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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Asylum Working Party
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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] - Compilation of comments of delegations

Following the meeting of the Asylum Working Party on 10 february 2023, delegations will find attached a compilation of drafting suggestions and observations received in response to the request for comments from the Presidency on the above-mentioned proposal.

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] –

Table of contents

AUSTRIA

Please find below our comments concerning Articles 19-22, 25, 27, 29(3), 30(8), 31, 35, 71, 57-58, Article 2 points (g)(v), (n) and (o), and Articles 3-6 AMR covered by the meeting of the AWP on 10 February 2023.

As previously stated AT is of the opinion that the AMR should foresee a stable responsibility of Member States. This would be necessary in order to create a fair balance between solidarity and responsibility as well as to ensure a proper functioning of the asylum system and to prevent secondary movements.

Unfortunately, some important responsibility elements were weakened in the current proposal.

Article 2 – Definitions

(g) - family definition

As already mentioned AT has a strong reservation against the extension of the definition of family members as proposed in Art. 2 (g) (v). Especially siblings should not be included in this definition.

Therefore Art. 2 (g) (v) should be deleted

Article 20 – Diplomas or other qualifications

AT upholds the reservation for the criterion related to the possession of a diploma or qualification. As also stated out by other MS during the AWP meeting, AT does not see any added value in introducing such a criterion, especially in comparison to Art 19.

Therefore, AT suggest deleting Article 20.

Article 21 – Entry

AT strongly opposes the reduction of the period for cessation of responsibility from 3 years to 18 months. As also pointed out by other Member States during the AWP Meeting, such a reduction would only incentivize more secondary migration.

Therefore, the responsibility should be at least 3 years or preferably longer.

Article 25 – Discretionary clauses

AT upholds a scrutiny reservation for the "social consideration" and would like to get more information on the reasoning for the amendment of the text. E.g. what would "social consideration" in regards to family relations mean in practice?

Please note that according to the last subparagraph of Par. 2 Member States are obliged to carry out necessary checks to examine the humanitarian grounds.

Therefore, undefined terms such as "social considerations" should be deleted from the text.

Article 27 – Cessation of responsibilities

Regarding the reintroduction of the cessation ground in para 1a, we oppose this reintroduction. The cessation of responsibilities as regulated in para 1a was removed in the Commission proposal for good reasons, because it has opened loopholes for abuse in the past.

There is a significant risk that, as it happened in the past, asylum seekers will present false documentation about a stay in a third country in order to avoid the unwanted responsibility of a Member State.

Therefore, Art. 27 (1a) should be deleted. Alternatively, we propose to extend the time limit for a stay in a third country to at least 12 months.

Article 31 – Submitting a take back notification

AT would like to highlight, that the name take back *notification* is not suitable under the current proposal. The current text gives the possibility to reject a take back notification or confirm it. This constitutes the same procedure as currently foreseen in the regulation (EU) 604/2013. Therefore, the word *notification* would be replaced with the word *request*.

Furthermore, it its of the utmost importance that a remonstration procedure is introduced in the test. The ECJ has clarified in judgment C-47/17 and C-48/17 (X & X) the need for a swift procedure and the consequences if a Member State rejects a take back/charge request for a second time. The current text does not foresee a procedure after a rejection is received and if a shift of responsibility is possible.

Article 32 – Notification of a transfer decision

Para 1 foresees that the transfer decision shall be taken within two weeks of the receipt of an acceptance/confirmation. It is unclear what the legal consequences are if the decision cannot be issued within two weeks. The transfer decision is a national decision and the national authorities should be able to issue the decision when it is feasible. Therefore we ask that the wording may be changed to "… shall take a transfer decision as soon as possible after the receipt of the confirmation of responsibility".

Article 33 - Remedies

It should be ensured that the deadlines for lodging an appeal are in line with the deadlines in the APR for inadmissibility decisions.

Furthermore, it is important that, as a general rule, appeals do not have suspensive effect unless a court explicitly decides otherwise.

Article 35 – Detailed rules and time limits

Art. 35 is one of the most important provisions of the AMR. In the past, in many cases transfers could not be enforced because of the 6-months deadline. Therefore, this provision significantly weakened the Dublin system as a whole due to the shift of responsibility.

We see an improvement of the text by introducing an interruption of the deadline in case of absconding or refusal to comply.

However, we consider it essential that

1. The transfer deadline is deleted from the text or at least further extended.
2. The remaining transfer deadline must be clear and indisputable for all parties. The current text leaves a lot of room for interpretation, which will create confusion and disputes over the remaining transfer time in practice. The procedure foreseen in para 2 makes the calculation of the remaining time limit for transfer overly complicated. A clear set of rules needs to be established.

Article 58 – Procedure after relocation

Art. 58 Para. 2:

The responsible Member State should always be determined before a relocation is carried out, taking into account all relevant criteria. This should also be reflected in the relevant provisions setting out the criteria and mechanisms for determining the Member State responsible.

BELGIUM

These comments are a supplement to the contributions that were made orally by the Belgian delegation during the Asylum WP of 10 February.

Article 20

Belgium maintains a scrutiny reservation on this article. We are reviewing a number of operational considerations within the Belgian national context.

Article 21

Belgium holds the view that the period of responsibility in the context of an irregular crossing should be at least 3 years. This is important to counter secondary movements.

Article 27

Belgium maintains a scrutiny reservation on this article. Amongst others, we are reviewing the use of the entry/exit system as a basis of proof in this context.

Article 35

Belgium maintains a scrutiny reservation on this article. Regarding the time limit in point 2, Belgium favours a time limit of 5 years instead of 3 with a view to reducing secondary movements.

Article 57

Belgium maintains a scrutiny reservation on this article. The time limits of 1 week (+ 1 week in exceptional circumstances) to confirm a relocation in art 57.7 may be too short

BULGARIA

Article 19 Issue of residence documents or visas

Regarding Art.19 on residence documents and visas, we confirm our position on the time limits we favour: 2 years for residence documents and 6 months for visas respectively.

Article 21 Entry

We maintain the time limit in the current Regulation, which is 12 months. We uphold a scrutiny reservation on the 18-months time limit, and our final position will depend the overall balance achieved in the proposal.

Article 22 Visa waived entry

We maintain a positive scrutiny reservation.

Article 27 Cessation of responsibilities

We support the addition of paragraph 1a.

Article 30 Replying to a take charge request

Regarding Art.30, as a general remark, we have always supported the time limit of two months to be maintained, as it is under the current regulation.

On the amendments of paragraph 8, we are flexible , we would come out with a concrete position if a draft of such a form is presented, so that there is clarity on the format and the information required.

Article 31 Submitting a take back notification

As in previous stages of the discussion, we cannot support the notification regime. The main reason is that the requested Member State should be entitled to the right to justify its reply in accordance with the criteria of the Regulation

Article 35 Detailed rules and time limits

Regarding the transfer of liability in the event absconding, we consider that a period of 5 or 3 years of suspension of the transfer in the case of absconding is unfounded. We propose 6 months with the possibility of an extension of up to one year.

Article 2 Definitions

On paragraph (g)(v) regarding family members, we maintain scrutiny reservation, still analyzing.

Article 58 Procedure after relocation

We support the addition in paragraph 3.

Article 4 [Principle of integrated policy-making,

We maintain our position of moving the text to the preamble. On the proposed recital text, we still have doubts about the content of 'including the necessary human and financial resources and infrastructure'. The text creates an obligation without the parameters being clear. It is not clear what the scope of 'capacity' and the numerical dimension of financial resources are. In any case, the capacity and resources allocated to migration and asylum management should be compliant with the demographic and economic potential as well as the particularities of the national asylum system of the Member State concerned. The resources required are also directly dependent on migration flows, which cannot be fully predicted.

We are working on a proposal to re-draft the above wording.

Article 5 Principle of solidarity and fair sharing of responsibility

We support the principle of solidarity and fair sharing of responsibility as set out in par. -1, but we consider that the text belongs in the preamble.

In par. (f), it is unclear what is the content of " to correct" unauthorized movements.

Article 6 Strategic Governance and monitoring of the migratory situation

We maintain our position on the deletion of paragraph 1 and paragraph 2. We are sceptical on the added value of the European Asylum and Migration Management Strategy. Strategic management of the migratory situation is difficult to be set up at EU level since there are no common standards in place. Migration management is a sensitive political issue linked to the specificities of each Member State like geographical situation, strategic partnerships, cooperation with neighbouring non-EU countries, internal policy and national priorities, organisation of the national asylum system, composition and volume of migration flows, risks, etc.

We also have questions pending regarding the national strategies. Such a document should be a “”live” document, to be updated depending on the migration situation and trends, and as it is proposed in par. 3 based on the results of the monitoring of the Agencies. The upgrading of strategies is not regulated, and on the other hand, constant updating will become an administrative burden for national authorities.

In this context, we support the opinion of the Council Legal Service expressed during the meeting and do not consider that a legal obligation should be established for Member States with regard to national strategies.

CROATIA

Article 2, point g)(v) 'family members'-

we cannot support the inclusion of "siblings" in the definition of family members. According to the Commission explanation, siblings include brothers and sisters, as well as half-brothers and half-sisters (adult and minor). Taking into account the mechanism for establishing family and kinship relations, and the fact that international protection applicants do not have documents to prove family and kinship relations, we believe that it is very difficult to prove family relations without relevant documents. DNA analysis is an expensive and lengthy procedure which would not yield results in case of half-brothers and half-sisters. The fact that MS often have only the applicant's statement has resulted in different practices in MS and their interpretation of this criteria when establishing responsibility. The issue arises when one MS accepts the applicant's statement as valid proof while another MS does not. We would therefore like to point to the importance of regulating this issue through prescribing clear criteria or a list of proof used for establishing family and relative links.

As regards the added text in **point (v)**, we generally welcome the idea. However, it is necessary to clarify this provision so we propose that it be amended in line with the explanation given by SE PRES at the meeting.

"**On a case-by-case basis, a minor is considered unmarried if his or her marriage is not in accordance with the relevant national law in the relevant Member State in which he or she is located or in the Member State where the marriage took place with regard to the legal age of marriage."**

Article 5 - Principle of solidarity and fair sharing of responsibility –

we support MS that have proposed that the text from paragraph 1 of this Article be moved to the recital since it does not represent a legal norm.

Article 6

As regards the proposal for Article 6 of AMMR, we believe that the Commission cannot adopt the European Asylum and Migration Management Strategy without active participation of MS (this is not the same as the fact that the Commission will take into account the national strategies, as referred to in paragraph 2, point a) of this Article). As regards paragraph 3, although this is a may provision, we believe that such a proposal interferes with MS competencies. The Commission can set up a framework for migration strategy on the EU level but we are against establishing a national strategy framework that would be binding on MS. The link between the Commission guidelines and national strategies should be discussed at the next Working Party meeting. We also do not agree that legal/labour migration issues be included in the strategy since this issue is under the competence of MS. In paragraph 5, we propose that the Commission prepare a draft/proposal of the EU strategy in cooperation with MS within 18 months and that MS have a longer deadline of 24 months from the entry into force of AMMR to draft their national strategies. We believe that this is also linked to Article 69 of AMMR: *By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the measures set out in […] Part IV of this Regulation.*

Article 21 - Entry –

When it comes to cessation of responsibility based on the entry criteria, we can only support the period of 3 years from the registration of application.

Moreover, already the first sentence in the Article mentions "circumstantial evidence" so we would once again like to draw attention to the fact that applicant statements have so far presented quite a challenge when interpreting circumstantial evidence since some MS accept and some do not accept applicant statements as relevant proof. This is also related to the issue of how to determine the exact date from which to calculate the deadline for the cessation of responsibility if we only have circumstantial evidence (this refers to the last sentence of paragraph 1: That responsibility shall cease if the application is registered more than [18 months / 3 years] after the date on which that border crossing took place.).

Article 22 - Visa waived entry –

we welcome the amendments in paragraph 1 and the new paragraph 2.

Article 25 - Discretionary clauses –

the word "social" was added in paragraph 2 but we do not see how it would be interpreted in practice since this is a very broad term and it might delay the procedure.

Article 27(1a) - Cessation of responsibilities –

we cannot support the new paragraph 1a since it still does not resolve situations in which MS border with third countries, as is the case with Croatia, and applicants cross illegally from MS to a third country and then also illegally into another MS. We think that this paragraph would make sense only in cases of legal border crossings whereas the practice so far has shown that most international protection applicants choose illegal pathways. We are also confused about the wording "or other evidence". We would like to propose that this provision be supplemented so it is explicitly clarified that this does not refer to cases where applicants leave the EU territory illegally:

"1a. The obligation laid down in Article 26(1) shall cease where the Member State responsible can establish, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/222617 or other evidence, that the person concerned has **legally** left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible."

Article 29 - Submitting a take charge request, paragraph 3

The idea was to make Dublin more efficient through faster procedure so we believe that MS that submits the take charge request does not have to provide a detailed justification. We believe it is sufficient to prescribe an obligation to provide evidence which supports the request and we suggest that the wording **"full and detailed"** be deleted.

Article 30 – Replying to a take charge request, paragraph 8 –

so far the practice has shown that a system which requires a justification for why an MS is not responsible doesn't work well. We would like to know why the evidence itself is not sufficient but a justification is also required. A detailed justification is an additional obligation for MS with unrealistically short deadlines so we propose that the wording "**substantiated**" be deleted.

The deadlines are key in this case because if an MS misses a deadline, it becomes tacitly responsible, even more so if it is under migratory pressure. We would therefore like to **propose a 2-month deadline** for regular response to a take charge request, or **1 month in case of urgency**.

Article 31 - Submitting a take back notification –

we believe that such short deadlines are not realistic so we propose **a one-month deadline** in paragraphs 3 and 4.

Article 35 - Detailed rules and time limits –

we generally believe that the amendments made by the PRES may discourage secondary migration. However, we propose that the extended deadline for transfer be calculated exclusively from the final decision since each transfer decision (either take charge or take back notification) may be subject to administrative dispute before a court.

Article 57 – rocedure before relocation

Paragraph 2 –

It is not clear whether security screening should also be carried out in case of beneficiaries of international protection.

Paragraph 3 –

It is stated that beneficiaries of international protection may be relocated only after they 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. Therefore, when it comes to this category of candidates for relocation, we believe that getting the necessary consent for relocation will be a particular challenge if the person in question does not have all the necessary information on the MS of relocation.

We would like to point out that the efficiency and the objective of relocation may be affected by differences in the rights and obligations of MS which may be key if there are no family or cultural links between relocation candidates and MS of relocation. Apart from family and cultural links, we propose that interpreting capacities of MS of relocation also be taken into account since this factor certainly contributes to better integration.

Paragraph 7 –

we cannot accept the deadline of one week for accepting the request (or two weeks in case of complex requests or a large number of requests that need to be additionally verified) from the receipt of relevant information on the candidate for relocation. We propose longer deadlines, e.g. 2 weeks or 10 working days or 4 weeks for complex cases or cases when a large number of requests need to be additionally verified. Furthermore, we do not agree with tacit acceptance of relocation in case of failure to act within the specified deadline.

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 (also relevant to paragraph 10).

Article 58 - Procedure after relocation –

we think that relocation where MS responsible has not yet been determined would represent a pull factor.

Paragraph 1 –

we would like to know what happens if the the person concerned did not appear in MS of relocation, more specifically what are the consequences for the person who absconded and what are the implications for the benefitting MS and the MS of relocation in terms of responsibility.

As regards paragraph 4, 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.

THE CZECH REPUBLIC

General comments

The Czech Republic generally appreciates the new legislative text that is based on the CZ concept on solidarity and responsibility.

Criteria for determining the Member State responsible (Čl. 19, 20, 21, 22, 25, 27, 29 (3), 30 (8), 31, 35 (2), 2 (g)(v), 2 (n), 2 (o), 71, 57, 58)

Article 2/g(v)

We do not see including of siblings to the definition of family members as substantial issue of the text, however we slightly prefer not to include them in the definition, we will be flexible regarding this issue.

Article 19/4

Although we understand the intention of these changes to clarify the provision, we would appreciate to have simple text here. We suggest better wording „invalid documents". We think that this includes all kind of situations mentioned in the text relating the expiry of the validity. In regard to the time limit for visas we are flexible.

Article 21/1

In regard to the time limit, we are flexible.

Article 71

We agree that this article will be dealt with under the recast of the Long Term Residence Directive within the IXIM WP.

Article 2O

We understand the concerns mentioned by a number of delegations as regards practical consequences of this new Article. Therefore, we would not oppose the possible deletion of this Article.

Article 25

We agree to add the provision that no reply within the given time limit could be considered as a positive decision as it was mentioned in the concept. This was also pointed out by several delegations during AWP.

On the other hand, we agree that the application of discretionary clause and the assessment of an individual case may be a complex issue, but the requesting MS should be keep informed how the requested MS continue with the assessment of the particular request at the same time. Therefore the provision regarding the obligation to inform the requesting MS about the „state of play" and possible consequences of not complying may be considered further.

Article 27/1a

We propose to specify the meaning of "*other evidence"* by adding the reference to Article 30/4. For example: "….or other evidence **according to Article 30 par. 4.**"

Article 29/3

We propose the following wording:

In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State, ***only if not based on formal proof***, shall **include full and detailed reasons, based on all the circumstances of the case, relating to the relevant criteria set out in Chapter II…**

Formal proof should be understood in terms of Article 30 par. 4.

Article 30/8

The similar wording as we propose above for Article 29 par. 3.

Article 57/2

At the end of the second paragraph "… shall exclude the person concerned from any future relocation or **transfer**…". We would like to ask the Presidency what does the word "transfer" mean in this context?

DENMARK

For now DK has a **scrutiny reservation on all Dublin-related articles.** We expect to have a position in the beginning of March.

FRANCE

La France réitère sa réserve générale d'examen sur l'ensemble d'AMMR. Les mouvements secondaires et les demandes d'asile multiples constituent l'un des problèmes majeurs de l'Europe en matière d'asile. Les règles de responsabilité doivent être renforcées afin de prévenir les abus du système d'asile qui font peser une charge sur tous les États membres, alors que les flux primaires augmentent. AMMR doit permettre de répondre à cette situation en faisant preuve de fermeté à l'égard des demandeurs abusant du régime d'asile européen commun (RAEC) et en assurant une solidarité pérenne, prévisible et efficace entre les États.

1. Sur les critères de détermination de l'État membre responsable (articles 19 à 22, 25, 27, 29, paragraphe 3, 30, paragraphe 8, 31, 35, paragraphe 2, 2, points g), sous v), n) et o), et 71)

La France renvoie à ses commentaires écrits précédents sur la partie Responsabilité et ne se prononce ici que sur les nouveautés introduites par la Présidence.

La France soutient pleinement les déclarations des Pays-Bas lors de la séance du groupe Asile sur la nécessité d'adapter le règlement AMMR à la suite de l'arrêt C-750/20 de la Cour de justice de l'Union européenne. La France considère que si un État membre est déjà responsable de la demande d'asile du ou des parents d'un enfant né à la suite d'un mouvement secondaire dans un autre État membre, le premier État membre responsable de la demande des parents doit automatiquement être responsable de la demande de ce mineur si ses parents présentent une demande au nom de cet enfant. Dans le cas contraire, ce serait une incitation claire aux mouvements secondaires.

Proposition rédactionnelle (article 16, peut être reproduit pour les articles 17 et 25).

Article 16 Family members who are beneficiaries of international protection

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Where the applicant is a minor whose family member has not respected his or her obligation pursuant to article 9, paragraph 4, the desire in writing of his or her family member is not required provided that it is in the best interest of the child.

Article 19 : délivrance de titres de séjour ou de visas

Paragraphe 4 :

La France est fermement opposée à la diminution de la durée de responsabilité pour le critère des visas et demande le maintien d'une durée de trois ans. Toute diminution de cette durée constituerait un affaiblissement majeur de l'équilibre du règlement. Il est donc essentiel de maintenir un délai de trois ans pour les visas et pour les titres de séjour dans un enjeu de lutte contre les mouvements secondaires.

Proposition rédactionnelle :

4. Where the applicant is in possession of one or more residence documents **which have expired, were revoked or withdrawn less than three years** or one or more visas **whose validity has expired, was revoked or withdrawn […] less than three years** ~~18 months~~ before the application was registered, paragraphs 1, 2 and 3 shall apply.

Article 20 : Diplômes ou autre titre

La France soutient la version du texte dans sa rédaction actuelle.

Article 21 : Entrée

La France est fermement opposée à la diminution de la durée de responsabilité pour le critère des franchissements irréguliers et demande le maintien d'une durée de trois ans. Toute diminution de cette durée représenterait un affaiblissement majeur de l'équilibre du règlement**. Le renforcement des mécanismes de solidarité au bénéfice des États de première entrée tel que discuté précédemment ne doit pas conduire à un affaiblissement simultané des règles de responsabilité. Il s'agit d'une ligne rouge pour la France.**

Proposition rédactionnelle :

Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than ~~[18 months /~~ 3 years~~]~~ after the date on which that border crossing took place.

Article 22 : entrée sous exemption de visa

Pas observation.

Article 25 : clauses discrétionnaires

Paragraphe 2 :

La France soutient la rédaction actuelle et la prise en compte des considérations sociales, même si cette clause doit rester à la discrétion de l'État membre requis.

La France remercie la Présidence d'avoir supprimé le régime d'accord tacite dont elle rappelle qu'il n'était pas opérationnel et qu'il était contraire à l'esprit des clauses discrétionnaires. Si ce régime d'accord tacite était intégré dans AMMR, cela constituerait une ligne rouge pour la France.

Article 27 : cessation de la responsabilité

Pas d'observation.

Article 29 : présentation d'une requête aux fins de prise en charge

Paragraphe 3 :

La France renouvelle son opposition à l'obligation de motivation « complète et détaillée » du critère de responsabilité pertinent sur lequel la requête est fondée, car cette obligation constitue une lourdeur supplémentaire dans la procédure Dublin et n'est pas opérationnelle. Elle conduirait à ralentir les procédures et ainsi dépasser les délais prévus par AMMR, entrainant des bascules de responsabilité qui n'auraient pas lieu dans le système Dublin en vigueur. Cette disposition doit être supprimée.

La France demande la suppression de cet ajout et le retour à la rédaction de l'actuel article 21, paragraphe 3, du règlement Dublin III, la mention des formulaires types étant suffisante.

Proposition rédactionnelle :

3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall ~~include full and detailed reasons, based on all the circumstances of the case, relating to the relevant criteria set out in Chapter II. It shall~~ be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

Article 30 : réponse à une requête aux fins de prise en charge

Paragraphe 8 :

La France réitère sa position : la motivation de tous les éléments de la requête fera peser une charge disproportionnée sur les administrations en charge de l'application du règlement Dublin.

Un projet de formulaire type devrait être présenté le plus tôt possible afin d'apprécier cette disposition. A défaut, celle-ci ne peut pas être soutenue.

Proposition rédactionnelle :

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

Article 31 : présentation d'une notification aux fins de reprise en charge

La France rappelle son attachement à la procédure des notifications aux fins de reprise en charge afin d'améliorer le fonctionnement global du système Dublin.

Paragraphe 1 :

Le délai pour émettre la notification devrait être étendu à un mois afin de le rendre plus opérationnel.

Article 35 : modalités et délais

Paragraphe 2 :

La France souligne l'importance de « geler » le délai de responsabilité pendant une période suffisante afin d'éviter des bascules de responsabilité injustifiées pour les États membres. À ce titre, la France préconise de retenir l'option des cinq ans afin de dissuader les demandeurs de se placer en situation de fuite.

En outre, si la suppression de la bascule de responsabilité en cas de non-exécution du transfert d'un bénéficiaire de la protection internationale est une avancée positive, la France demande également la suppression de cette bascule de responsabilité pour les personnes soumises à une procédure de reprise en charge, car ces personnes ont volontairement quitté l'État membre responsable de leur demande, en violation de leurs obligations prévues à l'article 9 du présent règlement.

Aussi, pour réduire les mouvements secondaires, il semblerait dysfonctionnel de prévoir une bascule de responsabilité, même au terme d'un délai prolongé, pour les demandeurs pour lesquels l'État membre responsable a déjà été déterminé. La France considère que la suppression de la bascule de responsabilité – encadrée dans le délai de cinq ans prévu par le deuxième paragraphe - est de nature à dissuader les demandes multiples présentées dans plusieurs États membres, et confirme le principe de responsabilité.

Propositions rédactionnelles :

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the **transferring** […] Member State.

Notwithstanding the first subparagraph, where the person concerned **fails to comply with his obligation under Article 9(4) of this Regulation,** absconds **or refuses to comply with the transfer decision and the Member State responsible is informed of this fact by the transferring Member State […]** before the expiry of the time limits set out in paragraph 1, first subparagraph, […] the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage **but in any case within ~~three~~/five years of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3), if the person concerned becomes available to the authorities again or no longer refuses to comply with the transfer decision. Where the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer. This subparagraph shall not apply where […]** another Member State has carried out the procedures in accordance with this Regulation and transferred the person **concerned** to the responsible Member State **or where the responsibility has transferred to another Member State pursuant to Article 27** after the person **concerned** absconded.

Article 2 : définitions

Point g), sous v) : membres de la famille

La France remercie la Présidence pour ses explications données en groupe, et propose une modification de rédaction précisant que seule la législation de l'État membre ou des États membres concernés est applicable s'agissant de la régularité du mariage de l'intéressé, et non la législation de tous les États membres de l'Union européenne.

Proposition rédactionnelle :

(g) […] **On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State ~~concerned~~ or the Member States concerned, in particular having regard to the legal age of marriage.**

Point o) : établissement d'enseignement

La France souhaite un retour à la rédaction précédente, et le maintien des termes « *recognized by that Member State* », car seul l'État membre dans lequel se trouve l'établissement est en mesure d'indiquer s'il reconnait les formations délivrées, afin d'éviter tout risque de fraude.

Proposition rédactionnelle :

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

Article 71 : modifications de la directive sur les résidents de longue durée

La France remercie la Présidence pour la suppression de cette disposition dans le règlement AMMR.

2. Sur les procédures avant et après la relocalisation (articles 57 et 58)

Article 57 : procédure avant la relocalisation

Paragraphe 6 :

La France souhaite que l'État membre contributeur puisse se réserver la possibilité - s'il l'estime nécessaire - d'effectuer également des entretiens portant sur le besoin de protection sur place (et pas seulement d'évaluation du risque sécuritaire).

Proposition rédactionnelle :

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 **the** national security or public order **of the Member States. The Member State of relocation may also choose to support the beneficiary Member State in order to identify the persons to relocate, according to paragraph 3. The Member State of relocation may choose to verify the information transmitted during a personal interview with the person concerned. The personal interview shall take place within the time limits provided for in paragraph 7.**

Paragraphe 7 :

La France rappelle que les délais prescrits dans la procédure de relocalisation sont trop courts (une semaine ou deux semaines selon les cas) et devraient être de deux semaines et quatre semaines, afin d'être moins contraignants pour l'État membre contributeur. Ces délais apparaissent notamment inadaptés lorsqu'il y a des enjeux sécuritaires dans le dossier de la personne à relocaliser.

Proposition rédactionnelle :

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

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to **the […]** national security or public order **of the Member States**, the Member State of relocation shall inform **the benefitting Member State,** within ~~**one**~~ **two** week**s** **of receipt of the relevant information from that Member State […]** of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place **and the person shall, where applicable, be excluded from the list referred to in Article 49(2).**

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 **two-week** ~~**one-week**~~ time limit mentioned in the first and second subparagraphs, but in any event within **four weeks** ~~**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 **two-week** ~~**one-week**~~ time limit.

Failure to act within the **two-week** ~~**one-week**~~ period mentioned in the first and second subparagraphs and the **four-week** ~~**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.

Article 58 : procédure après la relocalisation

Paragraphe 2 :

La France rappelle qu'en vertu du paragraphe 3 de l'article 57, la procédure de détermination de l'État membre responsable doit obligatoirement être effectuée avant la relocalisation afin de savoir si le demandeur relève de la responsabilité de l'État bénéficiaire et s'il peut être relocalisé selon le critère retenu. Ainsi, le cas de figure du paragraphe 2 de l'article 58 ne peut pas se produire : l'État membre responsable a forcément été identifié préalablement à 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 afin d'assurer la cohérence entre les procédures.

La France comprend la position de la Commission selon laquelle relocaliser un demandeur d'asile avant de déterminer l'État membre responsable permet d'alléger la pression migratoire pesant sur l'État membre bénéficiaire. Elle estime toutefois disproportionné de mettre en œuvre des opérations de relocalisation – intrinsèquement lourdes et coûteuses – pour être par la suite contraint de procéder à un nouveau transfert : ces transferts à la chaine auraient pour effet de à créer artificiellement une pression qui n'existait pas pour l'État membre contributeur. La France est fermement opposée à cette logique non opérationnelle.

La France demande ainsi la suppression du paragraphe 2.

Proposition rédactionnelle :

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

Paragraphes 3 et 7 :

La France considère que la nouvelle rédaction du deuxième sous-paragraphe crée un risque d'interprétation important sur l'articulation des termes « *responsibility for examining the application for international protection* » et « *responsibility for examining any further representations or a subsequent application* ». Cette formulation, reprise du paragraphe 7, risque d'ajouter de la confusion et de laisser croire qu'il y a plusieurs types de responsabilités.

Il n'existe qu'une seule et unique responsabilité d'examen d'une demande de protection internationale selon le règlement AMMR, quelle que soit la procédure appliquée dans le règlement Procédure. La France demande ainsi la suppression de ce deuxième sous-paragraphe, estimant que le premier paragraphe est suffisant.

Proposition rédactionnelle :

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) **second** subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

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

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

3. Sur l'approche globale des migrations (articles 3 à 6, et article 7)

Articles 3 à 5 :

Pas d'observation.

Article 6 : gouvernance et suivi de la situation migratoire

Paragraphes 1 et 2 :

La France rappelle que la rédaction des paragraphes 1 et 2 doit être améliorée pour que la stratégie européenne ait une réelle plus-value. Une telle stratégie nécessite d'être clairement définie, en particulier s'agissant de ses aspects opérationnels et de sa nature juridique.

Les termes « *setting out the strategic approach to managing asylum and migration at Union level and on the implementation of asylum and migration management policies in accordance with the principles set out in this Part*" méritent d'être précisés *a minima*.

Article 7 : coopération avec les pays tiers pour faciliter le retour et la réadmission

La France regrette le manque d'intelligibilité de cette disposition et estime que la rédaction proposée par la Commission s'apparente trop à une déclaration d'intention sans réelle perspective opérationnelle. L'économie générale de la proposition appelle ainsi des précisions procédurales.

GERMANY

Introduction

We reserve the right to make further comments and reiterate our scrutiny reservation on the entire Regulation and all its articles and recitals.

Our comments focus mainly on the amendments made. We also refer to our previous comments.

Following a preliminary initial examination, we comment on the individual articles as follows.

Criteria for determining the Member State responsible

Articles 19-22, 25, 27, 29(3), 30(8), 31, Article 35(2), Article 2 (g)(v), (n) and (o) and Article 71

Article 19

Paragraph 4:

The uniform time limit for cessation of responsibility after having issued a visa and residence title should, as proposed by the Commission, be maintained at three years in the interest of a stable and clear rule on responsibility.

Is it correct to assume that the term "withdrawn" in paragraph 4 is meant to cover all other ways of invalidating residence documents and visas (such as annulment, cf. Article 34 of the Visa Code)? Is paragraph 4 to apply also in cases where a person entered on a basis other than the expired/revoked visa?

Article 20

We see the objective of this provision and the positive effects it would have for integration if an applicant had successfully completed training during an earlier stay, and we are in favour of this.

Provisions must be formulated to prevent the potential for abuse, for example due to the wide variety of educational pathways in Europe. It can be assumed that reviewing the information presented would significantly increase the administrative burden. Unfortunately, there is no database of diplomas and qualifications for all of Europe which could be used to check the information supplied by applicants. In addition to being open to abuse, we believe that this provision is likely to be a source of discussions between member states.

However, in general, new responsibility criteria must be subject to the condition that effective measures to reduce irregular secondary movement be taken.

Article 21

The time limit for cessation of responsibility in the event of illegal entry should remain at three years, as proposed by the Commission. This is an important way to prevent irregular secondary movement.

Article 22

We agree with the revision.

Article 25

The wording at the end of the first sub-paragraph of paragraph 2 should be "The consent of the persons concerned shall be expressed or documented in writing." The current wording implies that the persons concerned are themselves capable of expressing their consent in writing. This may not be true of people with a certain disability or of people who are illiterate.

Regarding the addition to paragraph 2 we still have a scrutiny reservation. We fear that the term "social" is too vague and that member states will interpret it differently in the individual case, thereby delaying the determination of the member state responsible.

Article 27

Paragraph (1a)

We still need to examine the added text, because cessation of responsibility after the applicant has been absent from the EU for a period of at least three months would mean starting the procedure over if the applicant re-enters the EU. In Germany's view, the procedure for determining responsibility should only be carried out once.

In particular, it is not clear whether leaving the EU without an official return decision would also result in cessation of responsibility. Please explain.

Paragraph 2:

It is not clear what is meant by "voluntary return". Is it to be understood as in sub-paragraph 1, i.e. on the basis of a return decision?

Article 29

Paragraph 3:

We welcome that the take-charge request should only include reasons based on the relevant criteria.

Article 30

We welcome the fact that the objection to a take-charge request must be substantiated.

Article 31

Paragraph 1:

We view this addition and the resulting weakening of the time limits very critically. We believe that the time limits, no matter how they are ultimately defined, must have a binding effect. That is why definite rules are essential.

Paragraphs 3 and 4

We have no objections to these revisions.

Article 35

Paragraph 2:

We welcome the inclusion of refusal to comply as a reason for extending the time limit. Art. 11 (1) (ga) must be amended accordingly.

We are also in favour of a maximum time limit of five years. However, in our view, it is important that the transfer does not have to be carried out within the remaining time (at least three months) and that instead the clock for transfers starts over when the obstacle to transfer no longer exists. Because the obstacles to transfer are not beyond the applicant's control, the time limit for the member state to carry out the transfer should be long enough.

Do we understand the addition to the last sentence of paragraph 2 correctly to mean that the responsible member state should be able to invoke the cessation of responsibility pursuant to Article 27 even during the transfer phase? This would contradict the basic principle that, once it has been determined, responsibility should continue unchanged. In particular, in light of the recent judgment of the ECJ of 12 January 2023 (Staatssecretaris van Justitie en Veiligheid v B. and F, K. v Staatssecretaris van Justitie en Veiligheid) a clarification seems to be necessary.

Article 2

(g)(v)

We have a scrutiny reservation regarding the definition of family.

Please explain how the insertion of "or the member states" is to be understood.

(n)

Cf. our comments above on Article 20.

(o)

The provision is not clear. It is, for example, not clear to us what is meant by "transparent criteria" and who is to define them.

Article 71

In principle, we would not object to applying Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. However, certain associated issues should be clarified, for example specific questions regarding readmission within the EU.

<u>Procedures before and after relocation (Articles 57 and 58)</u>

Article 57

We approve the (technical) amendments made by the Presidency with regard to the revision in Article 44a (3) (a).

Paragraphs 5/6:

Please explain whether, during the personal interviews provided for under Article 57 (6) sentence 2, the "member state of relocation" may, by means of electronic systems and in accordance with its powers under national law, itself collect the information that is to be transmitted by the "benefitting member state" in accordance with Article 57 (5). In our view, this would be important for speeding up the procedures and making them less error-prone. Should this be made clear in the recitals or in the operative part of the text? This request is connected to the ongoing revision of the SOPs for the Voluntary Solidarity Mechanism (VSM), which will be endorsed soon and should be taken into account.

We ask the Presidency to reconsider the wording of "danger to the national security or public order of the Member States" as we are not sure whether the current wording reflects what was meant to be achieved with changing the Commission's proposal. We want to avoid that the wording can lead to misunderstandings.

Paragraph 7:

While we do understand why this article provides for a time limit of one or (in exceptional cases) two weeks to make the procedure as efficient as possible, we would like to point out that given the current experience with the VSM, these time limits are too short, especially if the member state of relocation chooses to conduct a personal interview with the person concerned as provided for in paragraph 6. For this reason, the time limits should be extended as follows: in general at least two weeks and in case of a personal interview to a minimum of three weeks, with the possibility to prolong this to four weeks.

In any case we reject the principle that failure to act within the time limits referred to above should entail the obligation to relocate the person concerned (last sentence of paragraph 7).

Text proposal (changes in strikethrough/bold):

Article 57

5. In the cases referred to in paragraphs 2 and 3, the benefitting Member State shall transmit to the Member State of relocation as quickly as possible all relevant information and documents on the person referred to 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 the national security or public order of the Member States.

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 of the Member States. The Member State of relocation may choose to verify this information during a personal interview with the person concerned. ***In case of a*** ~~*The*~~ *personal interview* ~~*shall take place within*~~ *the time limits provided for in paragraph 7* ***shall be three weeks****.*

7. Where there are no reasonable grounds to consider the person concerned a danger to the national security or public order of the Member States, the Member State of relocation shall confirm within ~~*one*~~ ***two*** *week****s*** *of receipt of the relevant information from the benefitting Member State that it will relocate the person concerned. Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its […] national security or public order of the Member States, the Member State of relocation shall inform*

*the benefitting Member State, within ~~one~~ **two** week**s** of receipt of the relevant information from that Member State […] of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.*

*In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at that time, the Member State of relocation may give its reply after the ~~one~~**two**-week time limit mentioned in the first and second subparagraphs, but in any event within ~~two~~ **three** weeks, in case of personal interviews within four 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~~ **two**-week time limit.*

*Failure to act within the ~~one~~ **two**-week period mentioned in the first and second subparagraphs and the ~~two~~ **three**-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~~.*

Article 58

We have no objections to the more or less technical adjustments and rearrangements made by the Presidency.

We still have a scrutiny reservation concerning the procedure for determining the member state responsible and regarding the question whether this procedure can also be applied prior to a transfer with a view to avoiding multiple transfers. Given the fact that a relocation transfer involves considerable effort (as evidenced by our experience with the VSM) this option should be examined.

Comprehensive Approach (Articles 3–6)

Article 3

(a)

We agree to the addition of "search and rescue".

At the same time we ask to add the words "**with full respect for human rights aspects**" after "migration management" ("*building their capacities in search and rescue, border, asylum and migration management* ***with full respect for human rights aspects****, preventing*").

We would also like an explanation of each of the following:

- What does "legal pathways for third-country nationals in need of international protection" refer to? To the discussion of "complementary pathways"?
- Does "those otherwise admitted to reside legally in the Member States" refer to all third-country nationals with residence titles, regardless of the legal basis for their residence? If so, we view this **critically** following our initial assessment. Coherence is important, but it must fit within the existing regulatory framework.
- We would be grateful for an explanation of how the statement here on building border management capacities relates to (e) and the provisions of the Frontex Regulation.

(ha)

What is meant by "unauthorised movements"? **Better**: **"irregular" movements**"

Article 4

Germany welcomes the Presidency proposal to place all of Article 4 in a recital.

The Presidency's proposed alternative text would also be acceptable (text proposed by Slovenia in footnote 4).

Article 5

Paragraph 1 sentence 1

This sentence expresses a principle and is not a legal norm; it could therefore be moved to a recital.

Note: To achieve the desired balance between responsibility and solidarity, all EU Member States must do their part. We must avoid subjecting those Member States to disadvantages that are located at the EU's external borders, but also those that are affected by irregular secondary movements, such as Germany.

Paragraph 1 (e)

Why was this change made? The intended assessment implicit in "reasonable" [previous version: "take all reasonable and proportionate measures"] is lost in this change.

We also ask that "unauthorised" be replaced by "**irregular**", because this should not lead to a discussion of whether, from a legal perspective, the secondary movement referred to here is "authorised" or not.

We also propose adding "**including irregular secondary movements**" after "movements".

Article 6

Paragraphs 1 and 2

In view of the fact that neither option A) (deletion) nor option B) (addition of "after consultation of the Member States") proposed by the Slovenian Presidency was adopted (Germany was in favour of option A), our position remains the same:

Should the Commission really have the competence to define a comprehensive migration policy which is binding for the Member States without previously consulting the co-legislators, who would only be informed after the fact? Germany could **not accept** that.

It should be made clearer that an overarching planning of asylum and migration management takes place

- within the framework of the existing division of competences,
- on the basis of applicable law,
- on the basis of Member States' international obligations, and
- in compliance with rule-of-law standards, in particular the right of asylum, and with attention to the needs and rights of vulnerable groups of persons in special need of protection and procedural guarantees.

This wording should be included <u>verbatim</u> here or in one of the preceding articles.

How will this process work in practice? The Commission drafts the strategy, the Member States formulate it in further detail, and, in its next revision of the strategy, the Commission takes into account what the Member States have drafted? This process should be clearly laid out here.

Paragraph 3

We enter a **negative scrutiny reservation on "taking into account the guidelines developed pursuant to paragraph 7**"; see above: should the Commission really have the competence to define a comprehensive migration policy which is binding for the Member States? **Germany could <u>not accept</u> that**.

In general, the following question **still remains**: which spectrum of issues should the national strategies cover? They <u>should not extend to regular migration</u> that is not directly related to the Common European Asylum System.

Further questions:

- How can we avoid creating excessive bureaucratic burdens that bring no tangible added value? Will every item in the EU Strategy have to be demonstrably transposed at the national level, as in the case of an EU directive?
- How do the Member States' obligations, formulated here in detail, to create national strategies with contingency plans relate to the contingency plans according to the Frontex Regulation (Articles 8 (6) and 9 (3), Regulation (EU) 2019/1896), which only refer to integrated European border management and return but not to asylum management? How are these contingency plans to be distinguished from each other? In other words: what added value does this provision offer?

Paragraph 5

How will these strategies be disclosed and linked to each other? The Member States should notify at least the Commission and the other Member States when their strategy is established. Will there be a review process? Will it be possible to classify parts of the strategies? Transparency would be desirable here.

Paragraph 7

Scrutiny reservation: paragraph 7 needs to be discussed in conjunction with Article 6 (3); Germany's position depends in particular on whether the Member States must take the Commission's guidelines into account in their national strategies.

GREECE

Following the Asylum Working Party meeting on 10th of February, please find attached **EL** contribution and comments on the proposal for a Regulation on asylum and migration management (ST 5165rev.1/23) and more specifically on Articles discussed at the AWP meeting, namely Articles 19-22, 25, 27, 29(3), 30(8), 31, 35, 71, 57-58, Article 2 points (g)(v), (n) and (o) and articles 3-6.

- The comments concern the articles requested by the Presidency and discussed at the AWP meeting: Articles 19-22, 25, 27, 29(3), 30(8), 31, 35, 71, 57-58, Article 2 points (g)(v), (n) and (o) and Articles 3-6.
- EL maintains a general scrutiny reservation on the whole text of the proposal.
- EL reiterates the views expressed in the AWP meeting of the 10th February and previous written comments.

All drafting and proposed text by EL is in red, in addition to the comments to specific articles.

Article 2

Comment: (v) Maintenance of '' Siblings'', regardless of age and marital status. A broader definition of '' family member'' aims at facilitating the integration of family members in the same MS and thereby, discourages secondary movements.

Article 3

Comment: EL raises examination scrutiny on the rewording of the Article.

(ha): EL would suggest the deletion of point (ha) which refers to unauthorized movements.

Article 4

Comment: EL suggests the inclusion of Article 4 to the recitals.

Article 19

4. Where the applicant is in possession of one or more residence documents which have expired, were revoked or withdrawn less than ~~three~~ two years *or one or more visas* ***whose validity has expired, or withdrawn ~~ceased~~ […]*** *less than* ***6 months ~~18 months~~ ~~three years~~*** *before the application was registered, paragraphs 1, 2 and 3 shall apply.*

Comment: EL supports the deadlines of the currently applicable regulation 604/2013 (i.e. 6 months for visas and 2 years for residence permits).

Article 21

*1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 12 months **[~~18 months~~/3 years]** after the date on which that border crossing took place.*

Comment: EL cannot support extension to 3 years of responsibility for the MS of first entry in case of illegal border crossing, as this does not contribute to the necessary balance between responsibility and solidarity. EL supports the current timeline as provided for in Regulation 604/2013.

Article 22

Comment: EL agrees with the deletion in par. 1 and with the addition in par. 2.

Article 25

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

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

Comment: EL considers the addition of "social" to the humanitarian clause as positive. The proposed additional wording ("Failure to reply…applicant.") reflects the CZ concept note (ST 15265/22, page 31), while it is also necessary for the essential balance to be achieved.

Article 27

1a. The obligation laid down in Article 26(1) shall cease where the Member State responsible can establish, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/222617 or other evidence, that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

Comment: EL supports the addition of the cessation of responsibility for the person concerned after 3 months outside EU. However, EL needs clarification on how the cessation of responsibility will be marked in Eurodac. Also, EL raises scrutiny reservation on the connection of the provision with the Regulation (EU) 2017/2226.

Article 30

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

Comment: EL supports the idea of a standard reply form. The ideal template could include clarifications regarding the non-appliance of each article of the hierarchy of criteria, in parallel with the choice for free text/comments where a well founded and detailed rejection is substantiated.

Article 31

Submitting a take back ~~notification~~ request

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

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

3. The ~~notified~~ requested Member State shall give a decision on the request to take back the person concerned ~~confirm receipt of the notification~~ to the Member State which made the request ~~notification~~ within ***two weeks ~~one week~~****, unless the ~~notified~~ requested Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27,* ***or that the take back ~~notification~~ request is based on an incorrect indication of the Member State responsible pursuant to Regulation (EU) XXX/XXX [Eurodac Regulation].***

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

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

Comment: EL continues to be in favour of retaining the current take back request system and related timeframe. Also, EL retains its substantive reservations that it is not reasonable that the time limits for sending a take back procedure will be flexible, but the deadline for replying to the request will be mandatory. This option does not comply with CJEU Judgment C 670/16 Mengesteab, since the rapid determination of the MS responsible is not achieved. The non- compliance with the time limits of sending a take back shall tantamount with the shift of responsibility. Furthermore, the take back procedure is mainly based on the EURODAC result, whereas the family related requests require a demanding preparation and an exhaustive evidence assessment. Accordingly, it seems contradictory that the deadline for sending a take back request will be indicative, whereas the deadline for sending a take charge request (family criteria) will be binding. EL stresses that the AMMR's aim of ensuring faster determination of the MS responsible is not served by the provision that there will be no shift of responsibility, due to the failure of a MS to send a take back request within the to-be-agreed time limits.

Article 35

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the ***transferring*** *[…] Member State.*

Notwithstanding the first subparagraph, where the person concerned absconds ***or refuses to comply with the transfer decision and the Member State responsible is informed of this fact by the transferring Member State […]*** *before the expiry of the time limits set out in paragraph 1, first subparagraph, […] the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage* ***but in any case within ~~three/five years~~ 18 months of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3), if the person concerned becomes available to the authorities again or no longer refuses to comply with the transfer decision. Where the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer. This subparagraphh shall not apply where […]*** *another Member State has carried out the procedures in accordance with this Regulation and transferred the person* ***concerned*** *to the responsible Member State* ***or where the responsibility has transferred to another Member State pursuant to Article 27*** *after the person* ***concerned*** *absconded.*

> **Comment:** EL prefers the current Dublin III provision (i.e the 18 months extension of the Dublin transfer due to absconding). It is beyond doubt that the vast majority of Dublin transfers based on take backs are against the wishes of the applicants, therefore the main reason for non-complying with the decision is that the applicants abscond. We would like to underline the necessity for clear, but short-term transfer deadlines, otherwise the rapid access to the asylum prodecure and the quick examination of the asylum request will not be ensured. The extension of absconding more than 18 months will result in stagnating Dublin cases.

Article 57

3. Where relocation is to be applied, the benefitting Member State ***, or, upon request of the benefitting Member State, the Asylum Agency,*** *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* ***such as those based on family, social or cultural considerations,*** *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. […]* ***The person concerned shall not have the right to request to be relocated to a specific Member State pursuant to this Article.***

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 ***the*** *its national security or public order* ***of the Member States.*** ~~***The Member State of relocation may choose to verify this information during a personal interview with the person concerned. The personal interview shall take place within the time limits provided for in paragraph 7.***~~

9α. The benefitting and the contributing Member States shall continue and conclude the process of relocation ~~***or return sponsorship***~~ ***even after the timeframe for the implementation*** ~~***or the validity of implementing acts***~~ ***has expired.***

Comment: EL retains its reservations on the possibility of personal interview with the person concerned, conducted by the MS of relocation. From the greek experience, these interviews extremely delay the process and do not contribute in the alleviation of the burden in front-line MS.

Article 58

Comment: EL needs clarifications in pg 1 and 2, since transfers are controlled.

Article 71

Comment: EL would like the discussion on the reduction of the time required for beneficiaries of international protection to access long-term residence status to take place in the context of the negotiation of the proposal for the Long Term Residence Directive.

HUNGARY

Article 2

With regard to the definition of family members (g), Hungary would like to keep the wording of the currently applicable Dublin III regulation, and not to include families which formed during the migratory route. Hungary does not support the inclusion of siblings in the definition.

Articles 3, 4 and 5

We maintain our position that these articles should be removed from the operational part of the text to the recitals. In addition, we would like to highlight the need to align the text of Paragraph (-1) of Article 5 with the text of the Treaties (Article 80 TFEU) and to stress in Paragraph (1) that our main aim should be to contribute to reducing root causes of forced migration, to provide help to those in need of international protection as close to their countries of origin as possible, to avoid the misuses of our asylum system and to stop (not only reduce) illegal migration to the territory of the Member States.

Regarding Paragraph (1) (d) of Article 3 we would like to point out that illegal migration is to be prevented and not managed. Furthermore, we would like to better understand what is the difference between the unauthorized movements mentioned in point (ha) and the content of point (d).

Article 6

Regarding this article we are currently analyzing the position expressed by the Council Legal Service during the AWP meeting of 10 February. However, in line with the concerns expressed by the CLS and taking into account the questionable added value, as well as the unforeseen consequences of the whole Article 6 (which would have a much broader scope than the strategic policy cycle for European integrated border management set out in the EBCG Regulation), Hungary is ready to support the deletion of Article 6 in its entirety.

As a general comment our position is that if an EU level strategy related to asylum and migration was to be adopted in the future, it has to be adopted by the Council. We would also welcome more information on the possible effect of Article 6 to the evaluations carried out in the framework of the Schengen Evaluation and Monitoring Mechanism (SEMM). We would particularly like to know if the content and the practical implementation of the national strategies mentioned in Paragraph 3 of Article 6 would be subject, and to which extent, to evaluations carried out under the SEMM? We do not agree with creating an obligation to take into account the reports and analyses of international organizations when drawing up any future EU strategy, these reports should only be taken into account where appropriate and after verification of their content. Finally, if we intend to develop guidelines to assist the Member States in developing their national strategies, we insist to mention that these guidelines will be developed by the Commission together with the Member States with the assistance of the relevant Union agencies (where appropriate).

Article 19

Regarding the responsibility criterion, we still consider the current rules to be preserved (2 years for a residence permit, 6 months for a visa).

Article 20

We maintain our previous position in relation to this Article. We do not support the criterion, having regard to a lacking EU database and the impact of diasporas.

Article 21

With regard to the responsibility criterion in the Article, Hungary can consider the responsibility time period of 3 years, if it is ensured that only persons genuinely eligible for protection are allowed to enter EU territory. Thus, before discussing this responsibility criterion, progress is necessary to be made in the aforementioned aspect.

We request the deletion of Paragraph (2), as Hungary does not support the separate treatment of persons disembarked after SAR operations from those who illegally crossed the borders of the Member states by land, sea or air (as it is already mentioned in Paragraph (1)).

We can only support Paragraph (3), if relocation will be of voluntary nature in all circumstances in the final text.

Article 22

With regard to Paragraph (1), we would like to keep the provisions set out in Paragraph (1) of Article 4 of the Dublin III Regulation.

Article 27

We think that the practical implementation of Paragraph (1a) could lead to massive misuses of the asylum system. We suggest to find a different wording which will be more precise what evidence should be considered as "other evidence" and we would also like to increase the three-month deadline.

Article 31

Hungary still does not support the concept of back notifications.

Article 35

With regard to absconding in Paragraph (2), we do not support extending the currently applicable timeframe to 3 or 5 years, as this will not incite the applicant to cooperate with the authorities. Thus, this measure will not support the aim to swiftly carry out the asylum procedure.

Articles 57-58

While maintaining our general position on relocation, and by taking into account the important aim to ensure the internal security of the Member States Hungary would like to suggest prolonging the (one-week) deadline mentioned in Paragraph (7) of Article 57. Furthermore, our position regarding Paragraph (2) of Article 58 is that the Member State responsible should be determined prior to relocation.

IRELAND

General Comment:

We have seen a large increase in secondary movements across the EU in recent times. It is therefore important to have a functioning Dublin system with a level of 'stable' responsibility that will help to prevent secondary movement.

Article 19:

Our preference is for the previous text of the AMMR whereby responsibility remains in the Member State that issued a residence document or visa which has expired less than 3 years before the application is registered.

Article 20:

This will be difficult to establish in practice and wonder if there is any added value in including it.

Article 21:

We support keeping the period of three years here.

Article 22:

We can agree to the compromise text in this Article.

Article 25:

The reference to 'social' may be too broad here and would appreciate further information on what is envisioned here.

Article 27:

We don't support the cessation of responsibility where it can be established that the person has left the territory of the Member States for at least three months. Ireland does not have access to the Entry/Exit system and while we appreciate that this can be established on the basis of 'other evidence' as well as data recorded and stored in the Entry/Exit system this will be difficult to establish without access to that system.

Article 29(3):

We can support the inclusion of the text in para 3. Dublin requests in general are supposed to offer full disclosure and transparency so including this text and having to provide more detail will help to achieve this.

Article 31:

We strongly support the system of take back notifications and welcome the increase in the time limits in paragraph 3 and 4 however, it will still be challenging to meet this deadline.

Article 35(2):

We prefer the previous text which provided for an Indefinite period for transfer in the case of absconding. We don't think that an absconder should ever be rewarded for circumventing immigration controls.

Article 2(g)(v) :

We don't support the inclusion of siblings in the definition of family members, this is a difficult relationship to establish and would increase the administrative burden on Member States. We welcome the clarification that the reference to "the Member States" in the second sub-paragraph of paragraph (iv) refers to the Member States involved and not all Member State, however, this could be made clearer in the text.

Article 71:

We can support the deletion of this Article and moving discussions on this to Proposal for a recast Long Term Residence Directive in the IMEX working party.

Article 57:

The possibility to carry out a personal interview before relocation takes place, is important for Ireland. While we recognise the need to have a swift procedure the time limit of one week in para 7, which can be extended to two weeks in exceptional circumstances is too short.

Article 58:

Para 2 In our view the Member State responsible should be determined prior to relocation to prevent a situation where applicants are being transferred multiple times between Member States.

Article 3:

We welcome the revised text of the chapeau which is in line with the discussion paper from the SI presidency.

Article 4:

We support moving this Article to a recital as per the footnote.

ITALY

The Italian delegation wishes to submit the following contribution to the discussion of the AMMR provisions, as dealt with in the AWP meeting on February 10.

The missing provisions have already been included in the previous Italian contribution submitted on January 27.

Article 3

Comprehensive approach to asylum and migration management

With the overall aim of effectively managing asylum as well as managing migration flows to and between the territories of the Member States, actions taken by the Union and the Member States in the field of asylum and migration management shall be guided by a comprehensive approach addressing the entirety of relevant migratory routes and consisting of the following components, within the framework of the applicable Union law ~~**The Union and the Member States shall take actions in the field of asylum and migration management on the basis of a comprehensive approach. That comprehensive approach shall address the entirety of the migratory routes that affect asylum and migration management and shall consist of the following components**~~:

(a) mutually-beneficial partnerships and close cooperation with relevant third countries, including on legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States addressing the root causes of irregular migration, supporting partners hosting large numbers of migrants and refugees in need of protection and building their capacities in **search and rescue,** border, asylum and migration management, preventing and managing irregular migration, combatting migrant smuggling and trafficking, and enhancing cooperation on readmission;

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

(c) full implementation of the common visa policy;

(d) effective management and prevention of irregular migration, **migrant smuggling and trafficking, while ensuring the right to apply for international protection**;

(e) effective management of the Union's external borders, based on the European integrated border management;

(f) full respect of the obligations laid down in international and European law concerning persons rescued at sea and enhancing cooperation between Member States to this aim;

(g) **effective** access to procedures for granting and withdrawing international protection **[…]** and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection**, in accordance with Regulation (EU) XXX/XXX [*Qualification Regulation*]**;

(h) determination of the Member State responsible for the examination of an application for international protection, based on **the principle of solidarity and fair sharing of […]** responsibility **[…]**;

(ha) effective management and prevention of unauthorised movements;

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

(j) effective management of the return of illegally staying third-country nationals;

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

(l) measures aimed at reducing and tackling the enabling factors of irregular migration to and illegal stay in the Union, including illegal employment;

(m) full deployment and use of the operational tools set up at Union level, notably the European Border and Coast Guard Agency, the Asylum Agency, EU-LISA and Europol, as well as large-scale Union Information Technology systems;

(n) full implementation of the European framework for preparedness and management of crisis.

Justification:

points a) and b): Combat should concern criminal network more than illegal migrants.

Point f: Mentioning cooperation btween MS is in line with the goals of SAR contact group and of the Commission Action Plan for the central Mediterrenean (point 14)".

Article 4

[Principle of integrated policy-making

1. The Union and Member States shall ensure coherence of asylum and migration management policies, including both the internal and external components of those policies.

2. The Union and Member States acting within their respective competencies shall be responsible for the implementation of the asylum and migration management policies.

3. Member States, requesting support to Union Agencies where nececessary, shall ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the comprehensive approach referred to in Article 3, including the necessary human and financial resources and infrastructure.]

Jusification: in para. 3 emphasis is put on the request by the Member States for support of the Agencies.

Article 6

Strategic g~~G~~overnance and monitoring of the migratory situation

[1. The Commission shall adopt a European Asylum and Migration Management Strategy setting out the strategic approach to managing asylum and migration at Union level and on the implementation of asylum and migration management policies in accordance with the principles set out in this Part. The Commission shall transmit the Strategy to the European Parliament and the Council.

2. The European Asylum and Migration Management Strategy shall take into account the following:

(a) the national strategies of the Member States referred to paragraph 3 of this Article;

(b) information gathered by the Commission under the Commission Recommendation No **2020/1366** ~~**XXX**~~ on an EU Migration Preparedness and Crisis Management Mechanism hereinafter referred to as Migration Preparedness and Crisis Blueprint; the reports issued under that framework as well as the activities of the Migration Preparedness and Crisis Management Network**; the regular Integrated Situational Awareness and Analysis (ISAA) reports**;

(c) relevant reports and analyses from Union agencies**, the European Migration Network and International Organisations**;

(d) information gathered in the course of evaluations undertaken in the Schengen evaluation and monitoring mechanism in accordance with Article 4 of Regulation (EU) No 1053/2013.**]**

3. Member States shall have national strategies **setting out the strategic approach to managing asylum and migration at national level and […]** to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part **[taking into account the guidelines developed pursuant to paragraph 7]**. Those strategies shall include contingency planning at national level, taking into account the contingency planning pursuant to Regulation (EU) **2021/2303** ~~XXX/XXX~~ [European Union Asylum Agency], Regulation (EU) 2019/1896 (European Border and Coast Guard Agency) and Directive XXX/XXX/EU [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies shall include information on how the Member State is implementing the principles set out in this Part […]. They shall take into account other relevant strategies and existing support measures notably under Regulation (EU) **2021/1147** ~~**XXX/XXX [Asylum and Migration Fund]**~~ and Regulation (EU) **2021/2303** ~~XXX/XXX~~ [European Union Asylum Agency] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896. The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation], should also be taken into account in these strategies.

4. **The Commission shall adopt a Migration Management Report each year setting out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States, pursuant to Article 7a.**

In the case of **recurring disembarkations following** migratory flows generated by search and rescue operations, the Commission shall consult the concerned Member States**. It may set a time limit for such consultations, which shall not be less than one week. The Commission shall explain in the Report how the opinions received have been taken into account.** ~~**The Report , which shall have a possibility to comment on the draft Report within one week, and the Report** shall set out the total number of projected disembarkations **for the following year** in the short term and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation through relocation and **measures as referred to in Article 45(1), point (d) through measures in the field of capacity building, operational support and measures in the field of the external dimension**.~~

~~The Report shall also indicate whether particular Member States are faced with capacity challenges due to the presence **of vulnerable persons of third-country nationals who are vulnerable according to the definition in Article 2 (ab),** and include the results of the reporting on monitoring listed in paragraph 3 including the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and propose improvements where appropriate.~~

5. The Member States shall establish the national strategies by [**18 months** […] after the entry into force of this Regulation] at the latest. **[**The first European Asylum and Migration Management Strategy shall be adopted by [**24 […]** months after the entry into force of this Regulation] at the latest and**]** the first Migration Management Report **referred to in Article 7a** shall be issued by [one year after the entry into force of this Regulation] at the latest.

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

[7. The Commission, with the assistance of the relevant Union agencies, may develop guidelines to assist the Member States in the development of the national strategies.]

Justification: in para. 4 the previous text should be partially reinstated since the Migration Management Report of the Commission should be considered part and parcel of the Strategy and thus mentioned in this provision, while the overall regulation is contained in Article 7a.

Article 57

Procedure before relocation

1. The procedure set out in this Article shall apply to~~:~~

~~(a) persons referred to in Article~~ **44a(3) point (a)** ~~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 **the […]** Member State**s**. If there are reasonable grounds to consider the person a danger to national security or public order **before or during the procedure set out in this Article, including where a security risk has been determined in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation],** the benefitting Member State shall not apply **or immediately terminate** the procedure set out in this Article**. The benefitting Member State shall exclude the person concerned from any future relocation or transfer to any Member State**~~, and shall, where applicable, exclude the person from the list referred to in Article 49(2)~~. **Where the person concerned is an applicant for international protection, the benefitting Member State shall be the Member State responsible in accordance with Article 8(4).**

2a. Where relocation is to be applied, the benefitting Member Sate shall inform the persons referred to in ~~**point (a) and (b) of**~~ **paragraph 1 of the procedure set out in this Article and Article 58, as well as, where applicable, of the obligations set out in Article 9(3), (4) and (5) and the consequences of non-compliance set out in Article 10.**

3. Where relocation is to be applied, the benefitting Member State**, or, upon request of the benefitting Member State, the Asylum Agency,** 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 **such as those based on family or cultural considerations,** 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.~~ […] **The identified person to be relocated ~~concerned~~ shall not be requested their consent nor 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 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

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

~~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. In the cases referred to in paragraphs 2 and 3 to 4, the benefitting Member State shall transmit to the Member State of relocation as quickly as possible all relevant information and documents on the person referred to 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 the national security or public order of the Member States. […].

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 **the** ~~its~~ national security or public order **of the Member States. The Member State of relocation may choose to verify this information during a personal interview with the person concerned. The personal interview shall take place within the time limits provided for in paragraph 7.**

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

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to **the […]** national security or public order **of the Member States**, the Member State of relocation shall inform **the benefitting Member State,** within one week **of receipt of the relevant information from that Member State […]** of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place ~~**and the person shall, where applicable, be excluded from the list referred to in Article 49(2).**~~

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 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 **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 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).

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

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 **procedure […]** of relocation.

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

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

***Justification**:*

In para. 3 the category of beneficiaries should be deleted since they are supposed to be integrated and out of the asylum reception system.

Furthermore, it is suggested to spell out the exclusion of consent for those applicants who are eligible for relocation.

In para. 9a the proposal made by EL is supported, since continuation of the process is not enough.

In para. 10, the reference to Article 33(1)(a) (and consequently the exclusion of point (b)) is aimed at not extending all the appeal grounds foreseen for Dublin cases to relocation cases. This amendment is consistent with para. 3 of this Article, third subparagraph, and with Article 58, para. 2, providing for the application of criteria after relocation.

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 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) **second** ~~third~~ subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

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

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

4. Where 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, Directive 2008/115/EC shall apply.

~~6.~~ **Where the ~~a~~ third-country national makes an application for international protection for the first time following the ~~a~~ transfer to the ~~sponsoring~~ Member State of relocation, the Member State in which the application was registered 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 second ~~first~~ subparagraph, the ~~sponsoring~~ Member State of relocation shall be responsible for examining the application for international protection.

The Member State which has conducted the process of determining the Member State responsible shall indicate the Member State responsible in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

~~7. Where a third-country national for whom the Member State had previously been determined as responsible has been transferred to the sponsoring Member State, responsibility for examining any further representations or a subsequent application of the person concerned in accordance with Articles 42 and 43 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] shall be transferred to the sponsoring Member State.~~

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

Comment: no changes suggested to this Article.

****

As announced by the Italian delegation, when submitting the previous contribution in January, the following provisions concerning the Dublin offsets should be reworded as follows in order to better balance the concept of voluntary solidarity:

Article 44h

Dublin offsets

1. **Where the relocation pledges to the Solidarity Pool have reached from 60 to 75% of the Recommendation referred to in Article 7c(2)(a), a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.**

Upon request of the benefitting Member State, the contributing Member States shall make a decision pursuant to Article 58a.

2. **Where, notwithstanding the meeting referred to in Article 44g, the relocation pledges to the Solidarity Pool are below 60% of the Recommendation or below the number referred to in Article 7c(2)(a), the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a).**

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

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

Member States that have contributed to the annual Solidarity Pool through relocation shall not be obliged to take responsibility pursuant to the first subparagraph above their fair share calculated according to the distribution key set out in Article 44k.

3. **This Article shall only apply where:**

the applicant is not an unaccompanied minor;

the benefitting Member State was determined as responsible for examining the application for international protection on the basis of the criteria set out in Articles 19-23;

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

the applicant has not absconded from the contributing Member State;

~~**where applicable, the benefitting Member State has fulfilled its obligations pursuant to Regulation (EU) XXX/XXX [the Eurodac Regulation];**~~

~~**the person is not a beneficiary of international protection;**~~

~~**the person is not a resettled or admitted person.**~~

4. **The contributing Member State may apply this Article to third-country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Article xx in the Asylum Procedure Regulation (XXX) shall apply.**

Justification:

Para. 1: a range between 60 and 75% should be foreseen in order to provide greater flexibility in the management of cases close to 75%. For the sake of completeness, the proposed additional paragraph intends to specify that the Article 58a procedure also concerns contributing MS.

Paragraph 2: the proposed amendment aims to add an alternative condition for the mandatory triggering of Dublin offsets, i.e. a gap in contributions lower than 60% of the recommendation or an amount of contributions lower than the set threshold.

Paragraph 3: In point e) the reference to Eurodac is redundant since all Member States are requested to comply with the registration obligations and any non-compliance should be dealt with elsewhere. The two categories deleted in f) and g) should not be included in the scope of AMMR, therefore they should not be mentioned among the exceptions.

Article 58a

Procedure for Dublin Offsets under Article 44h(1)

1. **Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1), it shall transmit its request to the contributing Member State and include the number of applicants for international protection to be taken responsibility for instead of relocations up to the number identified by the Recommendation of the Commission pursuant to Article 7c(2)(a).**

2. **The contributing Member State shall make a decision on the request within [15 days] as from the receipt of the request.The contributing Member State may decide to accept to take responsibility for examining a lower number of applicants for international protection than requested by the benefitting Member State but no less than 75% of its request.**

3. **The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applicants for international protection for which it takes responsibility for, shall indicate its responsibility pursuant to Article XX of Regulation (EU) XXX/XXX [Eurodac Regulation] and shall inform the benefitting Member State, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003**

***Justification**:*

The procedure for voluntary offsets should however include some elements of certainty. Therefore, a reference to a minimum level (e.g. 75%) of acceptance of requests made by beneficiary Member States is suggested in paragraph 3.

Finally, the request should be made in terms of applicants' number, rather than applications', since these might as well be multiple.

LATVIA

Latvian national experts continue evaluating all proposals and additions made by the Presidency in the text of the AMMR, therefore **we maintain a general scrutiny reservation on the new text**.

Consequently, **please find below our preliminary view** on Articles discussed previously:

Article 6

Latvia would like to receive a more detailed information regarding (1) the proposed role, competence and tasks of the Commission and the Council in setting out a comprehensive and binding EU strategy to manage asylum and migration, as well as (2) its consistence with the existing division of competences between the EU and Member States in the field of asylum and migration (this concern is valid also regarding new Article 5(-1) para).

In addition, Latvia has general concerns about the need for the MS to prepare their national strategies. In our view, the development of new comprehensive policy documents is justified only if they have a practical added value and do not impose disproportionate administrative burden.

It is also important to provide for an adequate flexibility for the MS to align this process with the drafting of their national policy planning documents and other obligations to exchange information within different EU report systems and mechanisms (e.g. contingency plans provided for in the FRONTEX regulation and the revised Reception Conditions Directive proposal), thus avoiding any duplication.

Article 57

Latvia maintains its concerns that the term "*meaningful links such as those based on family or cultural considerations*", if not defined clearly enough, could be interpreted individually by the MS, thus posing a risk of possible differences in application of the provision and therefore jeopardising unified application.

We are also still reserved towards the proposed deadline (one week) for carrying out the security check. Latvia believes it is too short for a comprehensive and qualitative analysis.

Article 58

We maintain our previous objections as regards automatically granting protection status after relocation of a beneficiary for international protection, which de facto implies mutual recognition of respective decisions. Latvian national legislation (in accordance with the current EU legal framework in the field of asylum) provides for an obligation to assess each asylum application individually, taking a decision to grant or refuse status on the basis of this assessment. The possibility to automatically grant a status, based on the status granted by another MS, is not provided thereto.

LITHUANIA

General comments

We maintain a general scrutiny reservation.

Article 2

Point (g)

As far as point (g) is concerned, we support it. We support the extension of the definition of family members to include family ties of the applicant, which already existed before the applicant arrived on the territory of the Member States. We think that this could help fight secondary movements which are created by third country nationals moving in an unauthorized way in search of their family members.

Point (v)

With regard to point (v), from Lithuania's perspective, we do not expect many cases where determination of responsibility for siblings' applications would take place and where this criterion would be applied. Therefore we can demonstrate flexibility and constructiveness regarding this issue.

Points (n) and (o) can be supported by us.

Article 19

In paragraph 4 we are in favour of 18 months.

Article 20

From Lithuania's perspective we do not expect a lot of cases where this criterion would be applied, therefore we can be flexible and constructive regarding this issue.

Article 21

In paragraph 1 we support 18 months term.

Article 22

We support very much adding the second paragraph. It is a fair approach.

Article 27

We support the changes made to the article.

Article 29

We support the changes made to the article.

Article 30

We support the changes made to the article.

Article 35

We are in favour of 3 years term in paragraph 2.

Article 57

We welcome the possibility to conduct a personal security interview in paragraph 6. Lithuania is among those Member States that conduct missions on the ground before relocation to ensure that the individuals do not pose any threats to security and public order and that the individual is likely to be in need of international protection. Only applicants in need of international protection should be relocated. However, one week is not enough to make arrangements for the mission and to conduct the personal interview – at least 2 weeks would be needed.

Article 58

As far as paragraph 2 is concerned we would like to reiterate our position that the responsible MS should be established before relocation. Multiple transfers should be avoided.

LUXEMBOURG

Articles 19:

We remain in favour of a uniform application (3 years) for the responsibility criterion related to resident documents and visas.

Article 20:

We maintain some concerns about the added value (to the criteria in Article 19) and the practical implementation of this responsibility criterion. We are wondering how the administration will get that information in the absence of cooperation by the applicant. We fail to see concrete technical solutions to overcome our concerns.

Article 22:

We are not in favour of shifting responsibility related to the visa waiver application, at least not within three years.

Article 31:

One of our four essential points in order to ensure a good balance between solidarity and responsibility is the Dublin system: it is crucial to ensure its proper functioning and effectiveness. Maintaining the take-back notifications is essential in this regard. **Strong point.**

Article 35(2):

We can support the new insertion and prefer the five-year period, but could accept the three-year period in a spirit of compromise.

Article 57:

We do welcome the possibility for Member States to conduct interviews. Based on our experiences in previous relocation activities, we believe that the one week (extendable to two weeks) timeline for accepting a relocation offer is too short and would welcome a timeline of two weeks, in all cases and remain flexible regarding a further extension of that deadline

Article 2 (g)(v) :

We see the extension to siblings as an important element in the balance of responsibility and solidarity and could accept it provided that the overall balance is given.

MALTA

Article 2

- Point (g), letter (v):

While taking due note of the changes made to Article 18 pertaining to family procedure, for the time being MT maintains its reservation on the addition of 'siblings'. In particular, we are still concerned by the fact that in the case of siblings, proving the family link is generally more difficult when compared to spouses and children, especially due to the lack of, or difficulty in, providing documentation confirming this.

Regarding the issue of married minors, following the explanation by the Presidency, we would like the text to be amended in order to clearly reflect that for a minor to be considered as married, the marriage is to be considered as lawful by the two Member States concerned.

- Points (n) and (o):

MT maintains its **substantive reservation on these two points** due to the serious concerns we have vis-à-vis the new criterion for establishing the Member State responsible based on the holding of diplomas or other qualifications.

Article 4(3)

MT maintains its position that this paragraph should be amended as follows:

> *Member States, with the support of Union Agencies, **where requested,** shall ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the comprehensive approach referred to in Article 3, including the necessary human and financial resources and infrastructure.*

Justification: MT, while being in favour of having robust Union Agencies that can provide adequate support to Member States, is of the opinion that support should only be provided upon the request of a Member State.

Article 19

- Paragraph 4

MT does not support the extension of responsibility in cases of expired residence documents and visas, which according to the current Proposal is extended to 3 years and 18 months respectively from the date of expiry. MT is of the opinion that this should be maintained as in the current acquis (i.e. 2 years for an expired residence permit and 6 months for an expired visa).

Article 20

- General comment

MT maintains its reservation on the whole Article since we do not support the inclusion of diplomas/qualifications as a mandatory criterion to establish responsibility.

- Paragraph 1

What happens in case an applicant was previously issued with a diploma or qualification from an education establishment which at the time was located in Member State X, but at the time of application is no longer located in that Member State, but has either closed completely or is now located in another Member State?

Without prejudice to our general comment, while we welcome the introduction of a timeframe within when this criterion would apply, MT is of the opinion that a 5 year period is too long and should therefore be considerably shortened.

Article 21

- Paragraph 1

MT maintains its substantive reservation on this paragraph in view of the extension of the timeframe for responsibility, which in our view should remain 1 year as per current acquis.

Article 27

- Paragraph 1

MT does not support the idea of a take back notification and is of the opinion that we should maintain the current system of a take back request.

Article 30

- Paragraph 8

While MT has no objections to the new additions made by the Presidency, we would like to recall our substantive reservation on the new time-limits for replying to a take charge request, which in our view are too short.

Article 31

- General comment

MT maintains its reservation on the whole Article since we are of the opinion that we should maintain the current system of a take back request.

Furthermore, MT is of the opinion that in case a take back request is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

- Paragraph 1

Without prejudice to our general comment, MT maintains its reservation on the time limit that is being proposed to send a take back notification, which we deem as being too short, and should be extended to two months. Furthermore, MT is opposed to the added proviso in this paragraph since in our view failure to send a take back notification within the stipulated time limit should lead to a change in responsibility.

MT also maintains its reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 35

- Paragraph 2

MT has a scrutiny reservation on this paragraph as we are currently assessing the practical implications of the provision in the second sub-paragraph.

Without prejudice to the above, MT is of the opinion that we should clarify that when referring to the person becoming available to the authorities again in the second sub-paragraph, we are referring to the competent authorities of the transferring Member State.

We also would like a clarification if the proviso in the second sub-paragraph applies in case there are multiple instances of abscondment or refusal to cooperate with the transfer by the same applicant, or if this is a one-off provision.

Article 57

- Paragraph 1

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis the inclusion of beneficiaries of international protection amongst the profiles of persons who can be relocated.

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis the inclusion of beneficiaries of international protection amongst the profiles of persons who can be relocated, and in view of our reservation with regards to Article 20.

Furthermore, MT is of the opinion that the text should clearly indicate that the consent of applicants for international protection is not required to proceed with relocation.

- Paragraph 10

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis the inclusion of beneficiaries of international protection amongst the profiles of persons who can be relocated.

Article 58

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis subsequent applications in the APR.

- `Paragraph 4

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis the inclusion of beneficiaries of international protection amongst the profiles of persons who can be relocated.

Without prejudice to this, 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.

THE NETHERLANDS

First of all the Netherlands refers to its oral input at the Asylum Working Party Council working group of 10 February 2023. To avoid any possible misunderstanding, NL would like to clarify that its during the AWP stated explicit preference for a 3 years term referred to the period mentioned in Article 21, first paragraph, and not, as some Member States seemed to have understood, to the period referred to in Article 19 (although we also support the 3 years term in that article). Furthermore NL would like to make some drafting suggestions with a view to make the article 35 clearer, in particular in the situation where an asylum seeker files subsequent applications and/or where an asylum seekers adsconds and lodges an application for international protection in several Member States. Our suggestions also include some tightening of article 34 (detention) with the aim of discouraging asylum shopping and hopping. These amendments and the additional amendments in several articles seems to us necessary to achieve a workable regulation. Our text suggestions are in bold, underlined and highlighted in yellow.

Finally,with regard to Article 6: Following the discussion on this article during the AWP of 10 February, the Netherlands will need to critically assess this article (scrutiny reservation).

Article 33

Remedies

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

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

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

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

The applicant or another person as referred to in Article 26(1), point (b), (c) and (d) shall not have a right to a remedy against other criteria set out in this Regulation or against any other act of the Member States implementing this Regulation, other than the transfer decision.

2. (…)

Explanation of the drafting suggestions Article 33

Determining responsibility should primarily a competence of the Member States and between the Member States. Obviously, an asylum seeker must be able to seek an effective remedy if the transfer to the Member State designated as responsible would violate Article 3 of the ECHR/Article 4 of the Charter or whether Articles 15 to 18 and Article 24 would have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a). But it should be made clear that only for that purposes a remedy can be lodged. This in order to avoid that also other articles or acts could be subject to a remedy which would undermine the effectiveness of the system (including rapid access to an asylum procedure) and would open the possibility of theoretical judicial proceedings which are not feasible in practice (for example, in the situation where an asylum seeker is present in Member State X and lodges an appeal against Member State Y).

Article 35

Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) from the transferring […] Member State to the Member State responsible shall be carried out in accordance with the national law of the transferring […] Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of

(a) the acceptance of the take charge request or of the confirmation of the take back notification by **the ~~another~~** Member State **responsible**,

(b) the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3),

(c) the final decision on an appeal or review of a transfer decision in second instance, in case the national law provides for such an appeal or review, where there is a suspensive effect in accordance with national law, regardless of whether the appeal is submitted by the applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) or the competent authorities of the transferring Member State,

(d) the final decision on an application, appeal or review for another type of residence document which, in accordance with national law, prevents that a transfer can be carried out, or

(e) the decision on an subsequent application for international protection in the same Member State which is registered after a transfer decision has been notified.

That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

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

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

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

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the transferring […] Member State.

Notwithstanding the first subparagraph, where the person concerned absconds or refuses to comply with the transfer decision and the Member State responsible is informed of this fact by the transferring Member State […] before the expiry of the time limits set out in paragraph 1, first subparagraph, […] the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage but in any case within three/five years of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3), if the person concerned becomes available to the authorities again or no longer refuses to comply with the transfer decision. Where the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer. This subparagraphh shall not apply where […] another Member State has carried out the procedures in accordance with this Regulation and transferred the person concerned to the responsible Member State or where the responsibility has transferred to another Member State pursuant to Article 27 after the person concerned absconded.

2a. The responsibility shall not be transferred to the transferring Member State when the tranfer cannot take place due to an absconding from that Member State and a new application for international protection is registered in another Member or when a new take back notification is made by another Member State, in case no new application has been registered in that Member State.

3. (…)

Explanation of the drafting suggestions

The EU Court of Justice ruling in Case C-323/21) concerning the so called "chain rule" has, in our view, further complicated the current Dublin system. The case concerns an asylum seeker who has lodged applications for international protection in several Member States. The outcome of that judgement, in brief, is that Member State X can become the responsible Member State due to the expiry of the transfer period, despite the fact that there was a de facto impossibility for that Member State to carry out the transfer as the asylum seeker was (demonstrably) outside its territory. Our text proposals aim to make it clear that under the AMMR in such a situation, that Member State cannot become the responsible one. This will also remove an incentive for asylum shopping and hopping. (Note: If our text suggestions are adopted, the last sentence of paragraph 2 may become probably redundant and could be deleted.)

Furthermore, our text proposals make it possible to suspend the transfer period if the asylum seeker makes the transfer not possible yet by filing all kinds of applications in the transferring Member State. Furtermore, our text proposals aim to regulate the situation where, after a transfer agreement, an asylum seeker lodge an subsequent application for international protection in the transferring Member State. Finaly our drafting suggestions aims to allow Member States that have a system with a second/higher appeal to retain this system. For those Member States, including the Netherlands, such a system is important, with a view to unity of national jurisprudence.

Article 34

Detention

1. ~~**Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.**~~ **A person must not be detained solely because he or she has made a request for protection.**

2. (…)

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

Where an applicant or another person referred to in Article 26(1), point (b), (c) or (d) is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application, or two weeks after receiving the Eurodac hit when no new application has been registered in the notifying Member State. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed ~~**one**~~ **two** week**s** from the date on which the person was placed in detention. The determining Member State […] shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take

charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the transferring […] Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within ~~**five**~~ **six** […] weeks of:

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

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

(c) the date on which the responsibility to take charge of the return procedure takes effect in accordance with Article 55(2).

(d) in case the person concerned submits an application after a transfer decision was notified, the date when the decision on that application is taken, where no appeal or review has been lodged against such decision, or from the moment when the appeal or review no longer has a suspensive effect in accordance with Article 33(3).

(…)

Explanation of the drafting suggestions

Paragraph 1: We would like to reiterate our earlier comments made on paragraph. As a person falls under this regulation precisely because he has moved from one MS to another, and given the definition of absconding in in this proposal, the fact that this person falls under the scope of this regulation would in fact often be a strong reason to detain him/her under this provision. The sentence "Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation" is paradoxical to this. We therefore would like to propose to delete this sentence and/or replace is by the wording **"a person must not be detained solely because he or she has made a request for protection".**

Paragraph 3: we would like to stress uniformity in these time limits, and would therefore propose to have a 2-week time limit where a person is detained at a later stage than the registration of the application (instead of the current 1 week).

Regarding the text: “Where a person is detained pursuant to this Article, the transfer of that person from the transferring requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within five weeks of”: The Netherlands welcomes the change made to five weeks (instead of four weeks), however we would suggest to take an extra week here, and speak of six weeks.

Furthermore, we propose to add two categories under this paragraph.

Article 16

Family members who are beneficiaries of international protection

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection**~~, provided that the persons concerned expressed their desire in writing.~~**

Article 17

Family members who are applicants for international protection

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

Article 26

Obligations of the Member State responsible

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

Explanation of the drafting suggestions Articles 16, 17 and 26

In August last year, the Court ruled in case C-720/20. Briefly, parents had already been granted international protection in one Member State, but then travel on to another Member State to apply for international protection again. In that second Member State, their child is born. Parents' application could be rejected as inadmissible because they already have international protection. Parents then refused permission to transfer their child, under Dublin arrangements, to the Member State where they already enjoy international protection. To our opinion this could lead to an inconvenient situation, leading to families being torn apart or secondary movement rewards/triggers. NL therefore suggests that in Articles 16 and 17, the condition "provided that the persons concerned experessed their desire in writing" be removed and to add explicitly 'beneficiary of international protection' to article 26 paragragh 26.

Article 12

Personal interview

(…)

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

Explanation of the drafting suggestions

This adjustment is necessary to be flexible once the asylum pressure in a Member State increases.

Article 30

Replying to a take charge request

8. ~~**Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 […], or where applicable within the two-week period set out in paragraphs 2 and 7, by a reply which gives substantiated reasons based on all the circumstances of the case and relating to the relevant why the criteria set out in Chapter II do not apply, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.**~~ **A reply refusing the request shall state the substantiated reasons on which the refusal is based, relating to the relevant criteria set out in Chapter II.**

Where the requested Member State does not reply to the request within the one-month period set out in paragraph 1 […], or where applicable within the two-week period set out in paragraphs 2 and 7, or if the refusel doesn't state the substantiated reasons, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. The Commission shall, by means of implementing acts, draw up a standard form for the reasoning of the replies required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

Explanation of the drafting suggestions

The current text could lead to discussions in court or between States as to whether a claim refusal was sufficiently substantiated and/or there was or was not a fictitious agreement. Clearer distinction necessary to our opinion.

POLAND

1. With regard to the part related to Dublin procedures, we assess the extension of deadlines as unfavourable, however, in order to meet the expectations of other MS, we can declare some flexibility. For Poland, which has an external border, it would be desirable to remain with the original deadlines (Dublin III).
2. In addition, we would like to point out that the current proposal does **not explicitly specify the extension of the transfer period in the case of absconding** — as it is covered by the current Regulation 604/2013 (Dublin III).
3. In detail, PL maintains the comments made after the AWP meeting held on 18-19 January, i.e.:

(Articles 19-22, 25, 27, 29(3), 30(8), 31, Article 35(2), Article 2 (g)(v), (n) and (o) and Article 71)

Article 19(4) — objection.

We are in favour of maintaining the wording of Article 12(4) Dublin Regulation currently in force, subject to the following conditions: 1) the document allows entry to the MS and 2) its use until leaving the territory of the MS. In the spirit of compromise, we are willing to agree on deadlines accordingly: 3 years (residence permit) and 1 year (visa).

Article 20(1) — objection.

The added criterion appears to be unnecessary in view of the existence of Article 19; we don't see its added value. However, if such a criterion is finally accepted, we opt for a maximum period of 3 years.

Article 21(1) —

support for the 18-month period.

Article 21(2) —

objection to the specification of the SAR.

Article 21(3) —

the absence of objections only if the relocation is voluntary.

Article 22(1) —

support for deleted text; support for adding (2).

Article 27(1a) —

support for the introduction of the circumstances of cessation of liability in the form of a documented departure from the territory of the MS for more than 3 months.

Article 30(8) —

support for substantiating the reply and for the request reply form.

Article 31(1)

- Once again, we object to the replacement of the regular *take back procedure* with *take back notification*. *The take back procedure* allows for an in-depth examination of the case taking into account, inter alia, the family situation of the person and avoids the automation of the process consisting only of checking the record of events in systems that may be incorrectly, or untimely carried out;
- If the majority of MSs support the *take back notification* procedure: we believe that the proposed deadline for sending notifications (2 weeks) is too short — we propose 1 month from the receipt of the Eurodac hit;
- Objection to the addition of the last sentence in (1). Such a construction means that, in fact, there is no time limit for notification.

Article 31(3) —

we support the proposal for a period of 2 weeks from receipt of the notification to reply (confirmation of receipt of the notification/indication of the incorrectness of the reason for sending the notification).

Article 31(3) —

support, assuming that in art. 27 the proposed paragraph (1a) will stay.

Article 35(2) —

objection to the introduction of a provision on the extension of the transfer time in the case of absconding to 3/5 years. The excessive extension of the time for transfer to the responsible MS will significantly increase the time for access to the asylum procedure and the substantive examination of an application for international protection. We propose to maintain the current period of 18 months or possibly as a compromise - 2 years.

Articles 2 (n) and (o) —

unnecessary criteria — covered by the scope of the criteria: visas and residence cards.

Procedures before and after relocation (Articles 57 and 58)

1. PL's horizontal position on relocation remains unchanged — we object to the mandatory relocation mechanism/compulsory financial contributions as the only alternative.
2. PL agrees with those MS which indicate that it is necessary first to establish the responsible MS and then to carry out any relocation. Reversing this order can result in multiple transfers.
3. We agree with those MS which indicate that the MS of relocation should have more time to verify in depth that the person does not pose a threat to public security and order (Article **57(7))**.

Comprehensive Approach (Articles 3-6 and 7)

Article 3(a) —

PL opts for deleting the reference to SAR

Article 3(ha), Article 5(1)(e) —

PL opts for changing the nomenclature "unauthorised movements" to "irregular migration"

Article 3(m), Article 6(6) —

technical note – there should be: European Border and Coast Guard Agency (FRONTEX), European Union Agency for Asylum (EUAA), eu-LISA, European Union Agency for Law Enforcement Cooperation (EUROPOL), European External Action Service (EEAS).

Article 4 —

PL prefers the text proposed by PRES SI. (3) — support from the Agency should only be triggered at the request of the MS.

Article 5(1) —

the reference of the principle of solidarity and fair sharing of responsibility to CEAS only appears to be narrow. Article 80 TFEU on the principle of solidarity and fair sharing of responsibility between MSs refers to policies on border control, asylum and immigration. We believe that the content of the article should be moved to a recital.

Article 6(2)(a) and **Article 6(7)** —

if the national MSs' strategies referred to in 6(3) are to be included in the European Asylum and Migration Management Strategy, and if the EC (together with EU agencies) can propose to MSs guidelines for the development of their national strategies on migration and asylum management, are they required to submit national strategies to the EC?

Article 6(3) last sentence –

Council Regulation No 1053/2013 is no longer in force (validity until: 31.01.2023).

Article 7 —

First sentence: (...) Union instututions, bodies, offices and agencies (...) — for simplification: Union institutions and agencies.

ROMANIA

We reiterate that we maintain the **scrutiny reservation** on the Proposal, showing flexibility during the negotiations.

- **Article 19 (4)** – We propose that the 18-month visa deadline be reduced to 12 months.
- **Article 31** – We support the use of take-back requests to the detriment of take-back notifications, as well as the applicability of time limits both to the requested Member State and to the requesting Member State.
- **Article 35 –** We support the use of the 3-year period for making the transfer from the date of acceptance, both in the case of the request to take charge and in the case of the request to take back and we propose the amendment of the text in paragraph (2): *Notwithstanding the first subparagraph, where the person concerned absconds or refuses to comply with the transfer decision and the Member State responsible is informed of this fact by the transferring Member State […] before the expiry of the time limits set out in paragraph 1, first subparagraph, […] the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage* ***but in any case within three years of the first acceptance of the take charge or take back request****. Where the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer. This subparagraphh shall not apply where […] another Member State has carried out the procedures in accordance with this Regulation and transferred the person concerned to the responsible Member State or where the responsibility has transferred to another Member State pursuant to Article 27 after the person concerned absconded.*
- **Article 2 g (v)** – We support the previous form of text.
- **Article 57 point 1** – To begin with, we refer to the above-mentioned statements regarding the provisions of Article 44a – we continue to support that the relocation under the Solidarity Pool should only take into account applicants for international protection. We show flexibility in terms of relocation of beneficiaries of a form of international protection.
- **Article 57 point 7** – We point out that the 1 week/two weeks deadline, during which security checks are also carried out and an acceptance response must be submitted, is too limiting and should be extended.

SLOVAKIA

(*Part* II. – framework, *Dublin provisions, Art. 57-58)*

Art. 2(g) –

Same substantial reservation as we have raised during the negotiations on the Qualification Regulation and APR, where we are against the extension of the definition beyond the family that existed in the country of origin. We are of the opinion that the extension of this notion may lead to marriages of convenience with the aim to avoid expulsion from the EU. We do not consider notions such as *genuine family relations* or *dependent child* mentioned in QR to be sufficiently clearly defined (with clear conditions) in order to avoid abuse of the system. We have substantial reservation to the extension of the definition to siblings of the applicant, as well.

Art. 2(n) –

as we have reservation to the article 20 and the criterion of qualification and diplomas, where we would like to delete this criterion, we have reservation to these definitions, as well.

Art. 4 –

we would like to support the comment in FN 4. We are also of the opinion that the text would be better placed in a recital.

Art. 5(-1) –

scrutiny reservation. In principle we look at this paragraph in a same way as other Member States during the last AWP, we are also of the opinion that this paragraph would be better placed in to the preamble. Since we also perceive an attempt to incorporate the CZ PRES declaration here, the wording of that provision may be up for further discussion due to the reason the declaration uses different language than the regulation.

Art. 5(1)(e) –

we prefer previous wording ("*take all* ***reasonable and proportionate measures*** *to prevent and correct unauthorised movements between Member States*").

Art. 6 –

We would like to reiterate, that it is essential to ensure balance between added value of the relevant provisions and the administrative burden they could create.

Due to similar concerns as were presented by several Member States during the previous discussions to this Article and also by CLS related to the legal nature of the EU migration strategy and the fact that the role of the Council in adoption of the EU migration strategy is not sufficient, we agree with the opinion of CLS that deletion of the paragraphs 1 and 2 will be the best and the easiest way how these concerns can be addressed.

Art. 12(3) –

we are not in favour of the new condition that the personal interview shall take place **in any event, <u>before any take charge request is made</u>**.

The personal interview should take place as soon as possible, however not necessarily before the „*take charge request*" is sent. Such condition is unnecessary strict, in practice unpredictable objective circumstances may occur (e.g. the absence of an interpreter, pandemic or other situations) and render impossible to meet the time limit.

Art. 15(5) –

we don't agree that it is in the best interest of a minor to transfer him/her from one Member State to another in case of the absence of a family member or a relative. To prove that it is not in the best interest of the minor could be difficult in practice and at the same time sensitive for the minor being vulnerable as such.

Art. 16, 17, 18 –

reservation linked to our reservation to the extension of the definition of family members in Art. 2(g).

Art. 18(2) –

since we do not support the addition of the siblings to the definition of the family members, we also cannot support the amendments of the Article 18. Moreover, we consider the Article 18 par. 2 as whole to be confusing, it is unclear what situations it might cover and how it shall be applied in practice also because there are no precise rules to follow.

Art. 19(4) –

we would like to maintain the current time-limits, 2 years for residence documents and 6 months for visa.

Art. 20 – reservation.

We note the Commission's explanation that the relationship between the residence permit and the diploma criterion is not identical and that there may be cases where the situation in the country of origin has changed when the person with the diploma has returned (resident permit expired). However we still do not consider said criterion to be sufficiently reliable. A diploma is not the same as a residence permit or visa issued by a national authority. We perceive determination of responsibility based only on the submission of diploma or qualification risky. In current days of modern technology, it is easy to forge various documents; moreover documents proving education don't have minimum security standards as ID documents. Therefore, we suggest deleting the whole article.

Art. 21(1) –

we support the shortening of the time limit from 3 years to 18 months.

Art. 24(1) –

we have concerns regarding the addition of a new factor into the text. The word "psychological" trauma is vague and should be specified how said psychological trauma should be demonstrated (by a psychologist or other way). There is also not clear of what level of trauma it should be. The notion "psychological trauma" is a little bit tricky and we wonder how it should be assessed in practice.

Art. 26(1)(c) –

substantial reservation. We are against the inclusion of beneficiaries of international protection in the scope of this article, because the aim of the Part III of this Regulation is to set up the criteria and mechanisms for determining the Member State responsible and beneficiaries of international protection have different status than applicants for international protection or unsuccessful applicants for international protection. The Member State responsible has been already determined in these cases.

Art. 26(1)(d) –

reservation of a same nature as in Art. 26 paragraph 1(c).

Art. 28 –

as we have mentioned during the first reading of this proposal and was also mentioned by several delegations during previous AWP meetings, we are also of the opinion that the determination of the responsible Member State should be done before relocation takes place.

Art. 28(2) –

scrutiny reservation. Our position to this provision will depend on the final definition of the notion absconding.

Art. 31 –

substantial reservation. We are against the automatic process of submitting a take back notification, because it doesn't allow the notified Member State to assess in all cases whether its responsibility still lasts.

We also would like to reiterate our reservation regarding the inclusion of beneficiaries of international protection and resettled person into the scope of this Regulation. (*the aim of the Part III of this Regulation is to set up the criteria and mechanisms for determining the Member State responsible for examining an application for international protection*)

Art. 31(1) –

we consider the said time-limit of 2 weeks to be short for processing of relevant notification, especially in cases of a massive influx of applicants for international protection. We would therefore welcome a longer period (1 month).

We welcome that previous PRES has tried to make the text more clear by adding the last sentence, however if there will not be any consequences of failure to submit take back notification within two-weeks period than we see no added value of such time limit.

Art. 31(3) –

We consider the text to be ambiguous; it is not clear what does the term "receipt" means in practice. It is also not clear, from the formulation of this article, how to proceed in case where the notified Member State does not agree with its responsibility. In what form the notified Member State can express its dissenting opinion?

Art. 32(1) – reservation.

We are still of the opinion that even the proposed two week period is not sufficiently long due to the objective reasons.

In practice several factors could hamper compliance with the proposed time limit e.g. – right of an applicant or his/her legal representative or guardian to become familiar with the applicant's file before the decision is taken; statement of the legal representative to applicant's file before issuing the decision; the need to obtain more detailed country of origin information, which are often requested by the appeal courts.

Therefore we suggest to not setting up a concrete time limit for this period but we would like to prefer to use wording "***as soon as possible***" or to have longer period. **3 weeks** could be acceptable for us.

Art. 33(3) – scrutiny reservation

regarding the time limit of one month for taken a decision on suspension the implementation of the transfer decision.

Art. 34(3) subparagraph 2 – reservation.

We are of the opinion that two weeks period for submitting a take charge request or take back notification is too short. We also do not agree with the new addition of a time limit for submitting a take charge request or take back notification after receiving the Eurodac hit, when no new application has been registered. There is no need for shorting one month time limit which is in current Dublin. In practice in cases of detained people the purpose as well as the length of the detention is always strictly monitored also by national courts. Therefore **we would like to maintain current legislation**.

Art. 34(3) subparagraph 3 – reservation.

Even though the transfer period was extended from 4 to 5 weeks, we still consider the proposed time limit as not sufficiently long for practical preparation and realization of the transfer. Current time limit of 6 weeks is optimal and allows securing all formal, technical and organisational aspects of preparation of the transfer. Shortening of the time limit would constitute an additional negative aspect of the already difficult conditions for securing transfers. Therefore **we do not agree with the period of 5 weeks.**

In practice the realisation of the Dublin transfer is in many cases lengthy and complicated, mainly in case of larger number of transferred persons. In connection with migration crisis there has been an enormous increase of Dublin cases. Moreover, recently we have observed rise of detention in relation to Dublin procedure, which also increased pressure on the preparation of transfers and on the staff.

Art. 34(3) –

We also have a comment of technical nature regarding the translation into the Slovak language. In sub-paragraph 2, the sentence "***Such reply shall be given within one week of receipt of the take charge request***", the one week time limit was translated as two week time limit into the Slovak language.

Art. 35(2) –

it seems to us that further modification of the text complicates the provision and makes it unclear. In case we would like to introduce a maximum time-limit for transferring responsibility, we would prefer to maintain the current system with only the addition of maximum time-limit for absconding within the paragraph 1. The transfer of responsibility would thus apply within that time-limit and we would not have to complicate paragraph 2.

Art. 57(6) –

we also would like to support those Member State which would like to see here the possibility to carry out the asylum interview as well (not just a personal interview regarding the national security or public order).

Art. 57(7) –

we have to reiterate that we still 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.

Art. 58(2) –

a reservation due to our position to the process of determination of the Member State responsible where we are of the opinion that the responsibility should be determined before relocation takes place.

SLOVENIA

General comment:

Please note that this contribution complements the positions and comments already expressed during the previous meetings of the Asylum Working Party.

The Republic of Slovenia welcomes the proposal for a regulation, but the support will depend on the outcome of the negotiations, therefore, we reiterate the scrutiny reservation regarding the whole text of the proposal.

Nevertheless, we have some concerns and reservations, as well as suggestions for improvements, which we will highlight in the comments on individual Articles.

Article 2, point (g)

The Republic of Slovenia believes that it should be written more clearly that the family must have already existed in the country of origin before the applicant entered the territory of the EU for the first time. We also oppose expanding the definition of family members in a way that includes siblings, therefore we maintain our reservation.

Article 5

We reiterate our general position on solidarity, namely that solidarity should only be mandatory in cases of migration pressure and crises, and therefore we do not support the reference to the relevant chapters. We also believe that the part on responsibility should be strengthened, as it is not sufficiently balanced with solidarity, and in this regard, we suggest adding elements of responsibility for the correct implementation of the Eurodac Regulation, especially the mandatory registration of all categories of persons.

Article 6

As regards the competence of the European Commission, we are of the opinion that it is necessary to ensure a greater role of the Member States. At the last meeting of the Asylum Working Party, we closely listened to the assurances of the European Commission that the provisions in Article 6 does not represent a legal obligation for the Member States. Nevertheless, we believe that the mentioned provisions will cause an additional administrative burden that is disproportionate to the final effect.

Article 20 in connection with Article 2, points (n) and (o)

The Republic of Slovenia reiterates reservation regarding the criterion of diplomas and qualifications due to overlap in content with the criterion from Article 19 (issued residence documents/visas). As many other Member States, we also believe that the practical application of the article is also questionable, especially in relation to verification – who and how will verify the authenticity of diplomas or other qualifications.

Articles 57 and 58

As regards Articles 57 and 58, which clarifies procedures before and after relocation, the Republic of Slovenia reiterates its position – we still do not support the mandatory relocation of applicants, as this would represent a pull factor.

SPAIN

General remarks on the responsibility concept

Following the article-by-article examination on the above-mentioned proposal at the Asylum Working Party held on 10th February 2023, the Spanish delegation reiterates its constructive approach in the negotiation of this file and remains committed to facilitate the progress on the discussions of this legal instrument as an essential piece of the Pact on Migration and Asylum, in order to concluding the negotiations of all the files thereof before the end of the legislative term.

Nevertheless, Spain upholds a general scrutiny reservation, taking into account the interdependency of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR and the Crisis and Force Majeure Regulation.

Concerning the responsibility rules set up in the AMMR proposal, the overall approach might also follow the same principles stated for the solidarity rules, respecting an adequate balance between both principles and benefiting from a common approach. If the solidarity mechanism is evolving towards a mandatory, but flexible system, responsibility determination rules should also be adapted accordingly.

Specific remarks on the discussed articles.

Article 2. Definitions

- Article 2(g)v). Spain is in favour of including "siblings" in the concept of family members. This would contribute to provide more effective responsibility rules and a meaningful link between the person concerned and the Member State responsible, taking into account also the wider implications for the families concerned.
- Article 2(n) and (o). Our delegation supports the inclusion of these criteria and the definitions thereto. A temporal reference could complete the definition of education establishment *in fine*, as follows:

  "in accordance with national law or administrative practice on the basis of transparent criteria at the time of issue of the diploma or qualification".

Articles 3-6 and 7. Comprehensive approach

- **Article 5. Principle of solidarity and fair sharing of responsibility**

According to Article 80 TFEU, this principle should govern the Union policies in the area of asylum and migration, including its financial implications.

It should be acknowledged that this principle affects the EU as a whole and its Member States. It covers the whole migration and asylum area and therefore not only the rules under the CEAS, but also other relevant Union legal instruments on migration and asylum.

In this sense, the following wording on paragraph -1 is suggested:

"-1. The principle of solidarity and fair sharing of responsibility shall govern the Union policies in the area of asylum and migration, including its financial implications.

This principle is based on the premise that the EU as a whole and its Member States share the responsibility to manage migration and asylum, governed by the set of common rules included in the Common European Asylum System and other relevant Union legal instruments on migration and asylum.

- **Article 6. Strategic governance and monitoring of the migratory situation**

The European Asylum and Migration Management Strategy should take place, after consultation of the Member States. Article 6 should state that this Strategy should be ellaborated within the framework of the existing division of competences, with full respect of the applicable national, european and international law and Member States' obligations.

In this context, Spain upholds its strong reservations regarding the guidelines to develop the national strategies, which should remain under the exclusive competence of the Member States. Therefore, Spain suggests the deletion of paragraph 7 and, consequently, the reference to the guidelines under paragraph 3.

Furthermore, Spain considers that the content of Article 7 related to cooperation with third countries to facilitate return and readmission could be an element that the Strategy should take into account. Thus, Article 7 as a whole could become a new letter e) of paragraph 2 of Article 6.

Articles 19-22. Responsibility rules relating to residence documents and visas, diplomas and other education qualifications and entry in the territory of the Member States

- **Article 19. Issue of residence document and visas**. Spain would favour maintaining a similar deadline of three years for residence documents and visas.
- **Article 20. Diplomas or other qualifications.** Our country supports these criteria based on diplomas and other education qualifications. It is not overlapping those cases where the education period is in place and no diploma already exists but establishing criteria linked to social and personal links with the Member State where the applicants got their educational background.
- **Article 21. Entry criteria.** Spain does not support the extension of deadlines, advocating for maintaining the current Dublin rules (12 months). In addition, persons disembarked following search and rescue operations should have a lower deadline, given their specificities linked to the fulfilment of obligations under international law.
- **Article 22. Visa waived entry**. We can accept the suggested wording, including the new paragraph 2.

Article 25. Discretionary clauses.

Spain supports the widening of the scope of the discretionary clause with the inclusion of social and cultural considerations in terms of flexibility and efficiency under the overall fair share principle.

Article 26. Obligations of the Member State responsible

Spain stresses that beneficiaries of international protection should not be part of the responsibility determination rules, since their applications have already been processed by a given Member State and the procedures have been completed and thus the attached obligations have been complied with. Beneficiaries of international protection are to be considered a shared EU responsibility.

Therefore, letter c) of Article 26.1 should be deleted and the consequential amendments should take place throughout the text.

Article 27. Cessation of responsibilities.

In line with the contribution on Article 26, the second subparagraph of paragraph 1 should be deleted, since *"persons who have already been granted international protection"* should fall outside of the responsibility determination rules.

Spain supports the proposed paragraph 1a.

Article 29. ***Submitting a take charge request***

Regarding paragraph 3 of this provision, we support provisions aimed at adequately justifying the used criterion and that all the other hierarchically superior criteria are not met. In this vain, the applicant should be asked about the concurrence of those criteria, including through uniformed forms.

Therefore, we suggest the following wording:

> *"3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall include full and detailed reasons, based on all the circumstances of the case, relating to all the criteria set out in Chapter II. It shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant's statement, who shall be asked about the concurrence of the criteria set out in Chapter II. enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.*

Article 31. Submitting a take back request

As a general rule, the take back procedure must remain as a request procedure, not a mere notification procedure. Otherwise, the exception foreseen in article 31(3) in fine could become in the general rule if used as an answer to take back "notifications". We thus propose changing the word "notification" by request in the title itself and throughout the relevant provisions in the legal instrument.

Additionally, the failure to request within the time limit should tantamount to accepting the responsibility.

Hence, the following wording is proposed:

Article 31

Submitting a take back request

1. *In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back request within two weeks after receiving the Eurodac hit. Failure to make the take back request within the time limit shall tantamount to accepting the responsibility .*

Article 33. Remedies

Spain considers that the scope of the remedies should include the potential incorrect use of the hierarchical responsibility determination criteria and thus cover articles 14 to 24. Therefore, we suggest the following wording on Article 33.1.b):

b) whether Articles 14 to 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

Article 35. Detailed rules and time limits.

Regarding paragraph 2, the suspension of the deadlines to transfer persons should not be indefinite. Therefore, in case of absconding we recommend a maximum period of three years to implement the transfer.

Articles 57-58. Relocation procedure

- **Article 57. Procedure before relocation.**

  Spain upholds the scrutiny reservation on article 57.1 with regard to the scope of persons which may be relocated established in article 44a.3.a. In our view, beneficiaries of international protection should fall beyond the scope since they should not be part of the responsibility determination rules. The same reservation applies to Article 57.3 when mentioning "beneficiaries of international protection".

Furthermore, we suggest extending the scope of paragraph 3 to "social considerations", in line with the wording in Article 25.2.

"Where relocation is to be applied, the benefitting Member State, or, upon request of the benefitting Member State, the Asylum Agency, 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 such as those based on family, social or cultural considerations, between the person concerned and the Member State of relocation.

While we can accept the time limits set up in this article, further clarification is required as to the reference in paragraph 9a to "timeframe for the implementation".

- **Article 58. Procedure after relocation.**

Paragraph 6 may be simplified taking into account that responsibility after relocation should always remain in the Member State of relocation.