



Council of the European Union
General Secretariat

**Interinstitutional files:
2020/0279(COD)**

Brussels, 04 February 2021

WK 1570/2021 INIT

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ASILE

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From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	11213/20 + ADD
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] - replies from Member States and Switzerland (Articles 3 to 7)

Delegations will find attached a compilation of replies received from Member States and Switzerland on the abovementioned subject.

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Replies received from Member States and Switzerland

in regard to 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]**

– Part II – Articles 3 to 7 (the AMMR governance structure) –

**(Informal videoconference of the members of the Strategic Committee on
Immigration, Frontiers and Asylum (SCIFA) on 10 February, 2021)**

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AUSTRIA

Austria welcomes the proposal to implement a common framework for asylum and migration management which is **based on a holistic and whole-of-routes approach** and its manifestation in the legal text of the AMR. It is crucial for the proper functioning of the asylum and migration management system that **MS take action based on a comprehensive and sustainable approach as well as integrated policy-making**. In our view, the safe third country concept should be included in the comprehensive approach.

- ❖ Austria also supports that the proposal includes **clear obligations for MS**. Harmonized and practicable provisions that are applied by all Member States, as well as an **effective monitoring** mechanism to **ensure full compliance with the EU asylum acquis** and the provision of **sufficient reception standards and adequate capacities** (in the areas of reception, procedures and return) are the **basis for a functioning comprehensive asylum and migration management system**.
- ❖ More specifically, for the **effectiveness** of a comprehensive asylum and migration management system, Austria inter alia regards the following components as crucial:
 - **Focusing on enhancing protection in or near the regions of origin** with comprehensive capacity building measures
 - Realizing the full potential of **available measures to reach and foster partnerships and close cooperation with relevant third countries**, building on the capacities and voluntary commitments of Member States and implementing existing and new cooperation instruments. In this regard, Austria welcomes the proposed Article 7.
 - Effective measures against absconding and secondary movements including appropriate sanctions and clear rules on detention
 - Streamlined and effective asylum and return procedures, including mandatory procedures at the external borders with a broad scope of application and fewer exceptions

- ❖ AT supports the common objective to ensure a **fair balance between solidarity and responsibility**. However, AT observes that the rules on governance **do not reflect measures in the field of responsibility and solidarity in a sufficiently balanced way**. Notably, **measures to prevent secondary movements** should be mentioned more specifically in the pertinent Articles (following the example of the more specific wording of other elements such as in the list of Art 3). In general, the governance framework should grant equal attention to measures against irregular arrivals at the external borders and secondary migration within the Schengen area.
- ❖ Concerning the proposed solidarity concept, there is a need for a mandatory but also **flexible approach by introducing more, new and innovative solidarity contributions**, for example in the external dimension. As already brought forward by Austria, the focus on relocation and return sponsorship as the sole solidarity contributions in certain situations is problematic. AT **does not support the introduction of a special solidarity mechanism after SAR disembarkations** since this could create new pull factors. SAR cases, if disembarked in an EU Member State, should be dealt with in a mandatory border procedure and otherwise be treated according to the same rules as all other arrivals to the EU. However, priority should be given to disembarkation in third countries, in accordance with international law. Moreover, the current and past realities and “lessons learnt” must be taken into account for a possible new solidarity mechanism. It is also important to **acknowledge pressure on national asylum and migration systems from the past**, so that previous burdens allow for deductions in the solidarity contributions. SCIFA Meeting 10th of February 2021 AT Position
- ❖ AT **welcomes the formal inclusion of the comprehensive EU leverage coordination mechanism in the AMR** and the creation of **obligation of the COM to propose measures to improve migration management and return cooperation with specific third countries**.
- ❖ In this light, the **COM (EU) must clearly communicate its concerns/interests in the area of migration management and return** to third countries and **make full use of instruments in all policy areas** (economy, trade, development aid and visa).

- ❖ **Uniformity of MS in negotiations** with different countries of origin and equal treatment of all third countries by applying a **uniform standard** is important.
- ❖ There is a strong need to **strategically link migration and return cooperation with other areas** (e.g., development assistance, trade), **working closely with the High Representative**; ensure that progress on readmission is matched by progress in other areas of the partnership.
- ❖ It is important that such possible linkages are anticipated and communicated to the responsible authorities in the MS. Opportunities are often not utilized because the responsible authorities are not aware that such a linkage is desired or that such negotiations are taking place.
- ❖ The importance of **discussing measures on a case-by-case basis** is also underlined. A case-by-case examination, tailored approaches and a cost/benefit assessment must be ensured in any case. Positive and negative conditionalities as well as a more-for-more and less-for-less approach should be examined.
- ❖ Austria is very concerned about not having the role of the Council sufficiently incorporated in the proposed governance framework. The **Council should have a stronger role** concerning all measures that aim at the implementation of an effective asylum and migration management system. There should also be a **balance between the added value of measures and the administrative burden on MS' systems**.
 - Austria welcomes the **Migration Preparedness and Crisis Blueprint** and calls for its swift operationalization. Austria requests more information regarding its foreseen role in the solidarity mechanism, including its role regarding monitoring and forecasting methodologies.

- Austria further advocates for a more balanced approach regarding the role of the Commission and the Council in drafting the yearly Migration Management Reports as well as reports on migratory pressure.

Due to the high relevance of these reports to the Member States, the Council should be granted a central role in drafting and confirming these reports.

- The Council should decide whether the Commission's evaluation of the migratory situation and the proposed support measures are proportionate.
- The reports should be drafted based on consistent forecasting methodology and measurable and objective criteria defining solidarity contributions. These aspects should be established in close cooperation with the Member States.
- Austria does not support the open definition of migratory pressure or crisis, as this grants the Commission and individual benefitting Member States too much discretion in matters which affect all Member States.

ESTONIA

Estonia's positions regarding the AMMR articles 3–7

- As our government recently changed, we are still analysing the Pact and therefore can share only general positions.
- The integrated approach to policy-making described in articles 3 and 4, suits us.
- We do not support SAR as a separate solidarity mechanism. We are afraid that it might be a powerful pull factor and encourage illegal crossings. Instead, we believe it should be regarded as a criteria for defining a situation of migratory pressure or crisis.

We are in favour of solidarity, but do not support any measures resulting in mandatory relocation. The instruments of solidarity need to remain flexible and include additional means of support besides relocation and return sponsorship.

FINLAND

Below are listed the preliminary Finnish positions and questions regarding Part II of the AMMR, with the caveat that the National Parliament is yet to express its view on the proposal.

It is key to build the EU's migration and asylum policy on a comprehensive approach. The proposed Article 3 puts rightful emphasis on this, including an extensive compilation of the relevant elements. In Finland's view, the compilation should not be exhaustive but rather seek to list the most essential elements of the policy. In terms of content, as a first reaction, at least the provisions on legal pathways as well as return should be fine-tuned to provide a fuller picture of these policy areas.

The principle of integrated policymaking (Article 4) is crucial for effective outcomes, both within the EU and vis-à-vis partner countries.

While Finland generally adheres to the principles behind the proposed Articles 4 and 5, it would be good to hear from the Commission what is the intended added value of including these principles and general statements on the obligations in directly applicable secondary legislation. In particular, how does the Commission envisage the monitoring of Member States' compliance, taking into account the rather imprecise and broad nature of these provisions?

Finland supports the starting point in Article 6 of developing the EU's and its Member States' policies based on strategic considerations that are forward-looking and knowledge-based. In practical terms, it is important to ensure that all relevant reporting and analysis takes place in a coordinated manner, avoiding gaps and overlaps, while keeping the administrative burden in check. *It would be useful to hear how the Commission plans to ensure that the national strategies optimally support the EU-level strategy in practice.*

Regarding Article 7, applying relevant incentives to improve cooperation in readmission is part of the overall return policy. Finland considers it positive that the Commission will have the opportunity to propose measures in this regard, while taking into account the EU's external relations in their entirety and guaranteeing that the EU's return policy fully respects fundamental and human rights.

GERMANY

DE supports regulations allowing a more coherent approach to the migration policy of the EU and the Member States, taking into account considerations related to a broad scope of issues. In particular, we regard the principles of shared responsibility, and of solidarity, to be very essential in this context, and appreciate this to be emphasized in a very clear manner. Especially with respect to the provisions concerning the CEAS, we welcome the approach suggested by the Commission.

The approach taken foresees a new procedure including various and rather unspecific demands towards the Member States. We are familiar with general planning, broken down in more detail by the Member States' own programmes, which are then subject to a monitoring mechanism. Such mechanism is already in use e.g. within the context of financial instruments. However, defining and implementing something as vast as migration policy in general using such an approach, is new. In addition, the scope of the applicability of this procedure is not quite clear yet. Depending on the answers to these questions, this approach would appear feasible given that it would not result in too high bureaucratic burdens imposed on the actors involved. In particular monitoring should not be performed in a too confining manner. The scope of the monitoring is of great importance to us: on the one hand it must be particularly clear that the competences of the Member States and the leeway which in fact exists for them for forming own migration policy (beyond the scope of the CEAS), should not be narrowed down indirectly through overarching programmes. On the other hand, with respect to CEAS related issues, it is essential that the room to manoeuvre should be narrowed down, in particular when it comes to the implementation of EU legislation on CEAS on Member State level. Therefore, it should be discussed if the same instruments should be used for CEAS related issues on one hand, and for non-CEAS related migration policy (i.e. labour mobility) on the other hand.

With respect to Article 6 section 1, it should be clarified whether it is indeed intended that the European Commission can, and should be, vested with the competence to define some comprehensive migration policy, which would factually be binding the Member States, without prior involvement of the co-legislators, who would only be informed after the fact. In addition, we would have to raise some questions about the relationship between the monitoring programme foreseen in the draft in relation to EU agencies, in particular to the proposed EU Asylum Agency. In the EUAA proposal, a monitoring mechanism is foreseen. Would the monitoring of the migration policy be carried out by the Commission or could this also be a task for the EUAA? We are also wondering what consequences the proposal foresees in case of non-compliance.

In a more general manner, whereas the “general” clauses in Article 3 and Article 6 seem to deal with migration policy as a whole, it appears that the programming on both EU and Member State levels would focus on the issues dealt with in the CEAS reform package, because the Articles 3 to 7 bear a clear focus on the programming on CEAS issues. However, the broad fields of regular migration are extensively dealt with by other instruments of EU policy and laws. With a view to the fact that, most migration into the EU takes place in a regulated and legal manner, and that vivid discussions are ongoing with respect to the legal admission of low and medium skilled workers, the declaration of the programming as a tool for defining migration policy as a whole (correctly) does not appear to be reflected in the regulation. Part II of the AMMR mainly focuses on the programming of the CEAS, as does the rest of the regulation being the successor of the Dublin-Regulation. In this respect, the general language used in many parts of the draft might be replaced by more focused terms, where the regular intention indeed does not cover a scope which is as broad as the terminology used might suggest.

With regard to Article 6 (4) we refer to Germany’s written comments on the SAR-related provisions of the AMMR following the Asylum Working Party meeting of 13 January 2021.

GREECE

In view of the forthcoming SCIFA, please receive below a set of questions by Greece

Questions submitted by Greece in view of the SCIFA vtc 10/2/2021

Asylum and Migration Regulation Proposal, articles 3-7

General comment

The whole Part has a rather declaratory and political character, especially articles 3-5, as also reflected in its title as "Common Framework". In this sense, this kind of provisions might be more suitably located at the preamble of a legal text. Should we consider that specific legal obligations are supposedly emanating from these framework provisions?

Article 3

Even though the title of the article refers to a "comprehensive approach" we are skeptical about the inclusion of quite a number of distinct policies, without a clear reference to their interrelation. Moreover, it is unclear how all these internal EU policies are connected with the external dimension which is projected at the forefront of the different components and in a rather detailed way. For example, the policies extend from the fight against migrant smuggling (which relates mainly to international police cooperation) to integration policies for beneficiaries of international protection (which is mainly a national competence). What is the exact objective of the article, especially taking into consideration that the main purpose of the Regulation which is the determination of the responsible member-state and the implementation of the solidarity and fair-sharing of responsibilities principle?

Article 4

In para 3 there is reference to MS ensuring the capacity "to effectively implement asylum and migration management policies". Shouldn't it be clearly stipulated that this capacity has limits and that it needs to be in accordance with the fair sharing principle as provided in Art. 5? For instance, it is mentioned that the member-states, with the assistance of agencies, shall ensure the necessary human and financial resources, without reference to the fair share of each member-state.

Article 5

- As we see only reference to the MS in para 1, we wonder whether the principle of solidarity and fair sharing should be observed only by MS or also by the Union.
- In which sense the reference in (e) on "preventing and correcting unauthorized movements" is not overlapping the clear definition on the rules of determination of responsibility in (c)?

Article 6

- What does the word "transmit" mean in para 1? Is it about a communication to the Parliament and the Council or an approval?
- What is the added value of submitting a contingency planning with the national strategy, as provided in para 3, in addition to those contingency plannings to be submitted in the context of Regulations on EUAA and FRONTEX and the Reception Directive. Isn't this an overlapping and burdensome obligation for MS? What should be the limitations of contingency plannings on the projected assessments? A rise of 20-30%? A crisis that can result in a rise of 100% or more?
- Why the Migration Management Report shall make specific reference to flows generated by SAR operations, as provided in para 4, and not mentioning those flows generated as a result of migratory pressure?
- What is the purpose of including the Schengen Evaluation in this Regulation? Reg. 1053/2013 functions in a different framework and has a distinct content. It is not relevant to the monitoring of a migration situation.
- What does "sufficient capacity" mean? Is it related to the fair share?
- In para. 3 it is stated that: "Such national strategies shall include information on how the Member State is implementing the principles set out in this Part and legal obligations stemming therefrom at national level". Which are the legal obligations emanating therefrom? We need to be concrete.

LITHUANIA

Lithuania has one question and one request.

- Question: what is the interrelation between Art 6 of AMMR (in particular, para 4 and 6) and the monitoring mechanism foreseen in the EUAAR?
- Request: for a better understanding, it would be very useful to have a visualisation of the strategic planning – what are the structural parts, which sources of information would be used (links with other MAP proposals), what is the interrelation between AMM strategy and IBM strategy, etc.

THE NETHERLANDS

AMMR- PART II COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT

- When reading article 3 and 4, as well as article 7 in unison, NL strongly supports the principles and aspects listed as part of a European comprehensive approach and integrated policy-making. However, the question arises how this will be ensured in practice. For example, how will the external and internal components of such a comprehensive approach ~~will~~ be ensured? Which service or official will take the lead, especially in relation to the partnerships with our international partners? NL suggests establishing a partnership coordinator – operating in tandem with the return coordinator. Ahead of the possible FAC-JHA Jumbo meeting, NL kindly invites the Presidency together with the CION/EEAS to develop a roadmap detailing which services and Council bodies will be involved in for example determining the priority partner countries or regions, as well as a time-line to engage with those priority countries. To be clear; this is not meant as a country-specific roadmap, but as a governance tool.
- Related to the previous point, article 7.1 mentions that CION, where appropriate, shall identify any measures which could be taken to improve the co-operation with a third country as regards readmission. Could CION provide more information on how it plans to share such reports, the possible measures, etc.?
- Articles 4.3 and 6.3 mention that that MS, with support of the Agencies and based on national strategies, shall ensure that they have the capacity to effectively implement asylum and migration management policies, including the necessary human and financial resources. How and who will determine the adequate level of a MS's capacity to effectively implement asylum and migration management policies? Will this include the number of staff, reception and detention capacities, housing and integration of beneficiaries of international protection and so on? Will this be done on the basis of forecasting or historic trends (i.e. taking an historic average) or on the basis of expected developments (more preferable).

- NL strongly supports the development of the European Asylum and Migration Strategy, the development of supporting national strategies as proposed in article 6.1. As for the sharing of information with the EP and others, NL kindly requests additional clarity on which types of data will be (publically) shared. Will this include for example the expected irregular arrivals to a specific MS, the number of estimated SAR-cases for specific MS, the available registration, asylum and reception capacities of specific MS, etc.? NL is concerned that such a report may influence the tactics of smugglers and/or behaviour of irregular migrants. For example, by targeting a specific MS to ensure disproportionate migratory pressure on a MS's reception and asylum capacity based on such a public report, especially if all aspects are presented in a concisely and structured manner.
- NL would like to see that such a Strategy will be strongly inspired by the already established and proven Integrated Border Management Strategy and the Schengen Evaluation Mechanism. With the proposed text of article 6, NL also sees several relevant elements which support the development of an Asylum and Management Evaluation Mechanism. Could CION reflect more on this during the SCIFA meeting?

POLAND

Pact on Migration and Asylum[1]

Regulation on asylum and migration management (AMMR)

Part II – Common Framework for Asylum and Migration Management

- PL submits its scrutiny reservation on Part II of AMMR and provides preliminary comments. Possible that we will ask questions and raise additional issues during upcoming VTC SCIFA.
- PL welcomes the strengthening and development of a holistic approach to migration and asylum management and proposed efforts to ensure that actions both at national and EU level taken internally and within external dimension remain consistent, in order to ensure their greater effectiveness.
- However, in any case, there must be room for respecting the Member States' competences in managing migration and asylum according to the Treaties. The common framework should ensure sufficient flexibility for national migration policies taking into account individual needs and resources, which are vary between Member States.
- The issue of fair share responsibility and solidarity as well as the development of a balance between these elements through introducing solutions acceptable to all, will be of fundamental importance for the effective implementation of the obligations under art. 5.
- PL does not oppose the idea to develop national strategies in the area of migration and asylum as well as EU strategy in this field prepared by the EC. However, the development of such EU strategy should to a large extent take into account consultations with the Member States and theirs role in the adoption procedure.
- In PL opinion, the above-mentioned approach should contribute primarily to ensure adequate capacities necessary for the effective implementation of migration and asylum management policies in individual Member States and better coordination of activities at the national and EU level in the field of prevention and preparedness for emergencies. For this purpose, it will be crucial to use both operational support from the EU agencies and financial support from dedicated EU funds.
- As part of the development of a common, integrated approach to migration management, Poland positively assesses the inclusion in art. 7 the specific mechanism to improve coordination and provide more effective use of tools across different policy areas to strengthen cooperation with third countries in the field of return and readmission. However, the key it will be its proper implementation always when necessary.

SLOVAKIA

We would like to submit the question:

What nature should the national strategy have? Shall it be a new document linked to the proposal of the regulation or comprises it the existing national concept or migration policy which is normally valid for example for 5 years period?

On the issue of solidarity – Slovak Republic has the scrutiny reservation.

SLOVENIA

AMMR, PART II – Common Framework for Asylum and Migration Management (SI position)

Art 3 - Comprehensive Approach to asylum and migration management

We would like to suggest to amend point g) or add a new point with an emphasis on ensuring swift and effective decision-making international protection procedures. It is important that persons in urgent need of international protection are granted protection in the shortest time possible. Persons not in need of international protection should be redirected to other relevant procedures. This is important in order to reduce the time period of uncertainty for asylum seekers and for the proper functioning of the asylum system as a whole, also considering costs of procedures.

Considering broader aspect of point a) which does not only refer to persons in need of international protection but also other legal migrants, we would suggest to amend point k) to include other legal migrants as well.

Art 4 - Principle of integrated policy-making

In our opinion the support of the EU Agencies might not be needed in every situation, therefore we would like to suggest to amend para 3 by adding text “**where necessary** with the support of Union Agencies...” after Member States.

Art 5 - Principle of Solidarity and fair sharing of responsibility

We are of the opinion that solidarity can be mandatory only in situations of crises. For this reason, we would like to suggest to delete part of the text in point d) where it refers to the needs set out in Chapters I-III of Part IV.

We would also like to add an emphasis on implementation of EURODAC system. The Member States should fully practice registrations in Eurodac, to ensure the proper functioning of the Dublin system. In this regard, we would suggest to strengthen the role of Frontex in EURODAC registrations.

Art 6 - Governance and monitoring of the migration situation

We would like to know whether national strategies would be assessed according to its correlation with contingency planning pursuant to European Union Asylum Agency Regulation, Reception Conditions Directive and other relevant strategies and existing support measures under Asylum and Migration Fund. In this case, would the Commission be responsible for the assessment and what kind of a mechanism would be provided if the national strategy was not deemed sufficient? We also wonder if the national strategies and the European Asylum and Migration Strategy would be adopted on a yearly basis? Further question regarding national strategies is also how will the Commission take all of the national strategies and adopt unified European Asylum and Migration Strategy. In our understanding, this would be a very difficult task, as Member States have diverse asylum and migration policies and different migratory situations. Furthermore, we would like to know what aspects are included in contingency planning and whether it also includes procedural aspect.

We also find a deadline of one year too short for the Member States to fully adopt and establish national strategies. We would like to propose the deadline to be 18 months for the Member States, consequently, the deadline for the Commission to adopt the first European Asylum and Migration Management Strategy should be extended too.

Art 7 - Cooperation with third countries to facilitate return and readmission

Republic of Slovenia welcomes enhanced cooperation with third countries, which requires proper coordination. In our opinion, ensuring the effective returns and readmission of illegally staying third-country nationals is of particular importance. However, this requires not only strong partnership and coordination with third countries, but also cooperation among the Member States themselves and in cooperation with the EU Agencies. The current return system is crumbled and left entirely to capacities and influence of the Member States. It should be taken into account that not all Member States are as successful in returns of illegally staying third-country nationals due to various objective reasons (bilateral and historical ties, number of available diplomatic representations etc.). We find it crucial to enhance the cooperation with third countries and to provide for appropriate incentives and sanctions.

SWITZERLAND

We would like to take this opportunity to congratulate Portugal on assuming the presidency of the EU Council. We wish the Portuguese Presidency every success in the challenging times we are facing. Switzerland expresses furthermore its gratitude for the invitation to the discussions related to the European asylum system. We look forward to continuing a close and fruitful collaboration.

Even though Part II of the Regulation on Asylum and Migration Management AMMR is not defined as a development of the Dublin Acquis and therefore not binding for Switzerland as an associated state, we are pleased to share our view as it sets out the spirit and the basic principles of the AMMR. As an associated state, Switzerland has an interest in a functioning, resilient European asylum and migration system. We therefore welcome every effort to bring forward the reform of the asylum and migration management system in Europe.

Switzerland welcomes the comprehensive approach to asylum and migration management and the principles of integrated policy-making as they constitute the very basis of the European asylum and migration system. We are convinced that a strengthened system is in the best interest of all Dublin states. Highlighting the benefits of a long-term and efficient reform should thus be a priority in the ongoing discussions. This also concerns the principle of solidarity and fair sharing of responsibility.

As regards the governance and monitoring of the migratory situation, Switzerland will continue providing information regarding its migration system and cooperate with relevant EU institutions (EASO, Frontex, ISAA), as it has already been doing so far. We highly appreciate the timely and up-to-date information provided by the EU in this context.

Once again, we would like to thank the Portuguese Presidency for giving us the opportunity to share our thoughts and would like to reiterate our willingness to continue playing a constructive role in the discussions. As the relevant topics are also of interest for Switzerland as an associated state, we highly appreciate being involved in these discussions.