Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2020/0279(COD)

Brussels, 08 March 2021

WK 2873/2021 REV 3

LIMITE

ASILE
MIGR
CODEC
CADREFIN

WORKING PAPER

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

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	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 57 to 60 - Comments from the delegations

Following the informal videoconferences of the members of Asylum Working Party on 11 February 2021, delegations will find attached a compilation of replies received from Member States on the abovementioned subject.

In this third revised version, contributions by France and Germany have been added.

ANNEX

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]

and following informal videoconferences of the members of Asylum Working Party on 11 February 2021

Articles 57-60

Table of contents

PUBLIC

AUSTRIA

Please find below targeted amendments to Art. 57-60 covered by the meetings of the AWP on 3 and 11 February 2021 accompanied by the positions of AT and explanatory comments.

Concerning the issues "subsequent applications" and "absconding" in the context of return sponsorship, we would like to refer to our written comments, which we have submitted in relation to Art. 55.

PUBLIC

Article 57 Procedure before relocation

- **Art. 57 para. 2:** As also brought forward during the AWP meeting by FR and other MS, the details of the security assessment and the specific consequences of establishing reasonable grounds to consider the person concerned a danger to national security or public order should be clarified. AT is interested in the FR text proposal presented during the meeting and will examine it in more detail once the written version is available.

  Applicants for international protection subject to the border procedure (including posing a security risk) should not be subject to relocation or transfer in any event. There should be a clarification of relation and reference to the border procedure in Art 57 para 2, since an application by such a person shall be examined in a border procedure according to Art 41(3) in conjunction with Art 40(1)(f) APR. Art 45(1) AMR and Art 45(1) AMR in conjunction with Art 47(4) and Art 49(2) AMR set out that no relocation shall take place if a person is subject to a border procedure (including posing a security risk).

  Moreover, security risk should be examined in relation to all MS and not be limited to "danger […] of *that* Member State" as it is also the case in other legal files (such as Art 40(1)(f) APR). We propose replace "that Member State" in this wording by "a Member State" so that it reads:

  "[…] reasonable grounds to consider the person concerned a danger to national security or public order of **a** Member State[…]"

- **Art. 57 para. 3:** AT opposes the obligation to consider the "existence of meaningful links between the person concerned and the Member State of relocation" in case of applicants for international protection. Firstly, it is unclear what "meaningful links" refer to. Secondly, at this point, the outcome of the asylum proceedings is still open and we should be careful not to introduce any incentives for migrants with low prospects of recognition to apply for asylum in order to reach a preferred Member State. Therefore only a "may" clause would be acceptable.

  Regarding the necessary consent in writing of the beneficiary for international protection it seems very unrealistic that in practice beneficiaries will approve to a transfer to certain (unpopular) Member States. This may have serious impacts on the functioning of the system.

  Furthermore, does this mean that applicants contrary to beneficiaries do not have to consent to the transfer and may be transferred by force?

- **Art. 57 para. 6:** It should be possible that the Member State of relocation conducts an interview with the third country national on the territory of the benefitting Member State before the relocation/transfer is carried out.

  Moreover, reasonable grounds to consider a person a danger to the national security or public order should also be assessed in terms of other Member States, not only regarding the

Member State of relocation. We propose to replace “to its national security” in this wording by “to **the** national security or public order **of a Member State**”.

- **Art. 57 para. 7:** The paragraph implies that the time limit to carry out a security check is one week. This might be too short for the conduction of an appropriate security check. It is of utmost importance that the security assessment is carried out with due diligence. Therefore, the time frame should be extended.
- **Art. 57 para. 9:** The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out as soon as practically possible. Austria does not support a set time limit of four weeks to transfer, because this might create an individual right for the applicant.

  Moreover, the wording „**by the benefitting Member State**“ shall be added after „shall be carried out”, in order to clarify that the benefitting Member State shall actually carry out the transfer, which has obviously been intended by the Commission.

Article 58 Procedure after relocation

- AT maintains a scrutiny reservation on the Article.
- **Art. 58 para. 2:** The responsible Member State should always be determined before a relocation is carried out, taking into account all relevant criteria.
- **Art. 58 para. 4:** AT has concerns regarding the mutual recognition of decisions granting international protection. If a beneficiary of international protection is relocated, the Member State of relocation should under all circumstances be able to decide whether a new asylum procedure including an examination on the merits is conducted or not.

Article 59 Other obligations

We have taken note of the explanations given by the COMM concerning the information on the implementation of solidarity measures.

However, it is still unclear if the obligation to keep the Commission informed on the implementation of solidarity measures means that a single information before the start of the implementation of solidarity measures is sufficient or if also updates of information during and after the implementation of measures are necessary.

Article 60 Operational coordination

No comments.

BULGARIA

Art. 57 Procedure before relocation

Paragraph 2

If a third country national is a threat to the national security and public order of the sponsoring Member State, this implies that the person would also be a threat to the security and public order of the benefitting Member State as well as other Member States. In such circumstances, it would be beneficial that the sponsoring Member State or another Member State would assist with the return of that third country national. This would not only be a real support measure for the state under migratory pressure but it would also be in the best interest of all Member States if a person being a threat to national security and public order would be effectively removed from the Union's territory.

Paragraph 7

We can support the one week timeline for the sponsoring Member State to carry out all necessary checks and to either confirm the relocation or inform about the reasons to decline the relocation of a third country national.

We can also support the measure in the last subparagraph.

Paragraph 9

There is a need for clarity on the scope of the appeal, which the current text of the paragraph does not sufficiently provide. It will be appropriate to refer to Art.33 (1), not only to the suspensive effect in Art. 33(3). The scope of the appeal should be clearly defined in order to make it explicit in which cases the third country nationals may appeal the transfer decision. In a situation of migratory pressure, it is important that the applied procedures are effective as well as accurately regulated.

Art. 58 Procedure after relocation

Paragraph 2

We can support the exception in paragraph 2. If determining the Member State responsible is due after relocation and derogation from a principle of responsibility of the Member State of first entry is not applied, the relocation as a measure of solidarity would be worthless as responsibility would be once again transferred to the Member States of first entry/frontline Member States.

Conducting the procedure for determining the responsible Member State after relocation is also rational in light of the need for fast support measures for the country under migratory pressure.

PUBLIC

Art. 60 Operational coordination

The text of the provision is not clear enough about the role and competences of each of the mentioned stakeholders. Including which is the party initiating the coordination on behalf of the Commission and the procedural aspects of the coordination.

Regarding the support on behalf of the Agencies and the deployment of teams, to emphasize that it should take place on request and with the consent of the supported country, from whose territory the operational activities would be performed.

Further work should be done to refine the text or deletion would be also an option.

PUBLIC

CROATIA

Article 57 (Procedure before relocation)

Paragraph 3 - It is stated that a person with granted international protection may be relocated only after that person consented to relocation in writing. We believe that this provision must be clearly defined having in mind the end goal, which is to alleviate the burden from MS under migratory pressure. In this regard, it would be difficult to obtain the necessary consent for relocation if the person does not have all the necessary information about the said MS of relocation. Likewise, the quality and goal of relocation may also be impacted by significant differences in the rights and obligations between these MS.

When it comes to relocating international protection applicants, the existence of meaningful links between the person concerned and the MS of relocation is taken into account. We consider meaningful links to be those factors which can contribute to better integration of a person, such as family ties. However, we therefore find it important to also take into consideration the capacities of the MS of relocation with regard to translation services into relevant languages. This comment should also be taken into account when it comes to relocation of persons saved in SAR operations.

Paragraph 5 - It is stated that the benefitting MS will transmit to the MS of relocation as quickly as possible the relevant information and documents on the person concerned. We would therefore like to reiterate our opinion, which we have pointed out on numerous occasions, which concerns the importance of identifying persons on the basis of identity documents that they possess. Furthermore, although written consent is not required for the relocation of international protection applicants, given the fact that data are exchanged between MS, we find it necessary to ensure certain consent in terms of personal data protection.

Paragraph 6 - This paragraph is also related to the importance of adequately identifying persons, and we believe that adequate checks for the national security of the MS of relocation cannot be carried out only on the basis of a statement made by the person concerned. We therefore support the MS proposal to allow the MS of relocation to carry out interviews in the benefitting MS if it considers this necessary and useful.

Paragraph 7 - We believe that, if the MS of relocation confirms that there are reasonable grounds to consider the person concerned a danger to its national security and public order, then it might be considered that this person presents the same danger to all EU MS, and should be excluded from relocation in general.

Likewise, we propose that the time limit for the security check be longer than the foreseen 7 days (more precisely one week, which we assume also includes non-working days) - we propose 2 weeks, i.e. 10 working days, given the fact that non-compliance with the time limit means implicit

PUBLIC

acknowledgement of relocation and given the fact that in certain cases more time will be required due to the specific nature of some checks.

Here we would also like to point out the issue of delivering the files and their translation, which would be additional administrative and financial burden for the MS of relocation.

We would appreciate if we could receive a clarification on whether the benefitting MS needs to carry out a security check once again in case of relocation of persons who have been granted international protection.

Paragraph 8 - We do not see the added value in the time limit referred to in this paragraph. More precisely, the benefitting MS is under migratory pressure either way and additional imposing of time limits which do not have any legal consequences only places further burden and pressure on this MS.

Paragraph 9 - We find the time limit of 4 weeks unrealistic since it would present additional burden on judicial authorities in already difficult circumstances of migratory pressure given the obligation to decide on appeals against the decisions and the already short time limits for deciding in border procedures. We therefore propose this time limit to be longer.

Article 58 (Procedure after relocation)

It is not entirely clear to us how automatic mutual recognition of international protection will work in practice since this calls into question national sovereignty in deciding on the merits of the application.

Paragraph 1 - We would like to know what the consequences would be for persons who abscond and what are the implications of this for the benefitting MS.

PUBLIC

THE CZECH REPUBLIC

Article 57

Paragraph 3

We would welcome more clarification of notion "*meaningful links*" between a person concerned and a Member State of relocation.

Further, we are of the opinion that it should be explicitly stated that family members are relocated together during relocations.

With regard to the relocation of unaccompanied minors, where there is an exception to the exception and unaccompanied minors should be relocated, we would like to draw attention to the absence of an obligation to assess the best interests of the child.

Paragraph 6

It should be clarified how the verification that a person is not a danger to society should be carried out.

Paragraph 7

The deadlines mentioned here are not realistic with regard to the involvement of the police and security units.

Paragraph 10

We have a scrutiny reservation here. We are of the opinion that it is first necessary to discuss the provisions referred to here (e.g. appeals).

Article 58

Paragraph 1

Paragraph 1 is redundant from our point of view. It would probably be possible to refer to the general process of transfer, as well as to other procedural elements of the transfer to the responsible Member State.

Paragraph 2

We consider it unnecessarily complicated to relocate an applicant for an international protection before the responsible Member State is designated in his/her case.

The Member State responsible for the substantive assessment of the application should be identified first.

Nor it is not clear the link to the provisions in the draft APR, which provides for the possibility of designating the Member State responsible together with the border procedure.

Paragraph 4

We have practical doubts here. How would such a granting of international protection look like in practice.

PUBLIC

Please note that the grounds for granting asylum or subsidiary protection may not necessarily be the same in all Member States. Here we refer, for example, to the EMN study, which described the individual national protection statuses.

Paragraph 5

This provision is from our point of view redundant.

Article 59

In our opinion, we should consider the possibility of informing a wider catalog of stakeholders (i.e. Council, as well as Agency for example).

Article 60

We have some doubts about the usefulness of this provision. The provision seems redundant to us. The Commission's coordinating power is established in several other specific places in the draft regulation.

Article 61

We have the scrutiny reservation here. It depends on the discussions on Article 17 of AMIF.

Part III

We welcome the fact that the overall concept has remained and the hierarchy of criteria is maintained. However, it should also be noted that these provisions must be in line with the sections on solidarity. In this context, therefore, our following specific comments are preliminary.

We therefore have a scrutiny reservation to the whole Part III.

Article 8 para 4

In general, we welcome the system where the first state where the application for IP was registered should be responsible in situations where the applicant may be considered a danger to national security.

However, we are concerned about how the proposed provision may work in practice? If we could obtain more information, we would appreciate it.

PUBLIC

DENMARK

Denmark is of the opinion that the Member State responsible according to the criteria's set out in Part III should be determined prior to relocation in order to avoid second transfers and to secure an overall more efficient process. Besides this, it is essential that this determination take place prior to relocation in order to make a correct assessment of whether a Member State is under pressure or not. Furthermore, it does not seem to be in the best interest of the applicant to be relocated only to have his or her case handled in a Dublin procedure.

PUBLIC

ESTONIA

General remark - we note once more, that we hold a general scrutiny reservation to the whole text of the proposal and that relocation and transferal of returnees must remain as a voluntary measure of solidarity.

Article 57 Procedure before relocation

Paragraph 1 point b

Proposal to delete last two references starting from the word "where" as follows:

(b) persons referred to in Article 45(1), point (b) ~~where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).~~

Reasoning: It is not possible for us to support transferal of returnees and illegally staying persons as it would create a strong pull-factor and would not make returns more effective.

Paragraph 2

Proposal to delete the last part of the last sentence starting from the words „and shall" as follows:

"If there are reasonable grounds to consider the person a danger to national security or public order, the benefitting Member State shall not apply the procedure set out in this Article ~~and shall, where applicable, exclude the person from the list referred to in Article 49(2).~~"

Reasoning: It is not possible for us to support SAR as a separate category. Reasons have been elaborated previously.

Paragraph 3

1. **Proposal to delete second subparagraph in its entirety as follows:**

~~Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).~~

Reasoning: Please see the previous explanation.

2. **Proposal to delete the reference to the Article 20 in the last subparagraph**

Reasoning: We cannot support of adding the diplomas and qualification documents to the list of responsibility criteria. We will provide further explanations at a later stage, during the reading of the Article 20.

PUBLIC

Paragraph 4

Proposal to delete the paragraph 4 in its entirety.

Reasoning: We cannot support transferral of illegally staying persons. Please also see previously provided explanations.

Paragraph 5

General remark – as a "relevant information" can in addition to the full file of the international protection application process also include information concerning the assessment of the threat on the public order or national security, then in case of the national security the channel or ways of the information exchange must be addressed separately.

The DubliNet system does not provide for a suitable means to transmit national security related information.

Concerning DubliNet there might be also a practical aspect to consider due to the capacity limit of transferable attachments.

Paragraph 6

Proposal to add the possibility to conduct personal interviews to determine the possible danger to the national security or public order of the Member State of relocation as follows:

„The Member State of relocation shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5 **and shall upon a need conduct a personal interview with the person referred to in paragraphs 2 or 3** and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order."

Reasoning: We do understand the matter of effectiveness of the procedures. However people with reasonable grounds to consider them as a danger to national security or public order should not be transferred between Member States. We do appreciate the wording that confirms the possibility to verify and double check by the Relocating MS. However, as the power and practical possibilities to determine the danger to the specific Member State´s national security and public order lies with that Member Sate in question the possibilities to conduct interviews with the person to be relocated must also be foreseen. In our opinion it is not sufficiently possible to determine the threat solely based on the information requests to the databasis, especially in cases of persons entering the EU for the first time. When assessing a possible threat it is known that concrete circumstances of a national security threat must be serious, real, current or foreseeable. As we see it, the MS of relocation can best make that assesment for verification, including via the interview.

PUBLIC

Paragraph 7

Proposal to amend all the deadlines in the paragraph 7 by adding one week to every deadline.

Reasoning: Keeping on mind the importance of the assessment of possible danger to the national security or public order and the necessity to conduct interviews for that purpose before any transferal of the person, more time is needed than it is currently foreseen in the paragraph.

Article 58 Procedure after relocation

General remark – we are inclined to support of Dublin procedure of being concluded before transferal as it might possibly help to manage and prevent secondary movements and additional multiple transfers after relocation.

Paragraph 4

Proposal to delete the word "automatically" and clarify the wording of "grant international protection status respecting the respective status granted by the benefitting Member State".

Reasoning:
There is no EU wide protection status as such. Granting or not granting international protection is in the sovereign power and a responsibility of every Member State. We have heard the explanations of the Commission and we do understand the need to make procedures effective and to avoid duplications. However, it is not possible to grant international protection automatically. There are clear legal and administrative obstacles for it. Every administrative act needs to meet the legality criteria and therefore needs to be in a written form and provide clear and full motivation. The validity periods of the residence permits are different. It can happen; that in the MS of relocation the validity is shorter than in the benefitting MS and that shall raise questions of the "respective status". When the beneficiary of international protection is submitting the application of renewal of the permit, the validity of grounds are being assessed in essence and there is a possibility, the protection status is changed and the beneficiary has a right to submit an appeal. That is an additional reason, why all the aspects of granting protection must be well documented and reasoned in essence in the first decision.

PUBLIC

Paragraph 5

Proposal to delete the paragraph in its entirety.

Reasoning: it is not possible to support transferral of illegally staying third country nationals.

Article 59 (Other obligations) and **Article 60** (Operational coordination) – there are no proposals

PUBLIC

FINLAND

Article 55

Paragraphs 1 and 4:

If we have understood the concept correctly, the purpose of the return sponsorship is to contribute to the return of specified individuals. This means, that the sponsoring Member State would know which individuals the measures should be targeted to. We suggest this to be clarified in either paragraph 1 or in paragraph 4. This could be done in, for example, the following way:

> 1. A Member State may commit to support a Member State to return illegally staying third-country nationals 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 from the territory of the benefitting Member State. **The benefitting Member State shall provide a list of the third-country nationals concerned.**
>
> **or**
>
> 4. The measures referred to in paragraph 1 **shall be targeted to specified persons and** shall include one or more of the following activities carried out by the sponsoring Member State:

The measures listed in paragraph 4 are quite general, and none of those alone lead directly to the return of an individual, albeit they may contribute towards it. Thus, it is important that the benefitting Member State also commit to the cooperation, in order to make both the sponsoring activities and return possible in practice. Therefore, we find that an agreement, for instance in form of a MoU, should be concluded between the benefitting and sponsoring Member States in order to specify the measures to be taken by parties as well as the administrative arrangements. It is also important that we make full use of the supporting role of Frontex in this context. We propose adding a separate paragraph on this as new para. 5:

> **New 5: Before starting the return sponsorship, the benefitting and the sponsoring Member State shall agree on the measures to be taken by each party and on the necessary administrative arrangements so that the return of the third-country nationals concerned may be implemented.**

Article 57

Separate article on procedure on transfer following return sponsorship

The article 57 as it now stands is very long, and it is difficult to distinguish which paragraph applies to which category of persons. The discussion on the return sponsorship has also shown a clear need for specific procedural rules regarding the effect of absconding, suspensive effect of an appeal and subsequent asylum application in the benefitting MS to the 8-month time period for carrying out the return. In addition, we need to set out rules regarding the right to exchange personal data during the sponsorship and the channel through which the relevant information is exchanged in full compliance with data security and data protection requirements (Article 62).

> **We would therefore suggest that procedural rules regarding return sponsorship are set out in a separate article. This would also make a necessary distinction between the procedure on *relocation* and a *transfer* following the return sponsorship, which are two separate issues.**

Need for clear time-frame for the procedure

Overall, we see that it should be a priority to safeguard the implementation of relocations as quickly as possible. However, when we look at the proposal, we note that it is an open-ended procedure. There are no predictable timeframe for the process itself and no time-limit for its end. This is because (a) there is no time-frame for submitting requests for relocation, (b) the time-limit

for transfers is, in practice, an indicative one, and (c) the end of the period of validity of the implementing act does not relieve the MS from its obligation to receive the applicants. This also means that, in a worst-case scenario, there might be two (or even more) overlapping relocating obligations: one based on an already expired Implementing Act and - if the pressure situation continues for over a year - one based on a new Implementing Act covering the second year of pressure.

However, the larger the overall number of persons to be relocated to a given MS, the greater is the need for advance planning and scheduling for the overall efficiency of the process and for the preparedness of the MS to receive the applicants. Knowing, in advance, the estimated interval of transfers and the number of persons relocated at a time is crucial for the Member State of relocation to make available necessary reception facilities and the resources needed for processing the applications.

For these reasons, **we need more precise time-frame for relocating all persons covered by a particular Implementing Act. We would suggest the following:**

> **a) Introducing a pledging system similar to the one in the Council decision 2015/1601** to ensure that the relocations take place at regular intervals and thus a certain level of predictability for both relocating and benefitting Member State. On one hand, this would give relocating MS time to make the necessary arrangements to receive the applicants and to ensure sufficient reception capacity. On the other, this would help the benefitting MS to plan its activities and estimate the capacity needed to carry out the relocations.
>
> **b) The relocating obligation would cease after a set time from the end of the period of validity of the Implementing Act. This time should be set out in the Act.** A specific rule on the end for the procedures would provide a clear time-frame for carrying out the relocations. Our overall aim should be that the relocations are carried out within the period of validity of the Implementing Act. However, we understand that we need time to carry out also those transfers that are agreed close to the end of that period.

Another possible approach could be introducing a pledging system, extending the time-limit for transfers and consequence for non-compliance would be that the relocation could no longer be carried out and the person could not be replaced by another person**.** This second option would, however, be more complicated than the first one as it would require a comprehensive set of rules regarding, for example, consequences of absconding.

Paragraph 5

Although the paragraph clearly establishes an obligation to transmit all relevant information, and we agree that the exact content of that information should be specified in the implementing act, we could be more precise in the article itself. We would therefore suggest revising paragraph 5 by using similar wording as in article 29(3) sub. para. 1 on take charge request, but adapted to the purpose of relocation:

> **5. In the cases referred to in paragraphs 2 to 3 [***not 4, as this issue should be dealt with in a separate article***], the benefitting Member State shall transmit to the Member State of relocation all relevant information and documents by using a standard form, enabling the authorities of the Member State of relocation to check whether there are grounds to consider the person concerned a danger to its national security or public order and, where necessary, whether it is responsible on the examination of the application on the basis of the criteria laid down in this Regulation.**

Article 58

The discussion on the return sponsorship has shown a clear need for specific rules regarding determination of the MS responsible in case of a first asylum application and shift of responsibility in case of a subsequent asylum application, as well as the responsibilities of the receiving state vis à vis the transferred person. We would suggest setting up these rules in a separate article.

In the meeting, we asked many questions regarding relocation of a beneficiary of international protection. Depending on the answers to those questions, there may be a need to make relevant changes to the QR and on Article 4 of the long-term residents' directive.

In addition, we would need to add specific rules on Eurodac to indicate the shift of responsibility in case of a relocation of a beneficiary. In those cases, if we need to send a data set on the beneficiary to the Eurodac after relocation, under which category should we do it?

PUBLIC

FRANCE

- Sur l'article 57 : Procédure précédant la relocalisation

Paragraphe 2 :

- **Il serait nécessaire d'approfondir et de clarifier dans le texte les conséquences qui s'attachent à la détection d'une menace pour l'ordre public et les responsabilités qui incombent à l'État membre sur le territoire duquel se trouve la personne concernée.**

- **A la fin du paragraphe 2 portant sur les vérifications d'ordre public, pourraient être ajoutées les phrases suivantes pour mettre fin à la procédure en cas de danger pour l'État membre contributeur ou pour l'ensemble des États membres :**

2. Before applying the procedure set out in this Article, the benefiting Member State shall ensure that there are no reasonable grounds to consider the person concerned a danger to national security or public order of that Member State. If there are reasonable grounds to consider the person a danger to national security or public order, the benefitting Member State shall not apply the procedure set out in this Article and shall, where applicable, exclude the person from the list referred to in Article 49(2).

If, at any time during the relocation procedure, the benefiting Member state or the contributing Member state considers there are reasonable ground to consider the person concerned a danger to national security or public order, the relocation procedure is immediately ended.

If the person concerned is considered a danger to national security or public order, the person is removed from all relocation procedures permanently.

Paragraphe 3 :

- **La France souhaite intégrer l'obligation, pour l'État bénéficiaire de la relocalisation, de déterminer préalablement s'il y a un État membre responsable de la demande d'asile avant d'inclure la personne dans un programme de relocalisation.**

- **La procédure de relocalisation ne doit pas s'appliquer aux personnes pour lesquelles un autre État membre (que l'État membre bénéficiaire) a été reconnu responsable de l'examen la demande. La France propose dès lors l'ajout d'une phrase au début du troisième alinéa du paragraphe 3 :**

PUBLIC

3. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing.
Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2)

The benefiting Member State shall carry out, as soon as possible, the examination of the Member State responsible of the application and *the first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation*

- **En réaction à ce qu'a pu affirmer la Commission lors du groupe asile du 11 février, en l'état actuel du texte, « *Member State shall take into account, where applicable, the existence of meaningful links* » ne nous semble pas créer d'obligation pour les États bénéficiaires de relocalisation de procéder à la détermination de l'État membre responsable. Il convient donc d'inscrire clairement une telle obligation.**

  En soutien aux déclarations de la République tchèque et de l'Allemagne lors du groupe asile du 3 février, il convient de prévoir que les membres d'une même famille, au sens de l'article 2 sous g ; soient relocalisés dans le même État membre.

- **La France soutient le fait que seuls les bénéficiaires d'une protection internationale (au contraire des demandeurs d'asile ou personnes en situation irrégulière) doivent avoir l'opportunité de consentir ou non à la relocalisation dans l'État membre qui leur a été préalablement indiqué.**

Paragraphe 6 :

- **La France souhaite intégrer dans cet article la possibilité pour l'État membre contributeur d'effectuer les entretiens qu'il estime nécessaires sur le territoire de l'État membre bénéficiaire avant de procéder aux relocalisations. Cette possibilité est prévue dans le cadre des relocalisations volontaires auxquelles la France participe actuellement. La France propose dès lors l'ajout d'une phrase comme second alinéa du paragraphe 6 :**

6. The Member State of relocation shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.

Where the Member State of relocation deems it necessary, it can proceed to the interview of the person, including to examine if there are no reasonable grounds to consider the person concerned a danger to national security or public order.

Paragraphe 7 :

- **Compte tenu des enjeux qui s'attachent à la préservation de la sécurité et de l'ordre public, les délais laissés à l'État membre de relocalisation pour confirmer son accord à relocaliser semblent trop courts. Il est nécessaire que l'État membre de relocalisation puisse avoir le temps d'examiner le dossier du ressortissant de pays tiers relocalisé, en particulier lorsqu'il souhaite mener des entretiens sur le territoire de l'État membre bénéficiaire.**

- **La France souhaite donc proposer des délais plus longs pour la confirmation de l'accord par l'État membre de relocalisation. Ils seraient portés d'une à deux semaines dans la proposition de la Commisson à quatre à huit semaines. Dans des cas exceptionnels, justifiés par des considérations d'ordre public et de sécurité nationale, ce délai devrait pouvoir être allongé.**

7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall confirm within ~~***one week***~~ ***four weeks*** *that it will relocate the person concerned.*

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall inform within ~~***one week***~~ ***four weeks*** *the benefitting Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.*

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

Failure to act within the ~~***one week***~~ ***four weeks*** *period mentioned in the first and second subparagraphs and the* ~~***two weeks***~~ ***eight weeks*** *period mentioned in the third subparagraph of this paragraph shall be tantamount to confirming the receipt of the information, and entail the obligation to relocate the person, including the obligation to provide for proper arrangements for arrival.* ***In exceptional individual cases, duly justified by the relocation Member State, linked to national security or public order considerations, the eight week period can be extended further.***

- Sur l'article 58 : Procédure suivant la relocalisation

Paragraphe 2 :

- **La France souhaite que l'évaluation des critères et règles pour la détermination de l'État membre responsable de l'examen de la demande d'asile d'une personne faisant l'objet d'une procédure de relocalisation soit impérativement réalisée avant la relocalisation. La procédure de relocalisation doit être efficace, rapide et éviter, tant pour les États membres que les personnes relocalisées, un risque de transferts successifs.**

- **Pour ce faire, la France propose la suppression de l'article 58 paragraphe 2**, et renvoie à sa proposition de modification de l'article 57, paragraphe 3.

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

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

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

Paragraphe 5 :

- **La France propose, au vu des discussions qui ont eu lieu au groupe IMEX du 26 janvier 2021, de prévoir que si l'étranger en situation irrégulière relocalisé dépose une première demande d'asile après sa relocalisation, l'État membre bénéficiaire ne peut être considéré comme responsable de la demande que dans les cas prévus à l'article 57, paragraphe 3, 3ème alinéa :**

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, ~~*of*~~ *Directive 2008/115/EC shall apply.*

Where the Member State of relocation has relocated a third-country national who makes a first application after the relocation, the benefiting Member State can only be considered as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5).

GERMANY

Please remember that Germany maintains a scrutiny reservation on the entire AMMR (all articles and recitals). Germany also reserves the right to make further comments on the articles 57 to 60, as our examination is still ongoing.

PUBLIC

Article 57

- Subject to details yet to be examined, we welcome the procedure proposed by the Commission in Article 57, in particular that security risks are ruled out as far as possible before carrying out transfers. Our examination is still ongoing and we reserve the right to make further comments.
- We have some questions about the proposed procedure, in particular paragraphs 2 and 6, and the role of the security check during screening, which we prepend and will not repeat when addressing paragraphs 2 and 6:

    - How do the provisions of Article 57 (2) and (6) of the AMMR relate to the provisions of the Screening Regulation (applicable to the same persons), the Eurodac Regulation and the Asylum Procedures Regulation? In particular:
    - How does the security check during screening (Article 11) relate to
      a) the planned security check of the benefitting Member State (paragraph 2); and
      b) the planned security check of the Member State of relocation (paragraph 6)?
      Please explain whether multiple security checks should be carried out by the same Member State for the same person in a very short time and, if so, what is the difference, if any, between the security checks.
        - On what precise legal basis would each security check be carried out? For example, is Article 57 (2) also regarded as the legal basis for access to databases in the context of security checks, or does the legal framework for the specific database apply?
        - We would be grateful if you could explain the process of security checks in general, and specifically the appropriate way to carry out security checks on beneficiaries of international protection: For example, could the benefitting Member State fulfil its obligation by referring, without a new security check, to the security check carried out in the context of the asylum procedure? Under what circumstances and how long after the last security check would the benefitting Member State have to carry out a new security check in order to ensure that the security check is up to date?

- What, in the Commission's view, are "reasonable grounds to consider the person concerned a danger to national security or public order"? And how are these identified?
- We enter a scrutiny reservation as to whether legal remedies against the decision or the outcome of the security check under Article 57 of the AMMR is necessary. What is the procedure? Is there an administrative decision?
- How does identification during screening relate to Article 57 of the AMMR? In addition, the question arises as to which MS – benefitting MS or MS of relocation – is responsible for identification if such identification has not yet been sufficiently carried out as part of the screening procedure.

In particular:

(Paragraph 1)

- We recognise and welcome the benefits of a single procedure for all categories of persons. At the same time, we are taking an unbiased look at whether, in individual, sometimes specific instances, we should differentiate more between transfers of people seeking protection, beneficiaries of international protection and persons subject to return (in the context of return sponsorships). For example, we cannot see why detention for beneficiaries of international protection is necessary for the purpose of transfer, if the transfer requires the consent of the recognised person and is therefore voluntary anyway. We ask the Commission to explain its reasons for choosing a uniform procedure.

(Paragraph 2)

(Please find our questions about the procedure laid down in paragraph 2 above.)

- What is the time limit for the benefitting MS to carry out the checks prior to applying the procedure; and could the results of the security check of the screening procedure be reused?
- Please explain why the proposal only refers to danger to the national security or public order of the benefitting Member State and not of all Member States.
- The draft Eurodac Amending Regulation and Screening Regulation, in particular Article 11 of the Screening Regulation, each refer to a threat to internal security. Why is this different here, at least in terms of wording ("danger to national security or public order")? Does it mean something different?

(Paragraph 3)

- We welcome the provision, in particular that the requirement of written consent applies only to beneficiaries of international protection. In addition, we should discuss how we can also

create incentives for persons seeking protection, for example in the context of the Member States' relocation commitments, and give the persons concerned a limited choice among the host Member States, without guaranteeing that it will be granted. Overall, we must not lose sight of the objective of creating a fast, safe and effective solidarity mechanism.

- We also welcome the inclusion of EASO lists.
- We would nevertheless ask for clarification on the procedure for determining the responsible Member State (should the procedure not be carried out, at least in part, before the transfer, or should the MS of transfer not automatically be the responsible MS (cf. Article 58 (2)?). Moreover, relocations are excluded if the benefitting Member State itself is responsible for the reasons referred to in paragraph 3 subparagraph 3. Where possible, multiple transfers should be avoided.
- We ask the Commission to explain how "meaningful links" should be checked and taken into account. Would paragraph 3 allow transferring an entire family present in the benefitting Member State — with their consent — as a unit within the meaning of Article 18 (family procedure) (or in the case of pending asylum applications (Article 17)) to another Member State in order to relieve the benefitting Member State?
- In particular, how do Articles 57 and 58 ensure that nuclear families are not permanently separated in the course of relocations (for all categories of persons covered)?
- Please clarify what you mean by "with the exception of Article 15(5)": As we understand it, unaccompanied minors should NOT be relocated even if they have already been registered in the benefitting Member State and it is in the best interests of the unaccompanied minor to remain in the MS (in accordance with the relevant ECJ case law). Since the wording is complicated, the paragraph should be rewritten to be clearer.

(Paragraph 4)

- We have no objections to paragraph 4. We are still examining the details of the return sponsorship approach, standing by our position so far.

(Paragraph 5) - Scrutiny reservation

- How does paragraph 5 relate to Article 38 (requirement to communicate security-relevant information before carrying out a Dublin transfer), and on what grounds is Article 38 not supposed to apply mutatis mutandis to transfers for the purpose of relocation, according to Article 57 (10)?
- Please explain which relevant information and documents are referred to here. There may be a need specify the provision.

- In our view, the relevant information for establishing the identity of the person concerned should be included. It is important for the Member State of relocation to have access at least to alphanumeric and biometric data as well as the necessary application and interview documents. Independent of the details, the Member State of relocation in any case needs all the information required to verify in accordance with paragraph 6 that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.
- Please explain how access to the information and data protection are to be ensured in this regard.
- We welcome the wording "as quickly as possible" and the absence of a fixed deadline for the benefitting Member State.
- We are still reviewing the legal basis and examining the need for legal standing concerning the exchange of sensitive data from the security screening. We would first like the Commission to clarify these issues.

(Paragraph 6)

- The questions already raised concerning paragraph 2 come up again here with regard to the renewed security check by the Member State of relocation.
- We are still examining whether the right of the Member State of relocation to conduct security interviews in the benefitting Member State, in line with current SAR practice and as explicitly referred to in the ECJ judgment of 2 April 2020 in the cases C-715/17, C-718/17, C-719/17 (margin no. 185) concerning relocation decisions, should be mentioned here. We would welcome this possibility.

(Paragraph 7)

- Subject to our remarks on paragraphs 2 and 6 and to questions that may arise when examining details, which is still to be done, we welcome the fact that persons considered a danger to national security or public order are not to be relocated.
- Just to be sure, we would like clarification: do we understand correctly that there is no time limit for conducting the security check itself and that the one-week time limit for confirming relocation only starts after the security check has been completed? In particular with regard to security interviews as part of the security check, the time limit of one week seems too short and should be lengthened.
- If the conditions of Article 57 (7) subparagraph 2 (where the checks confirm that there are reasonable grounds to consider the person concerned a danger to the national security or

public order of the Member State of relocation) are met, then "another individual from the same nationality has to be allocated to the sponsor", according to the Report (p. 4). We assume (and we find it important) that this new individual will undergo the entire procedure to ensure also in this case that this person does not constitute a security risk. Otherwise, we would find such a substitution at short notice problematic, also on factual grounds, because this person would be unfamiliar to the Member State of relocation, which would therefore have been unable to undertake any measures to prepare the transfer.

PUBLIC

(Paragraph 8)

Scrutiny reservation, the examination has not yet been completed.

(Paragraph 9)

- Please clarify: what are the consequences if a transfer is not carried out within the time limit? In our view, this should not rule out any further attempts at relocation, as this would mean that the effort invested was in vain and would make the entire procedure vulnerable to abuse. If the time limit is meant to be absolute, then it should be much longer.
- "In accordance with the national law" means that the transfer process is governed by the national law of the benefitting Member State. At the same time, we must make sure that not too many details of the actual transfer process and the planned coordination have to be arranged directly between the Member States. Please clarify which questions can and must be governed in accordance with the national law, in view of Article 57 (10) (with reference in particular to Articles 33, 35, 36 and 37).
- With regard to the transfer "as soon as practically possible": what does this mean? Which practical issues are relevant (e.g. prior medical appointments, flight booking and the like)? In our view, this must also include allowing enough time for examining individual obstacles to transfer (such as health-related obstacles) and for legal remedies if necessary (we must therefore enter a scrutiny reservation on the scope of Article 33).

(Paragraph 10)

- In principle, we believe it makes sense that the rules on normal Dublin transfers generally apply here; however, we still have to examine the rules on Dublin transfers themselves in detail. We will examine the applicability of the Dublin rules to the present constellation in due course.
- The reference to Article 35 (1) is unfortunate, as Article 35 (1) refers in turn to Article 57 (9). We would be grateful for more precise wording.

- Scrutiny reservation in view of Article 33: in particular with regard to the right to pursue legal action and on time limits for decisions.
- Scrutiny reservation in view of Article 34; among other things, we are examining the details of how this provision is to apply to persons subject to return sponsorship. How does this relate to the return border procedure, which applies in some cases, and how does this relate to the rules on detention in the Return Directive and regarding applicants for international protection to the rules under the Reception Conditions Directive? We assume that persons referred to in Article 45 (1) (c) (beneficiaries of international protection) who are in any case only relocated with their consent are not to be included in the scope.

(Paragraph 11)

- Please explain/specify which rules are to be enacted in the form of implementing acts.

Article 58

- We would like clarification regarding the procedure for determining responsibility: (compare our remarks on Article 57 (3)) please explain whether and to what extent it would also be conceivable to conduct the procedure for determining responsibility (at least with regard to family ties) before transfer, in order to avoid multiple transfers. We are still examining this issue ourselves in an open-ended review.

- Please clarify: which rules apply to the different reception services for the groups of persons referred to in Article 45? Does the Reception Conditions Directive apply without further modification, or are subsequent amendments needed?

- Scrutiny reservation on paragraphs 4 and 5:
  To understand paragraph 4, we ask for clarification whether "respective status granted by the benefitting MS" refers only to the status "beneficiary of international protection" or whether additional residence statuses are to be included.
  In particular, the examination of the procedural rules and of the interaction with the Return Directive has not yet been completed (see remarks above, also because some special rules will have to be made, for example concerning detention). With regard to the relationship between the Return Directive and the AMMR in particular, we would like to know whether a new return decision by the sponsoring MS is needed after the transfer and before the return.

PUBLIC

Articles 60 and 61

(Scrutiny reservation)

PUBLIC

GREECE

PUBLIC

As a general remark, the EL has a scrutiny reservation on the whole text of the proposal. In view of the comments expressed in the Asylum Working Party on the 11th February, EL presents following preliminary proposals~~:~~

Article 57

Procedure before relocation

1. The procedure set out in this Article shall apply to:
   (a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);
   (b) persons referred to in Article 45(1), point (b) where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).
2. No comment
3. **No comment**
4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals **and stateless persons** concerned.
5. The benefitting Member State shall transmit to the Member State of relocation **or the sponsoring Member State** as quickly as possible the relevant information and documents on the person referred to in paragraphs 2 and 3.
6. The Member State of relocation **or sponsoring Member State** shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.
7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation **or sponsoring Member State** shall confirm within one week that it will relocate the person concerned.

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall inform within one week the benefitting Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at that time, the Member State of relocation **or sponsoring Member State** may give its reply after the one-week time

limit mentioned in the first and second subparagraphs, but in any event within two weeks. In such situations, the Member State of relocation **or sponsoring Member State** shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

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

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation **or of the sponsoring Member State** ~~.~~ It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State **and shall update the data set of the person concerned recorded in Eurodac by adding the Member State of relocation or the sponsoring Member State as the new responsible Member State**~~.~~

9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation **or sponsoring Member State** or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).

10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the transfer for the purpose of relocation **and return sponsoring**~~.~~

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

Article 58

Procedure after relocation

1. ~~The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit~~.

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

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

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

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

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

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

5. Where the Member State of relocation **or the sponsoring Member State** has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.

Article 59

Other obligations

The benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures taken on a bilateral level including measures of cooperation with a third country.

Article 60

Operational coordination

Upon request, **of the benefitting Member State** the Commission shall coordinate the operational aspects of the measures offered by the contributing Member States, including any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency

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.

Articles 57-60

Based on our position expressed earlier, we have serious concerns with regard to solidarity mechanism setting out the mandatory relocation and return sponsorship of asylum seekers as well as illegal migrants.

Regarding Paragraph 2 of **Article 57** we think that the responsibilities of the benefitting Member State during the security check should be specified in a more detailed manner (including the stipulation that in the event of a security risk at any stage of the relocation process, the Member State of relocation may at any time refuse to relocate of that person). As for the certain procedural provisions, the relationship between relocation and the traditional Dublin procedure is unclear. Paragraph 3 of Article 57 aims to clarify that where the benefitting Member State was determined responsible based on the criteria set out in Articles 15-20 and 24 (family relations, residence permit, diplomas, dependent persons), relocation to another Member State cannot take place. This, however, assumes that before relocation, the Dublin procedure for responsibility has taken place. Subsequently, it is important to clarify, whether this responsibility procedure is carried out before relocation. In our view, the Dublin procedure should be carried out prior to the relocation. We think that as a result of Paragraph 4 of Article 57, return sponsorship will lead to mandatory relocation, thus, we cannot accept its content. We ask the deletion of the paragraph. With regards to Paragraph 6 we would like to include the possibility for the Member State of relocation to carry out a personal interview prior to relocation if any security concern occurs regarding the person concerned. Furthermore we think that there should be a possibility to prolong the time limits mentioned in Paragraph 7 in there are reasonable grounds to consider that the person concerned may pose a danger to the national security or public order. Finally we think that Paragraph 6 the Member State of relocation should also verify if the person concerned is considered to be a risk for the whole of the EU.

We can accept the obligation to provide information in **Article 59** and the coordinating role of the Commission in **Article 60**, in our view, the Commission should primarily play a coordinating role with regard to the solidarity mechanism and not a decision-making role. At the same time as a

PUBLIC

general comment on the whole Part IV, we insist to put the same emphasis on other types of solidarity actions in addition to the return sponsorship and the relocation, as the text is currently not balanced enough.

PUBLIC

ITALY

Article 57
Procedure before relocation

1. The procedure set out in this Article shall apply to:
(a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);
(b) persons referred to in Article 45(1), point (b) where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).

2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider the person concerned a danger to national security or public order of that Member State. If there are reasonable grounds to consider the person a danger to national security or public order, the benefitting Member State shall not apply the procedure set out in this Article and shall, where applicable, exclude the person from the list referred to in Article 49(2).

3. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated **or subject to return sponsorship**. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links**, such as those based in particular on family or cultural considerations,** between the person concerned and the Member State of relocation **and, where possible, the nationalities indicated by the sponsoring Member State pursuant to Article 52 (3), second subparagraph**. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing.

Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals concerned.

5. The benefitting Member State shall transmit to the Member State of relocation **or the sponsoring Member State** as quickly as possible the relevant information and documents on the person referred to in paragraphs 2 and 4.

6. The Member State of relocation **or the sponsoring Member State** shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.
7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation **or the sponsoring Member State** shall confirm within one week **from the receipt of the relevant information from the benefitting**

Member State that it will relocate the person concerned.
Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation **or the sponsoring Member State** shall inform **the benefitting Member State** within one week **from the receipt of the relevant information from the latter** ~~the benefitting Member State~~ of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

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

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

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State, **on the basis of their consent as provided for in para. 3.**

9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation **or the sponsoring Member State** shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).

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

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

Comments*: the amendments proposed are without prejudice to the Italian position in relation to article 45 and connected provisions.*
In para. 3, the added wording is taken from article 25, para. 2 AMMR. It is meant to provide (non-exhaustive) examples of meaningful links which otherwise are too vague a concept.
In para. 7, the specification of a time limit is needed in order not to delay the relocation. The checks made by the MS of relocation follow the ones already made by the benefitting MS, as provided for by para. 2, first subparagraph. While it is in the interest of the benefitting MS to quickly check security grounds and consequently a time limit is not necessary, by contrast a deadline is to be

foreseen for the MS of relocation in order not to delay the process. Therefore, one-week time should be introduced in para. 7 for either confirmation or objective impossibility to relocate on security grounds.

In para. 8 the amendment proposed is consistent with the one in para. 3.

In para. 10, the amendment proposed is consistent with a special treatment of relocation cases unlike Dublin cases. In particular, the proposed reference to only point a) of article 33.1 is meant to limit the appeal grounds solely to the risk of inhuman and degrading treatment and avoid that a wider resort to appeals may delay and ultimately hamper relocation.
Furthermore, the exclusion of point b) of article 33.1 is deemed more in line with the third subparagraph of para. 3, and with article 58, para. 2. In the former provision the eligibility for relocation ("Those applicants shall not be eligible for relocation") is excluded, in the latter the criteria are applied after transfer and thus when relocation procedure has already been completed.

Article 58

Procedure after relocation

1. The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

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

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

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

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

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].
4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.

***Comments**: The transfer of responsibility from the benefitting MS to the sponsoring MS must be clearly established in AMMR Regulation. Consequently, a key element of return sponsorship is the updating of Eurodac following the explicit or implicit confirmation by the sponsoring Member State that it will relocate the person concerned.*

PUBLIC

Article 59

Other obligations

For the purposes set out in article 56, Tthe benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures taken on a bilateral level including measures of cooperation with a third country.

***Comment**: this obligation to inform the Commission should not be general but only referred to a specific provision of AMMR.*

Article 60

Operational coordination

Upon request, the Commission shall coordinate the operational aspects of the measures ~~offered~~ by the contributing Member States, ~~including~~ **and** any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency **according to their respective mandate**.

***Comments**: The deletion of "offered" is compatible with the Italian position on mandatory relocation. The word "including" may be interpreted as if the assistance provided by the two Agencies through experts and teams were part of the solidarity measures. Coordination is needed in order to achieve effectiveness on the ground but it should be made clear that the support of the Agencies is not accounted as solidarity contribution. Consequently, for the sake of clarity, the word "including" should be replaced by "and".*

MALTA

Article 57

- Paragraph 1

MT has a substantive reservation on this paragraph following our substantive reservations on the current wording of Article 45(1) points (a) and (b), and our concerns on Article 55.

- Paragraph 3

MT is of the opinion that the first sub-paragraph should include the possibility that these tasks, or part of them, are delegated to the EUAA upon the request of the benefitting Member State.

MT has a substantive reservation on the third sub-paragraph due to our substantive reservations on the new definition of 'family members', specifically the addition of siblings, and the new criterion for the determination of responsibility based on diplomas or other qualifications.

- Paragraph 4

MT has a reservation on this paragraph in view of our reservation on the current time limit envisaged in Article 55(2), which we deem as being too long. Furthermore, MT is of the opinion that return sponsorships should only be applicable vis-à-vis failed asylum seekers. In this regard, MT is of the opinion that the paragraph should be amended as follows:

> *When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the* ~~***illegally staying third-country nationals concerned***~~ ***third country nationals or stateless persons whose application has been rejected following a final decision***.

Alternatively, MT can accept the current formulation if the text in Article 55 is amended in such a way that the benefitting Member State decides which category/categories of illegally staying third country nationals are to be included in the return sponsorship (e.g. failed asylum seekers, over stayers, etc.).

- Paragraph 5

MT calls for clarifications on what documentation should be forwarded by the benefitting Member State to the Member State of Relocation. Should such documentation include the asylum file being kept by the determining authority of the benefitting Member State?

- Paragraph 9

MT would also like to reiterate its request on the following two questions:

- What happens if the transfer is not completed within 4 weeks?
- What happens if an applicant absconds and subsequently applies for protection in another Member State? Would a request be sent to the benefitting Member State or the Member State of relocation?

Article 58

- Paragraphs 4 and 5

MT is seeking clarification on what would happen if following relocation, a beneficiary of international protection, or a failed asylum seeker, submits a new application in the Member State

PUBLIC

of relocation. Our understanding of the current wording in the APR is, that such an application would be considered as a subsequent application. However, how can the Member State of relocation carry out a preliminary examination without being aware of what the applicant claimed in the previous proceedings (i.e. when applying for international protection in the benefitting Member State)?

In this regard, it should be noted that even if the documentation to be forwarded by the benefitting Member State to the Member State of Relocation under Article 57(5) includes the asylum file kept by the determining authority of the benefitting Member State, one would assume that these documents would be in the administrative language of that Member State.

Concerning the transfer of beneficiaries of international protection, MT is of the opinion that once a beneficiary of international protection has been relocated, his/her status in the benefitting Member State should be withdrawn on the basis that it has lapsed.

PUBLIC

THE NETHERLANDS

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

PUBLIC

General comments:

- As mentioned in the Asylum working party, we have reservations about the relocation of beneficiaries of international protection, as we are concerned this interferes with a Member State's sovereignty. In the following comments we nevertheless offer some text suggestions about the relocation of beneficiaries, but we feel further discussion on this topic is still needed.

- We have a scrutiny reservation regarding the definition of 'danger to public order', that we feel should be further clarified. We have concerns about the procedure as described in the articles below, if Member States do not use the same definition of 'danger to public order'.
- The time limits as described in article 57 (7) and (9) are too short, but we are still assessing what would be a workable time limit.
- It is an integral part of our national asylum system that relocated applicants for international protection need to lodge an application in the Netherlands after relocation. We wonder if this is sufficiently covered by the current wording of article 58(3) and have a scrutiny reservation on this paragraph.
- Last but not least, we think it would be advisable to introduce a pledging system similar to the one in Council decision 2015/1601 to ensure that relocations take place at regular intervals. This will create a certain level of predictability for the relocating and benefitting Member States and enable them to better organise themselves in case of relocations of large groups.

CHAPTER II

PROCEDURAL REQUIREMENTS

Article 57

Procedure before relocation

1. The procedure set out in this Article shall apply to:
   (a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);

(b) persons referred to in Article 45(1), point (b) where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).

2. **If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has not been carried out, the benefitting Member State shall ensure that there are no reasonable grounds to consider the applicant a danger to national security or public order of the Member States,** before applying the procedure set out in this Article~~, the benefitting Member State shall ensure that there are no reasonable grounds to consider the person concerned a danger to national security or public order of that Member State~~. If there are reasonable grounds to consider the person a danger to national security or public order, the benefitting Member State shall not apply the procedure set out in this Article and shall, where applicable, exclude the person from the list referred to in Article 49(2). **This entails that the benefitting Member State becomes the Member State responsible for examining the application for international protection.**

3. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing. **This consent shall include permission to exchange the information mentioned in paragraph 5.**

A beneficiary for international protection shall not have the right to request to be relocated to a specific Member State pursuant to this Article.

Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20, 24 **and 25**, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals concerned.

5. The benefitting Member State shall transmit to the Member State of relocation as quickly as possible **all** the ~~relevant~~ **available** information and documents on the person referred to in paragraph~~s 2 and~~ 3.

Where the person to be relocated is a beneficiary of international protection, this shall include all the information referred to in article 40(2) points (a) to (g), on what grounds the beneficiary based his or her application and the grounds for any decisions taken concerning the beneficiary.

In the case of beneficiaries of international protection the entire asylum file on the person should be transmitted, in order to be able to perform the obligatory review of the refugee status or subsidiary protection status in accordance with the Qualification Directive.

In the case of relocation of illegally-staying third country nationals, the relocating Member State should receive all the available information on that person, so that the actions of that person in the benefitting Member State (i.e. absconding) can be taken into account during the return procedure after relocation.

6. The Member State of relocation shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order. **The Member State of relocation may opt to verify this information during a personal interview with the person concerned, before the Member State of relocation confirms that it will relocate that person.**

The Member States should, just as is currently the case, have the possibility to interview the persons to be relocated on the territory of the benefitting Member State before a transfer decision is taken.

7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall confirm within [**x] weeks** that it will relocate the person concerned.

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall inform within one week the benefitting Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place **to any other Member State**.

When the relocating Member State concludes that the person to be relocated forms a danger to its national security or public order, that person should not be relocated.

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

Failure to act within the **[x]-week** period mentioned in the first and second subparagraphs and the **[x]-week** period mentioned in the third subparagraph of this paragraph shall be tantamount

to confirming the receipt of the information, and entail the obligation to relocate the person, including the obligation to provide for proper arrangements for arrival.

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State, **and, where applicable, of the fact that it will not examine his of her application for international protection.**

9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within **[x] weeks after the end of the appeal period ~~of the confirmation by the Member State of relocation~~** or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).

Since a person can appeal a transfer decision and no action will in practice be undertaken by relocating Member States until the appeal period has ended, we believe the end of the appeal period should be one of the two starting points for the transfer period.

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

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

Article 58

Procedure after relocation

1. The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2), **with the proviso that the request to take charge of the applicant must be sent within two months of the date on which the person was relocated.**

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

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

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

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

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.

Article 59

Other obligations

The benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures taken on a bilateral level including measures of cooperation with a third country.

Article 60

Operational coordination

Upon request, the Commission shall coordinate the operational aspects of the measures offered by the contributing Member States, including any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency.

PUBLIC

POLAND

Substantial reservation to the whole part as the structure and nature of the solidarity mechanism is under negotiations and Poland consequently opposes to make relocation mandatory in any case.

Additionally we would like to support these Member States that are in favor of carrying out the Dublin procedure before the relocation procedure takes place (in the benefitting Member State). On the one hand, we could avoid the unnecessary extension of the pool of relocation, on the other, reduce the related costs for the EU budget (AMF funds). In order to alleviate the burden from the benefiting Member State support of EU agencies should be guaranteed in this regard.

Furthermore, we would like to support the Czech Republic proposal according to which it should be explicitly stated in the provision that under relocation procedure family members are relocated together.

Referring to the concrete provisions:

Article 57- Procedure before relocation

Paragraph 1

Reservation to the scope of relocation. We are of the opinion that such procedure should cover only persons more likely eligible for protection.

Paragraph 2

Support for the exclusion from relocation of those who may pose a security risk.

Paragraph 3

Formulation of *meaningful links* should be defined within the AMMR (such definition may have an open nature).

Paragraph 4

Strong objection to para 4 that provides clear connection between return sponsorship procedure and relocation of irregular migrants when the period of 8/ 4 months (mentioned in art. 55.2) expires.

Paragraph 7

Poland is concerned about the proposed time limits for carrying out the pre-relocation security check. One or two weeks is not enough. The clarification of doubts in the field of security requires the involvement of many institutions at the national and international level, including law enforcement agencies and secret services. Therefore the time frame should be sufficient to allow for all necessary arrangements between interested EU and national institutions. Only providing more time for the exchange of information will make it possible to take appropriate operational actions in relation to persons being subject to relocation, which may pose a threat to public safety (establishing the identity of foreigners, identification of terrorists as well as searching all relevant systems and databases is crucial in this regard). We believe that such time limit should not be shorter than a month. By proposing more realistic and practical time limits we may also avoid excessive bureaucracy in the context of extending the deadline for a reply each time. At the same time the earlier examination of security issues will be always possible depending on the individual situation.

Moreover it is crucial to provide possibility for MS of relocation to conduct an interview within security check whenever necessary.

Article 58 - Procedure after relocation

Paragraph 4

We have serious doubts about the wording of this article that leaves many questions unsolved (including those raised during the AWP meeting). How this concept is related to the QR? It becomes even more important due to the Council Legal Service opinion according to which the concept of relocation of beneficiaries of international protection should be located in QR instead of AMMR.

Paragraph 5

Reservation to the wording. Poland is against the inclusion of illegal migrants in the relocation procedure.

PUBLIC

ROMANIA

We have a scrutiny reservation on Articles 57-61 and we make the following observations:

With regard to the Article 57 paragraph 2 we consider that together with the beneficiary MS, the MS of relocation should ensure that there are no reasonable grounds to consider a person who is the subject of relocation as being a danger to the national security or public order. In addition to paragraphs 5 and 6, we propose that checks regarding the potential threat to national security or to public order to be conducted, as well, by the MS of relocation prior of receiving the documents and information from the beneficiary MS. This applies both SAR operations and migratory pressure relocation.

With regard the Article 57 paragraph 3, our proposal is that the procedure establishing the responsibility to be conducted prior to the relocation procedure.

With regard the Article 57 paragraph 9, we propose that the due time for the transfer to be extended up to 6 weeks in order to ensure all the administrative steps.

As regards the Article 58 paragraph 2, we consider that establishing the responsible MS to be done by the beneficiary MS before the transfer carrying out from that beneficiary MS.

SLOVAKIA

Art. 57 (6) - We are of the opinion that the Member States should have possibility to carry out interview with the applicant in the benefitting Member State before he/she will be transferred to the Member State of relocation.

Art. 57 (7) – we have concerns regarding time limits of one and two weeks. We do not consider that these time limits are sufficient to thoroughly check whether the person does not constitute a danger to national security or public order. We understand the reason of effectivity, but from the practical point of view, time is needed to carry out security check consistently. Therefore, there is a need to extend both deadlines.

PUBLIC

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 11th February.

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

PUBLIC

Article 57, Procedure before relocation

1. No changes are proposed

2. No changes are proposed

3. ~~**Where relocation is to be applied, t**~~**T**he benefitting Member State shall identify the persons who could be relocated **or subject to return sponsorship**. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links between the person concerned and the Member State of relocation **and, where possible, the nationalities indicated by the sponsoring Member State in accordance with Article 52 (3), second subparagraph**. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing.

Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the **distribution of persons concerned among the contributing Member States**~~**list**~~ drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

Justification: The procedure foreseen in this paragraph should also apply to the return sponsorship. Otherwise, there would be a normative lack in this respect. The same purpose is pursued by the changes proposed in the following paragraphs.

4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals **or stateless persons** concerned.

Justification: Stateless persons should be included in this provision and more generally in this AMMR Regulation, starting with the definition in Article 2 (aa) of "illegally staying third-country national".

5. The benefitting Member State shall transmit to the Member State of relocation **or the sponsoring Member State** as quickly as possible the relevant information and documents on the person referred to in paragraphs 2 and 3.

6. The Member State of relocation **or the sponsoring Member State** shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.

7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation **or the sponsoring Member State** shall confirm within one week that it will relocate the person concerned.

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation **or the sponsoring Member State** shall inform within one week the benefitting Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

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

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

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation **or by the sponsoring Member State and shall update the data set of the person concerned recorded in Eurodac by adding the Member State of relocation or the sponsoring Member State as the new responsible Member State**. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State.

Justification: The transfer of responsibility from the benefitting MS to the sponsoring MS must be clearly established in AMMR Regulation. Consequently, a key element of return sponsorship is the updating of Eurodac following the express or tacit confirmation by the sponsoring Member State that it will relocate the person concerned.

9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation **or to the sponsoring Member State** shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the

Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation **or by the sponsoring Member State,** or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).

10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the transfer for the purpose of relocation **or return sponsorship**.

11. No changes are proposed

Article 58, Procedure after relocation

1. The Member State of relocation **or the sponsoring Member State** shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined **or where the person subject to the return sponsorship makes an application for international protection after the period of 8 months established in Article 55 (2)**, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).

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

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

Justification: Given the transfer of responsibility from the beneficiary MS to the sponsoring MS after the period of 8 months foreseen in Article 55 (2), it is clear that the application lodged after that transfer will fall under the responsibility of the sponsoring MS (the one lodged before, under the responsibility of the beneffiting MS).

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

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

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

PUBLIC

5. Where the Member State of relocation **or the sponsoring Member State** has relocated a third-country national **or stateless person** who is illegally staying on its territory, **it shall take the responsibilities and obligations of the benefitting Member State laid down in ~~of~~** Directive 2008/115/EC **and in this Regulation ~~shall apply~~**.

Justification: This is the logical consequence of the transfer of responsibility to the sponsoring MS and of the last subparagraph of Article 55 (2).

Article 59, Other obligations

For the purposes set out in Article 53 (4), t~~T~~he benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures taken on a bilateral level including measures of cooperation with a third country.

Justification: The information to the Commission makes sense for the purposes of Article 53(4), but not in other cases.

Article 60, Operational coordination

Upon request, the Commission shall coordinate the operational aspects of the measures offered by the contributing Member States**~~, including any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency~~**.

Justification: The coordination by the Commission on the tasks of Frontex and Easo is set out in their respective regulations. On the other hand, contributions from either the agencies or the Member States to them or their pool cannot be considered as a measure of solidarity provided by the contributing Member States in any case, so this subparagraph should be deleted.

Article 61, Financial support

Funding support following relocation pursuant to Chapters I and II of Part IV shall be implemented in accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*].

Scrutiny reservation on this provision.

PUBLIC