness of the implementation of solidarity measures.

Art. 52 - Substantial reservation. We are of the opinion that Member States should always have possibility to choose freely which form of solidarity contribution they would like to provide. In this

regard, all forms of solidarity should be perceived as equal. Therefore, we do not agree that some forms of solidarity (such as capacity building) should be excluded.

Art. 53 – Substantial reservation. We are of the opinion that the role of the Council should be strengthened in this Article.

We do not agree with the possibility to adjust solidarity contributions of the Member State in the area of capacity building and other measures in a way that 50% of the contributions will be changed to relocation or return sponsorship. Member States should have possibility to choose form of solidarity contributions, they want to provide, and this decision should be exclusively in the competence of the Member State concerned.

The implementing act of the COM should therefore contain only those contributions, which were offered by the Member State in their Solidarity Response Plans.

Art. 54 - Scrutiny reservation. We do not consider the proposed distribution key as suitable. Solidarity contributions of Member States should be based on their real possibilities therefore the key should take into account their capacities.

SLOVENIA

Republic of Slovenia supports the 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] and welcomes a common approach to asylum and migration management.

Republic of Slovenia enters a scrutiny reservation on the whole Asylum and Migration management Regulation proposal. We are in favour of reaching a proper balance between responsibility and solidarity. We believe that solidarity should not be mandatory in normal circumstances, and should be mandatory only in crises. We are also against the mandatory relocations of asylum seekers as this could generate a pull factor. Solidarity mechanism should be based on voluntary decision of a member state; otherwise, it would lose its meaning and its role.

Comments on Article 45:

Republic of Slovenia is not in favour of mandatory nature of relocation of asylum applicants, solidarity should be based on a voluntary decision of a member state. We agree that search and rescue operations are one of key factors in migration management however, we do not agree with a proposed separate procedure (and legal status) regarding the treatment of persons disembarked following search and rescue operations. These persons are in our opinion at first illegal migrants and further possibly asylum applicants in EU Member State; however, the proposal does not define them according to their status, but according to their method of entry. We believe this result in a new category of persons subjected to special treatment. This means legal institutionalization of new paths of arrival of third country nationals, which we are opposing.

Regarding point (b), we believe that return sponsorship is an important part of the migration policy; however, it should become a common EU policy with a common approach of all Member States and with a stronger European dimension. The current return sponsorship system is too scattered and left entirely to the Member States without considering objective reasons for its effectiveness (bilateral relations with third countries, historical ties, number of available embassies, etc.). In this regard, we are not in favour of the proposed return sponsorship measure, especially taking into account the proposed mandatory relocation in case of unsuccessful return. The key element should be a strong cooperation with third countries, including sanctions and incentives.

We believe that the time frame of three years in point (c) in relation to Directive 2003/109/EC should be as short as possible. From the integration point of view long period could in our opinion have a negative effect on the success of relocation which could lead to secondary movement. Our suggestion would be to have a maximum two-year time frame.

We would also like to state our reservations on paragraph two, regardless of its voluntary nature. We are strongly against any relocation of illegally staying third-country nationals for whom it is highly

likely that they are abusing international protection systems. Therefore this could enable a growing risk of abuse of international protection systems and may lead to secondary movement. In general, Slovenia favours the principle of successful return of illegal migrants from EU to third countries.

Comments on Article 50:

Republic of Slovenia welcomes a certain amount of flexibility on the possible solidarity contributions; however, this flexibility is limited to the European Commission's report on migratory pressure. Moreover, the possible use of correction mechanism proposed in Article 53 raises concerns over the possible voluntary choice of solidarity contributions according to the capacities and absorption possibilities of Member States.

We are of opinion that the provision moves in the right direction, since the migratory pressure is not assessed only on the basis of quantitative but also qualitative criteria according to relevant reports. However, we would like to see more predictability. In this context, the Council has an important role at the migratory pressure assessment. We would also like to see a more detailed threshold for the assessment of migratory pressure.

Comments on Article 51:

Republic of Slovenia entered a substantial reservation on mechanism of validating the report on migratory pressure and activation of solidarity mechanism. We are of opinion that a Council should take the report on migratory pressure and not the European Commission as the text proposes. European Commission should only prepare an implementation act based on the Council's report.

Comments on Article 52:

There should be a certain balance between the proposed solidarity contributions (relocation, return sponsorship and capacity building). Republic of Slovenia is of opinion that the Member States should have maximum flexibility in choosing a solidarity contribution according to its capacities.

Proposed two weeks' timeframe from the adoption of the report raises concerns, as it might not be enough time to prepare detailed plans for implementation and timeframe of capacity building measures.

Comments on Article 53:

Republic of Slovenia entered a scrutiny reservation; we are still studying the article more in detail. Regarding paragraph 2, subparagraph 3, we wonder how the European Commission will adjust the level of proposed capacity-building measures according to their proportionality with "people measures" and how will the European Commission rate the proposed solidarity contributions. As already stated in our comment on Article 50, we are not in favour of proposed correction mechanism as it leaves very limited flexibility to the Member States.

Comments on Article 54:

Republic of Slovenia entered a substantial reservation on proposed distribution key, as it only takes into account the size of the population and the total GDP. We are of opinion that integration and absorption capacities of the Member States as well as migratory situation on its territory should be taken into account.

SPAIN

As a general remark, the Spanish delegation has a scrutiny reservation on the whole text of the proposal.

On the one hand, the Spanish delegation reiterates its points of views and comments expressed in the Asylum Working Party on the 7th and 12th January.

On the other hand, the Spanish delegation presents following preliminary proposals:

Article 45, Solidarity contributions

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:

(a) relocation of applicants ~~who are not subject to the border procedure for the examination of an application~~ for international protection ~~established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]~~;

(b) return sponsorship of illegally staying third-country nationals or stateless persons, including applicants whose applications for international protection have been rejected;

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(d) capacity-building measures in the field of asylum, reception and return, operational support and measures aimed at responding to migratory trends affecting the benefitting Member State through operational cooperation with third countries.

2. Such contributions may, pursuant to Article 56, also consist of:

~~(a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];~~

~~(b)~~ relocation of illegally staying third-country nationals or stateless persons, including applicants whose applications for international protection have been rejected.

Justification: Our position against a mandatory border procedure with the consequence of long periods of detention of applicants for international protection at the border is well known. On the other hand, if the objective of the future Regulation AMM is to establish an effective mechanism of real solidarity, the scope of its measures has to be set as wide as possible. Stateless persons and applicants whose applications for international protection have been rejected must be included in those measures. In case of migratory pressure, the extent, scope and type of such measures will be specified, depending on the circumstances of the specific case and the needs of the benefitting MS.

Article 46, Solidarity Forum

~~A Solidarity Forum shall comprise all Member States. The Commission shall convene and preside the Solidarity Forum in order to ensure the smooth functioning of this Part.~~

Justification: Spanish delegation is reluctant to the idea of the Forum, which could lead to a kind of second round for the Member States and lead to a low level of contributions in their Solidarity Response Plans, in order to increase them during the Forum; the system would have to be fairer and more objective. The Forum will make the mechanism more cumbersome, slower and, consequently, less efficient.

Article 50 Assessment of migratory pressure

1. The Commission shall assess the migratory situation in a Member State where:

~~(a)~~ that Member State has informed the Commission that it considers itself to be under migratory pressure; **the Member State may include in its information an estimate of the measures needed to address and respond to the situation**

~~(b) on the basis of available information, it considers that a Member State may be under migratory pressure.~~

2. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in drawing up the assessment of migratory pressure. The Commission shall inform the European Parliament, the Council and the Member States, without delay, that it is undertaking an assessment

3. The assessment of migratory pressure shall cover the **concurrence of the circumstances set out in Article 2(w) situation in the Member State concerned during the preceding six months, compared to the overall situation in the Union,** and shall be based in particular on the following information:

No changes are proposed to letters (a) to (k)

4. The assessment of migratory pressure shall also take into account the following:

(a) the information presented by the Member State, ~~where the assessment is carried out pursuant to paragraph 1, point (a);~~

Concerning letters (b) to (j), Spanish delegation maintains a special scrutiny reservation, since they affect the competences of several ministries.

Justification: The lead role in triggering the mechanism corresponds to the MS concerned, which knows the situation, its needs and whether or not it is under pressure. On the other hand, migratory pressure may not exist for six months and may arise suddenly; in this case, action should be taken as quickly as possible, regardless of the situation in the previous six months. Moreover, the objective of the assessment should be to analyse the elements that determine the existence of a situation of migratory pressure, that is, the circumstances detailed in its definition, Article 2(w).

Article 51 Report on migratory pressure

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1).

Following the comments submitted by the Member State concerned, which shall be duly taken into account by the Commission, it ~~The Commission~~ shall submit the report on migratory pressure to the European Parliament and to the Council within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

2. In the report, the Commission shall state whether the Member State concerned is under migratory pressure.

3. Where the Commission concludes that the Member State concerned is under migratory pressure, the report shall identify:

(a) the **overall needs capacity** of the Member State **concerned under to manage the situation of** migratory pressure in the field of migration management, in particular **reception**, asylum and return ~~as well as its overall needs in managing its asylum and return caseload~~;

(b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, as appropriate, of:

(i) measures that the Member State under migratory pressure should take in the field of migration management, and in particular in the field of asylum and return;

(ii) measures referred to in Article 45(1), points (a), (b) and (c) to be taken by other Member States;

(iii) measures referred to in Article 45(1), point (d) to be taken by other Member States.

4. Where the Commission considers **on the basis of the information presented by the Member State concerned** that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.

Justification: The same as expressed in the previous article. Moreover, in the event of migratory pressure, there is no time to lose, and the focus must be on managing the situation, which implies identifying the needs, the means and the actions to be taken to address it. This does not mean that a comprehensive approach is not necessary, on the contrary; preventive actions must be adopted to be well-prepared in case of pressure, and the causes of the pressure must also be analysed to try to prevent it from recurring, but this is clearly not the aim of this provision.

Article 52 Solidarity Response Plans in situations of migratory pressure

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, the other Member States which are not themselves benefitting Member States shall contribute by means of the solidarity contributions referred to in Article 45(1), points (a), (b) and (c). Member States shall prioritise the relocation of unaccompanied minors.

2. Where the report referred to in Article 51 identifies measures referred to in paragraph 3, point (b)(iii) of that Article, ~~other those~~ Member States may contribute by means of those measures **in addition to the** ~~instead of~~ measures referred to in Article 51(3)(b)(ii). ~~Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report on migratory pressure under Article 51(3)(b)(ii).~~

2.3. Within two weeks from the adoption of the report referred to in Article 51, **contributing** Member States shall submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of contributions from among those set out in Article 51(3)(b)(ii) **and or**, where relevant, the measures set out in Article 51(3)(b)(iii) that Member States propose to take. Where Member States propose more than one type of contribution set out in Article 51(3)(b)(ii), they shall indicate the share of each.

Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals or stateless persons, including applicants whose applications for international protection have been rejected, present on the territory of the Member State concerned that they intend to sponsor.

Where Member States indicate measures set out in Article 51(3)(b)(iii) in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time-frame for their implementation.

~~4. Where the Commission considers that the solidarity contributions indicated in the Solidarity Response Plans do not correspond to the needs identified in the report on migratory pressure provided for in Article 51, it shall convene the Solidarity Forum. In such cases, the Commission shall invite Member States to adjust the type of contributions in their Solidarity Response Plans in the course of the Solidarity Forum by submitting revised Solidarity Response Plans.~~

3.5. Member State proposing solidarity contributions set out in Article 51(3)(b)(ii), may request a deduction of 10% of its share calculated according to the distribution key set out in Article 54 where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications for international protection.

Justification: Measures referred to in Article 51(3)(b)(iii) should not be included in order to replace or counterbalance measures under (b)(ii); in this respect, there are two possibilities; if those measures in (b) (iii) are necessary they should be addressed; if they are not, they should not be included in the Commission's report. Member States' contributions should therefore include both Article 51(3)(b)(ii) and Article 51(3)(b)(iii) measures, in proportion to their respective key. Other changes are proposed to maintain consistency with the proposed changes to Articles 45 and 46.

Article 53, Commission implementing acts on solidarity in situations of migratory pressure

1. Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) ~~or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum~~, the Commission shall adopt an implementing act laying down the solidarity contributions for the benefit of the Member State under migratory pressure to be taken by the other Member States and the timeframe for their implementation.

2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure.

~~Where the type of contribution indicated by Member States in their solidarity response plans is that referred to in Article 45(1), point (d), t~~The Commission shall assess whether the contributions measures proposed are in proportion to the ~~contributions that the Member States would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c) as a result of the~~ application of the distribution key set out in Article 54.

Where the contributions measures proposed are not in proportion to those the contributions that the contributing Member State should would have made according to

~~the previous subparagraph by means of the measures referred to in Article 45(1), points (a), (b) or (c), the Commission shall set out in the implementing act the measures proposed while adjusting their level.~~

~~Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 51(3)(b)(ii). The Commission shall adjust measures referred to in Article 51(3)(b)(iii) indicated by those Member States accordingly.~~

3. The implementing act shall set out:

(a) the total number of persons to be relocated from the requesting Member State pursuant to Article 45(1), points (a) or (c), taking into account the capacity and needs of the requesting Member States in the area of asylum identified in the report referred to in Article 51(3)(b)(ii);

(b) the total number of persons to be subject to return sponsorship from the requesting Member State pursuant to Article 45(1), point (b), taking into account the capacity and needs of the requesting Member States on return identified in the report referred to in Article 51(3)(b)(ii);

(c) the distribution of persons to be relocated and/or those to be subject to return sponsorship among the **contributing** Member States ~~including the benefitting Member State~~, on the basis of the distribution key set out in Article 54;

(d) the measures **referred to in Article 45 (1) point (d) to be provided by contributing Member States taking into account the capacity and needs of the requesting Member States identified in the report referred to in Article 51(3)(b)(iii) indicated by Member States pursuant to second, third and fourth subparagraph of paragraph 2.**

The distribution referred to in paragraph 3 point (c) shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has been responsible for twice the Union average per capita of applications for international protection. In such cases the Member State shall receive a deduction of 10% of its share calculated according to the distribution key set out in Article 54. This deduction shall be distributed proportionately among the **other contributing** Member States ~~making contributions referred to in Article 45(1) points (a), (b) and (c)~~;

4. Where contributions have been made in response to a request by a Member State for solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure pursuant to Article 56(1) within the preceding year, and where they correspond to the type of measures set out in the implementing act, the Commission shall deduct these contributions from the corresponding contributions set out in the implementing act.

5. On duly justified imperative grounds of urgency due to the migratory pressure present in a benefitting Member State, the Commission shall adopt immediately applicable implementing acts **in line with the measures requested by the MS concerned and** in accordance with the urgency procedure referred to in Article 67(3).

Those acts shall remain in force for a period not exceeding 1 year.

6. The Commission shall report on the implementation of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

Justification: The Spanish delegation understands the intention behind the Commission's proposal for a flexible solidarity. Nevertheless, that purpose should not result in a lack of solidarity; in the end, if the problems are not solved, the consequences in the medium and long term may be worse for the EU as a whole. It is therefore necessary to have a system that allows for flexibility but does not undermine its effectiveness.

Article 54, Distribution key

The share of solidarity contributions referred to in Article 45(1), ~~points (a), (b) and (c)~~ to be provided by each Member State in accordance with Articles 48 and 53 shall be calculated in accordance with the formula set out in Annex III and shall be based, excluding the benefitting Member State, 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 **per capita** (50% weighting).

Justification: GDP per capita reflects a country's wealth much more accurately than total GDP, which is not linked to a society's prosperity. The formula set out in Annex III for the distribution key pursuant to this Article must be modified accordingly.

Article 56, Other solidarity contributions

No changes are proposed

Article 2, Definitions

(w) 'migratory pressure' means a situation 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 arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action; **in any case, a Member State is considered to be under migratory pressure where the number of irregular arrivals of third-country nationals or stateless persons on its territory is higher than 120% of its fair share of the total number of such arrivals in the Union in the previous year, including arrivals following search and rescue operations.**

No changes are proposed to letters (r) to (v)

Justification: As a compromise solution, the Spanish delegation accepts that the Commission should assess the existence or not of migratory pressure and that the Commission retains a wide *marge de manoeuvre* and more or less subjective criteria for doing so. However, there is an objective fact that must be taken into account because it is clear evidence that a Member State is under pressure: if it receives a number of irregular arrivals that exceeds 120% of its share of total irregular arrivals in the

EU. In that case, the Member State concerned must in any case be considered under migratory pressure.

