

# Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum (Text with EEA relevance)

2020/0277(COD)

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22-01-2024 at 11h13

## Draft Agreement

Formula

1

Proposal Title

2

Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
addressing situations of crisis and force majeure in the field of migration and asylum  
(Text with EEA relevance)

Formula

3

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Citation 1

4

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) and (e) and Article 79(2)(c) thereof,

Citation 2

5

Having regard to the proposal from the European Commission,

Citation 3

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|            |  |
|------------|--|
| 6          | After transmission of the draft legislative act to the national parliaments,   |
| Citation 4 |  |
| 7          | Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,<br><u>1. OJ C , , p. .</u> |
| Citation 5 |  |
| 8          | Having regard to the opinion of the Committee of the Regions <sup>1</sup> ,<br><u>1. OJ C , , p. .</u>               |
| Citation 6 |  |
| 9          | Acting in accordance with the ordinary legislative procedure,  |
| Formula    |  |
| 10         | Whereas:   |
| Chapter I  |  |
| 132a       | Chapter I<br>General provisions  |
| Article 1  |  |
| 132b       |  |

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### Article 1 Subject matter

#### Article 1, first paragraph

132c

1 This Regulation addresses exceptional situations of crisis, including instrumentalisation, and force majeure in the field of migration and asylum within the Union. It provides for enhanced solidarity and support measures building upon Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] while ensuring the fair sharing of responsibility, and for temporary specific rules derogating from those set out in Regulations (EU) XXX/XXX [*Asylum and Migration Management Regulation*] and (EU) XXX/XXX [*Asylum Procedure Regulation*] and in Directive XXX/XXX [*recast Return Directive*].

#### Article 1, second paragraph

132d

2 Temporary measures adopted pursuant to this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of the applicants and beneficiaries of international protection, and be consistent with the obligations of the Member States under the Charter of the Fundamental Rights of the European Union, international law and the Union asylum acquis. This Regulation shall not affect the fundamental principles and guarantees, established by the acts from which derogations are allowed pursuant to this Regulation.

#### Article 1, third paragraph

132e

3 The measures in this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited manner and only in exceptional circumstances.  
Member States may only apply the measures provided for in Chapter IV and benefit from the measures provided for in Chapter III upon request and to the extent provided for in the Decision referred to in Article 4(3) without prejudice to Article 10(5).

#### Article 1, fourth paragraph

132f

4 For the purposes of this Regulation, a situation of crisis means:

#### Article 1, fourth paragraph, point (a)

132g

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(a) an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including persons disembarked following search and rescue operations, being of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities, including the size of the territory of the Member State concerned that it renders the well-prepared Member State's asylum, reception, including child protection services, or return system non-functional - including as a result of a situation at local or regional level - such that there may be serious consequences for the functioning the Common European Asylum System

### Article 1, fourth paragraph, point (b)

(b) a situation of instrumentalisation where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

Member States may request the authorisation to apply the measures included in Chapter III and IV particularly where there is an unexpected significant increase in the caseload of applications for international protection at the external borders.

Member States may apply the derogations provided for in a Council Implementing Decision referred to in Article 4(3) of this Regulation in the situation referred to in this point only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.

### Article 1, fifth paragraph

5 For the purposes of this Regulation, force majeure refers to abnormal and unforeseeable circumstances outside the Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent the Member State from complying with obligations under Regulations (EU) XXX/XXX [Asylum and Migration Management Regulation] and (EU) XXX/XXX and [Asylum Procedure Regulation].

## Chapter II

### Chapter II Governance

## Article 2

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### Article 2 Request by the concerned Member State

|   |                              |  |   |
|---|------------------------------|--|---|
| G | 132k                         |  | G |
|   | Article 2(1)                 |  |   |
| G | 132l                         | 1. Where a Member State considers itself to be in a situation of crisis or force majeure, that Member State may, given those exceptional circumstances, submit a reasoned request to the Commission, in order to receive solidarity allowing for the proper management of the said situation and to allow for possible derogations from the relevant rules on the asylum and return procedure, while ensuring that the applicants' fundamental rights are respected.   | G |
|   | Article 2(2)                 |  |   |
| G | 132m                         | 2. The reasoned request referred to in the first paragraph of this Article shall include   | G |
|   | Article 2(2), point (a)      |  |   |
| G | 132n                         | (a) a description of   | G |
|   | Article 2(2), point (a)(i)   |  |   |
| G | 132o                         | (i) how as a result of a situation of crisis as referred to in Article 1(4)(a), the Member State's asylum and reception system, including its child-protection services, has become non-functional, as well as the measures taken so far to address the situation and a justification proving that its system, while being well-prepared and despite the measures already taken, is unable to address the situation; or  | G |
|   | Article 2(2), point (a)(ii)  |  |   |
| G | 132p                         | (ii) how the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided in spite of the exercise of all due care, and how such situation of force majeure prevents it from fulfilling their obligations set out in the Articles 27, 41b(1), [41c(2)] of the Regulation (EU) XXX/XXX [Asylum Procedures Regulation] and in the Articles 29, 30, 31 and [35] of the Regulation (EU) XXX/XXX [Asylum and Migration Management]; or | G |
|   | Article 2(2), point (a)(iii) |  |   |

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|   |                         |   |   |
|---|-------------------------|---|---|
| G | 132q                    | (iii) how the Member State is facing a situation of instrumentalisation as referred to in Article 1(4)(b) putting at risk its essential functions, including the maintenance of law and order or the safeguard of its national security.  | G |
|   | Article 2(2), point (b) |   |   |
| G | 132r                    | (b) where relevant, the type and level of solidarity measures provided for in Article 8(1) that it considers necessary.   | G |
|   | Article 2(2), point (c) |   |   |
| G | 132s                    | (c) where relevant, the derogations provided for in Articles 10 to 14 that it considers necessary; and  | G |
|   | Article 2(2), point (d) |   |   |
| G | 132t                    | (d) when requesting to apply the derogation provided for in Article 11(7), whether it intends to provide for the exclusion of specific categories of applicants referred to in paragraph 8(a) or paragraph 8(b) of that Article or the cessation of the border procedure for specific categories of applicants following an individual assessment provided for in paragraph 10 of that Article.   | G |
|   | Article 3               |   |   |
| G | 132u                    | <p>Article 3</p> <p>Commission Implementing Decision establishing a situation of crisis or force majeure</p>  | G |
|   | Article 3(1)            |   |   |
| G | 132v                    | 1. Following the submission of the reasoned request referred to in Article 2, the Commission, in close cooperation with the requesting Member State and in consultation with relevant Union agencies and international organisations, in particular UNHCR and IOM, shall expeditiously assess the situation pursuant to this Article and, where the conditions set out in Article 1 are met, adopt an implementing decision referred to in paragraph 7. | G |
|   | Article 3(2)            |   |   |
| G | 132w                    |   | G |

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2. The Commission may also adopt a Recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 15.

Article 3(3)

132x 3. The Commission shall immediately notify the European Parliament, the Council and the Member States that it is undertaking the assessment referred to in paragraph 1.

Article 3(4)

132y 4. When assessing whether the Member State is facing a situation of instrumentalisation pursuant article 1(4)(b) of this Regulation, the Commission shall assess inter alia the following information:

Article 3(4), point (a)

132z (a) whether a third country or hostile non state actor is facilitating the movement of third-country nationals or stateless persons onto the European Union;

Article 3(4), point (b)

132aa (b) whether the information provided by the requesting Member State adequately reflects that the actions in point (a) have the aim of destabilising the Union or the Member State concerned;

Article 3(4), point (c)

132ab (c) whether there is an unexpected significant increase in the caseload of applications for international protection at the external borders or in the Member State concerned compared to the average number of applications;

Article 3(4), point (d)

132ac (d) whether the response to the implications of the situation of instrumentalisation on the migration and asylum system of the Member State concerned cannot be sufficiently addressed with the measures contained in the EU Migration Support Toolbox in accordance with Article 5(3) of Regulation

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XXX/XXX.

### Article 3(5)

132ad

5. The Commission shall determine whether the conditions set out in Article 1 are met, taking into account the reasoned request referred to in Article 2 and in the light of the information provided and the indicators on the concerned Member State referred to in Article 7a of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]. The Commission shall assess the information provided in the reasoned requests against the situation in the concerned Member State during the preceding two months and compared it to the overall situation in the Union.

### Article 3(6)

132ae

6. The Commission shall determine in particular:

### Article 3(6), point (a)

132af

(a) whether the requesting Member State's asylum, reception, including child-protection services, or migration system has become non-functional as a result of a situation of mass arrivals of third-country nationals or stateless persons, while being well-prepared, and despite the measures already taken, is unable to address the situation and whether there might be serious consequences for the functioning of the Common European Asylum System.

### Article 3(6), point (b)

132ag

(b) whether the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided in spite of the exercise of all due care, and how such situation of force majeure prevents it from fulfilling their obligations set out in the [Articles 27, 41b(1), [41c(2)]] of the Regulation (EU) XXX/XXX [Asylum Procedures Regulation] and in the [Articles 29, 30, 31 and [35]] of the Regulation (EU) XXX/XXX [Asylum and Migration Management];]

### Article 3(6), point (c)

132ah

(c) whether the Member State is facing a situation of instrumentalisation as referred to in Article 1(4)(b) to be addressed with the necessary and proportionate use of the measures contained in this Regulation.

### Article 3(7)



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| 132ai                                       | 7. When adopting the implementing decision referred to in paragraph 8 of this article, the Commission shall indicate why the response to the situation of instrumentalisation cannot be sufficiently addressed with the measures set out in EU Migration Support Toolbox in accordance with Article 5(3) of Regulation XXX/XXX.   |
| Article 3(8)                                |   |
| 132aj                                       | 8. Where the assessment referred to in paragraph 1 demonstrates the existence of the conditions set out in Article 1, taking into account the reasoned request referred to in Article 2 and in the light of the information provided and the indicators on the concerned Member State referred to in Article 7a of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] the Commission shall adopt, without delay and in any case no later than two weeks from the submission of the request referred to in Article 2, an implementing decision determining whether the requesting Member State is in a situation of crisis referred to in Article 1(4)(a) or Article 1(4)(b) or force majeure. The Commission shall transmit the implementing decision to the Council and the European Parliament. |
| Article 4                                   |   |
| 132ak                                       | <p style="text-align: center;">Article 4</p> <p style="text-align: center;">Commission proposal and Council Implementing Decision authorising derogations and establishing solidarity measures</p>  |
| Article 4(1)                                |   |
| 132al                                       | 1. Simultaneously with the adoption of the Commission implementing decision referred to in Article 3, the Commission shall, where appropriate, make a proposal for a Council implementing decision. The Commission shall immediately inform the European Parliament of its proposal for a Council implementing decision.  |
| Article 4(2)                                |   |
| 132am                                       | 2. The Commission proposal shall ensure that the principles of proportionality and necessity are respected and include:   |
| Article 4(2), first subparagraph, point (a) |   |
| 132an                                       | (a) where appropriate, the specific derogations referred to in Articles 10 to 14 that the concerned Member State should be authorised to apply;   |

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|       | Article 4(2), first subparagraph, point (b)   |  |
| 132ao | (b) where appropriate and where the concerned Member State is facing a situation of crisis, a draft Solidarity Response Plan, after consultation with the requesting Member State and that ensures the full discretion of contributing Member States in choosing between the types of solidarity measures, that includes                              |  |
|       | Article 4(2), first subparagraph, point (b)(i)  |  |
| 132ap | (i) where appropriate, the total amount of relocation contributions needed to address the situation of crisis;  |  |
|       | Article 4(2), first subparagraph, point (b)(ii)   |  |
| 132aq | (ii) where appropriate, the other relevant solidarity measures referred to in Articles 8(1)(b) and 8(1)(c) and their level needed to address the required for the specific situation of crisis;   |  |
|       | Article 4(2), first subparagraph, point (b)(iii)  |  |
| 132ar | (iii) where applicable, the total amount of solidarity measures to be taken from the available pledges in the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];  |  |
|       | Article 4(2), first subparagraph, point (b)(iv)   |  |
| 132as | (iv) when the available pledges in the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] do not cover the needs identified in points (i) and (ii), the Solidarity Response Plan shall also establish the additional pledges needed to cover such needs; and |  |
|       | Article 4(2), first subparagraph, point (b)(v)  |  |
| 132at | (v) the indicative contributions for each Member State to contribute with their fair share calculated in accordance with the distribution key set out in [Article 54/44k] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]; and  |  |

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|   | Article 4(2), first subparagraph, point (c) |   |
| G | 132au                                       | (c) where the concerned Member State is facing a situation of crisis referred to in Article 1(4)(b), the identification of the third-country nationals or stateless persons subject to that situation.  |
|   | Article 4(2), second subparagraph           |   |
| G | 132av                                       | Where setting up the solidarity needs of the concerned Member State, the Commission shall take into account whether the Member State is already a benefitting Member State pursuant to [Articles 44c and 44d of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].  |
|   | Article 4(2), third subparagraph            |   |
| G | 132aw                                       | Where the concerned Member State has considered, in the request referred to in Article 2, relocation as the primary or only solidarity measure to address the situation, the Commission shall take this request into account in its proposal, without prejudice to the possibility of the contributing Member States to choose between the types of solidarity measures.  |
|   | Article 4(3)                                |   |
| G | 132ax                                       | 3. Within two weeks of receiving the Commission proposal referred to in paragraph 1, the Council shall assess the proposal and adopt an implementing decision authorising the concerned Member State to apply the derogations provided for in Articles 10 to 14 and establishing a Solidarity Response Plan referred to in paragraph 2(b) with the solidarity measures that the concerned Member State can benefit from to address the situation. |
|   | Article 4(4)                                |   |
| G | 132ay                                       | 4. Where appropriate, when adopting the proposal for a Council Implementing Decision referred to in paragraph 1, the Commission may adopt a Recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 15.   |
|   | Article 4(5)                                |   |
| G | 132az                                       |   |

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5. The Council implementing decision shall ensure that the principles of proportionality and necessity are respected and shall state the grounds on which it is based and set the date from which the derogations laid down in Articles 10 to 14 may be applied, as well as the time period for their application, in accordance with Article 5. The Council implementing decision shall include:

Article 4(5), point (a)

132ba (a) where appropriate, identify the specific derogations referred to in Articles 10 to 14 that the concerned Member State is authorised to apply;

Article 4(5), point (b)

132bb (b) where appropriate, establish a Solidarity Response Plan that includes:

Article 4(5), point (b)(i)

132bc (i) the total amount of relocation contributions needed to address the situation of crisis in full consideration of the assessment of the Commission;

Article 4(5), point (b)(ii)

132bd (ii) the other relevant solidarity measures referred to in Articles 8(1)(b) and 8(1)(c) and their level needed to address the situation of crisis;

Article 4(5), point (b)(iii)

132be (iii) the total amount of solidarity measures contributions to be taken from the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];

Article 4(5), point (b)(iv)

132bf (iv) the additional pledges to cover the needs to address a situation of crisis, when the existing pledges in the solidarity pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] are not enough;

Article 4(5), point (b)(v)

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| 132bg                                       | (v) the specific contribution by each Member State pledged under the mandatory fair share established in accordance with the reference key set out in [Article 54/44k of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];   |
| Article 4(5), point (c), first subparagraph |  |
| 132bh                                       | (c) where the concerned Member State is facing a situation of crisis referred to in Article 1(4)(b), identify the third-country nationals or stateless persons subject to that situation.  |
| Article 4(5), second subparagraph           |  |
| 132bi                                       | The Council shall transmit immediately to the European Parliament and the Commission the final implementing decision.  |
| Article 5                                   |  |
| 132bj                                       | Article 5<br>Duration  |
| Article 5(1)                                |  |
| 132bk                                       | 1. Without prejudice to paragraph 3, the time period for the application of the derogations and solidarity measures set out in the Council Implementing Decision referred to in Article 4(3) shall be three months. Unless repealed under the terms of Article 6 (3), it may be extended once by a three month period upon confirmation by the Commission of the persistence of the situation of crisis or force majeure .   |
| Article 5(2)                                |  |
| 132bl                                       | 2. At the end of the period referred to in paragraph 1 and upon request of the concerned Member State, the Commission may submit a proposal for a new Council Implementing Decision to amend or prolong the specific derogations or the Solidarity Response Plan referred to in Article 4(5) for a period that shall not exceed three months and that, unless repealed under the terms of Article 6(3), may be extended once upon confirmation by the Commission of the persistence of the situation of crisis or force majeure. |
| Article 5(3)                                |  |

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|---|--------------|---|---|
| G | 132bm        | 3. The Member States facing a situation of crisis or force majeure, shall not apply Articles 10 to 14 longer than what is strictly necessary to address such situations, and in any case, no longer than the period set out in the Council Implementing decision referred to in Article 4(3).<br>The total duration of the application of the measures shall not exceed the duration of a situation of crisis or force majeure, which shall be a maximum of 12 months.  | G |
|   | Article 6    |   |   |
| G | 132bn        | Article 6<br>Monitoring   | G |
|   | Article 6(1) |   |   |
| G | 132bo        | 1. The Commission and Council shall constantly monitor whether a situation of crisis referred to in Article 1(4)(a) or Article 1(4)(b) or force majeure identified in a Commission Implementing Decision as referred to in Article 3(5) persists. It shall keep such situation under constant monitoring and review.  | G |
|   | Article 6(2) |   |   |
| G | 132bp        | 2. The Commission shall pay particular attention to the compliance with fundamental rights and humanitarian standards and the Commission may request the EUAA to initiate a specific monitoring exercise pursuant to Article 15(2) of the Regulation (EU) 2021/2303 of 15 December 2021 on the European Union Agency for Asylum.  | G |
|   | Article 6(3) |   |   |
| G | 132bq        | 3. Where the Commission considers that the circumstances having led to the establishment of the situation of crisis or force majeure have ceased to exist, it shall propose the repeal of the Council Implementing Decision referred to in Article 4(3). Where the Commission considers it appropriate on the basis of relevant information, it shall propose the adoption of a new Council Implementing Decision authorising the amendment or prolongation of the measures as established in accordance with Article 5(1). | G |
|   | Article 6(4) |   |   |
| G | 132br        | 4. The Commission shall report to the European Parliament and the Council, every three months after its entry into force, on the application of the Council   | G |

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Implementing Decision as referred to in Article 4(3), in particular on the effectiveness of the measures undertaken in resolving the situation of crisis or force majeure and shall conclude whether the situation persists and that the measures continue to be necessary and proportionate

### Article 7

132bs

Article 7  
Solidarity coordinator

### Article 7(1)

132bt

The EU Solidarity Coordinator, as established by [Article 7d] and [Article 44e] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] shall, in addition to the tasks listed under these Articles:

### Article 7(1), first subparagraph, point (a)

132bu

(a) support the relocation activities from the concerned Member State to the contributing Member State under this Regulation;

### Article 7(1), first subparagraph, point (b)

132bv

(b) promote a culture of preparedness, cooperation and resilience among Member States in the field of asylum and migration, including through the sharing of best practices. For this purpose, the EU Solidarity Coordinator shall be updated by the EU Migration Preparedness and Crisis Management Network in the framework of the relevant stages of the Migration Preparedness and Crisis Blueprint pursuant to the Commission Recommendation No. 2020/1366 of September 2020 on an EU Mechanism for Preparedness and Management of crisis related to migration in its original version.

### Article 7(1), second subparagraph

132bw

The EU Relocation Coordinator shall, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism. That bulletin shall be transmitted to the European Parliament and to the Council.

### Chapter III

132bx

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### Chapter III Solidarity measures applicable in a situation of crisis

#### Article 8

132by

#### Article 8 Solidarity and support measures in a situation of crisis

#### Article 8(1)

132bz

1. The Member State facing a situation of crisis may request the following types of contributions in the request referred to in Article 2:

#### Article 8(1), point (a)

132ca

(a) relocations, to be conducted following the procedures set out in [[Articles 57 and 58] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]],

#### Article 8(1), point (a)(i)

132cb

(i) of applicants for international protection

#### Article 8(1), point (a)(ii)

132cc

(ii) where bilaterally agreed by the contributing and benefitting Member State concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act establishing the Solidarity Pool;

#### Article 8(1), point (b)

132cd

(b) financial contributions aiming at projects that are relevant to address the situation of crisis in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States following the rules set out in [[Article 44(i)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]];



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### Article 8(1), point (c)

132ce

(c) alternative solidarity measures as referred to in [[Article 44a(2)(c)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], specifically needed to address the crisis situation and following the rules set out in [[Article 44j(2) and (3)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]]; such measures shall be counted as financial solidarity, and their actual value shall be established based on objective criteria.

### Article 8(2)

132cf

2. When implementing relocations referred to in paragraph 1(a), Member States shall give primary consideration to the relocation of vulnerable persons in accordance with [[Article 44e] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].

### Article 9

132cg

### Article 9 Responsibility offsets

### Article 9(1), first subparagraph

132ch

1. Where the additional relocation pledges set out in the Council Implementing Decision referred to in Article 4(3) and the pledges available in the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] are below the relocation needs as identified in the Council implementing decision:

### Article 9(1), first subparagraph, point (a)

132ci

(a) the contributing Member States shall take responsibility for applications for international protection for which the Member State facing a situation of crisis has been determined as responsible up to 100% of the relocation needs identified in the Solidarity Response Plan established in the Council implementing decision.

### Article 9(1), first subparagraph, point (b)

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| 132cj                                       | (b) Where applying (a) and where necessary, the contributing Member States shall take responsibility above their fair share by way of derogation from [Article 44h(5) third subparagraph of Regulation (EU) XXX/XXX [ <i>Asylum and Migration Management Regulation</i> ]].  |
| Article 9(1), first subparagraph, point (c) |  |
| 132ck                                       | (c) Where applying (a) and (b), [Article 44h(5), except for its third subparagraph, (6) and (7) of Regulation (EU) XXX/XXX [ <i>Asylum and Migration Management Regulation</i> ]] shall apply mutatis mutandis.  |
| Article 9(1), second subparagraph           |  |
| 132cl                                       | When Directive 2001/55/EC is activated in relation to the same situation as referred to in Article 1(4)(a) and Member States agree at the moment of activation not to apply Article 11 thereof, mandatory offsets pursuant to Article 9 shall not apply.<br><br>When the Council implementing decision authorises the Member State concerned to apply Article 13, mandatory offsets pursuant to Article 9 shall not apply.   |
| Article 9(2)                                |  |
| 132cm                                       | 2. Where the application of paragraph 1 is not sufficient to cover 100% of the relocation needs identified in the Council implementing decision referred to in Article 4(3), the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with [Article 44g] of Regulation (EU) XXX/XXX [ <i>Asylum and Migration Management Regulation</i> ] and following the procedure set out in [Article 44b] of Regulation (EU) XXX/XXX [ <i>Asylum and Migration Management Regulation</i> ]. |
| Article 9(3)                                |  |
| 132cn                                       | 3. A benefiting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefiting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a of Regulation (EU) XXX/XXX [ <i>Asylum and Migration Management Regulation</i> ]   |
| Article 9(4)                                |  |
| 132co                                       |  |

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4. Where a contributing Member State has become responsible for applications above its fair share in accordance with paragraph 1(b) or Article 13, it shall be entitled to:

Article 9(4), point (a)

(a) proportionally reduce from its fair share in relation to future solidarity contributions under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], with the corresponding amount of applications for which that Member State went above its fair share over a period of five years; or

Article 9(4), point (b)

(b) reduce from its fair share in relation to future solidarity contributions set out in a Council implementing decision adopted pursuant to Article 4(3) with the corresponding amount of applications for which that Member State went above its fair share. Such reduction can only be claimed within five years from the date in which the Council implementing decision that led the Member State to go beyond its fair share is no longer in force.

Article 9(5), first subparagraph

5. Where a Member State intends to avail itself of the possibility provided for in paragraph 3, it shall notify the Commission accordingly. The notification shall contain the number of applications for which the Member State took responsibility above its fair share and the reduction it intends to apply under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] or during the implementation of a given Council implementing decision adopted pursuant to Article 4(3).

Article 9(5), second subparagraph

On completion of the examination, made by the Commission of the notification referred to in the preceding subparagraph, where the Commission has confirmed that the Member State concerned has contributed above its fair share, the Commission shall authorise, by means of an implementing act, the Member State concerned to reduce from its fair share the corresponding amount of applications for which that Member State went above its fair share under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] or when implementing a Council Implementing Decision adopted pursuant to Article 4(3) within the period referred to in paragraph 3 to support another Member State, or where responsibility offsets are required pursuant to paragraph 1(b).

Article 9(6)

## Draft Agreement

|                                   |   |
|-----------------------------------|---|
| 132ct                             | 6. Where the solidarity needs of other Member States that are benefitting Member States pursuant to [Articles 44c or 44d of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to Article 4(5)(b), the High-Level Migration Forum shall be reconvened as matter of urgency, in accordance with [Article 44g of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] and following the procedure set out in [Article 44b of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].   |
| Article 9(7), first subparagraph  |   |
| 132cu                             | 7. Where, as a result of the measures required to support the Member State facing a situation of crisis that are included in the Council Implementing Decision as referred to in Article 1(4)(a), another Member State considers itself as under migratory pressure or facing a significant migratory situation within the meaning of [Article 2 of Regulation (EU) XXX/XXX [Asylum Migration Management Regulation]] or facing a situation of crisis, the Member State concerned may request solidarity measures or full or partial reductions of its solidarity contributions in accordance with Regulation (EU) XXX/XXX [Asylum Migration Management Regulation], or solidarity and support measures in accordance with this Regulation. |
| Article 9(7), second subparagraph |   |
| 132cv                             | When assessing the Member State's request referred to in Article 2, the Commission shall also take into account if this Member State has taken responsibility for examining applications for international protection above its fair share, in addition to the information set out in [Articles 7a and 7b of Regulation XXX/XXX [Asylum and Migration Management Regulation]].  |
| Chapter IV                        |   |
| 132cw                             | Chapter IV<br>Derogations   |
| Article 10                        |   |
| 132cx                             | Article 10<br>Registration of applications for international protection in situations of crisis or force majeure  |
| Article 10(1)                     |   |

## Draft Agreement

|               |   |
|---------------|---|
| 132cy         | 1. In a situation of crisis or force majeure, by way of derogation from [Article 27 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the Member State facing that situation may register applications, made within the period during which this paragraph is applied, no later than within four weeks after they are made.   |
| Article 10(2) |   |
| 132cz         | 2. Where applying paragraph 1, the concerned Member State shall prioritise the registration of those applications of persons with special reception needs as defined in [Reception Conditions Directive recast] and of minors and their family members.   |
| Article 10(3) |   |
| 132da         | 3. Where applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well founded.   |
| Article 10(4) |   |
| 132db         | 4. In a situation of crisis referred to in Article 1(4)(a), the derogation referred to in paragraph 1, may only be applied during the time period set out in the initial Council implementing decision referred to in Article 4(3) and not during any subsequent extensions thereof pursuant to Article 5(1) or 5(2).   |
| Article 10(5) |   |
| 132dc         | 5. In accordance with Article 3 of Directive XXX/XXX/EU [Reception Conditions Directive] and Regulation (EU) XXX/XXX [Asylum Procedures Regulation], Member States shall ensure that applicants for international protection are able to access and exercise their rights effectively under those instruments as soon as they make an application, regardless of when the registration takes place.<br>The Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measure applied, the location of the registration points, including the border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure. |
| Article 10(6) |   |
| 132dd         | 6. When submitting the request referred to in Article 2(1), a Member State may notify the Commission that it considers it necessary to apply the derogation referred to in paragraph 1 before it is authorised to do so in the Council Implementing Decision referred to in Article 4(3), indicating the precise reasons for  |

## Draft Agreement

which immediate action is required. In such a case, the Member State concerned may apply the derogation referred to in paragraph 1 from the day following the request and for a period not exceeding 10 days, unless the Member State concerned is authorised to continue applying that derogation in the Council Implementing Decision referred to in Article 4(3).

### Article 10(7)

132de

7. The extension of the time limit for registration of applications for international protection is without prejudice to the obligations to comply with the deadlines set out in [Article 10(1)(b) of Regulation (EU) XXX/XXX [Eurodac Regulation]].

### Article 11

132df

Article 11  
Measures applicable to the asylum border procedure in a situation of crisis or force majeure

### Article 11(1)

132dg

1. In a situation of crisis referred to in Article 1(4)(a) or force majeure, Member States may, as regards applications made within the period during which this Article is applied, derogate from [Article 41c(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], by prolonging the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks. This period may not be used in addition to the period referred to in Article 41c(2), third sub-paragraph [of APR].

### Article 11(2)

132dh

2. In a situation of crisis referred to in Article 1(4)(b), Member States may, as regards applications made within the period during which this Article is applied, derogate from [Article 41c(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], by prolonging the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks.

### Article 11(3)

132di

3. In a situation of crisis referred to in Article 1(4)(a) or force majeure, by way of derogation from [Article 41b(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may not be required to examine in a border procedure applications made by applicants referred to in [Article 40(1)(i) of that Regulation], when the measures in the contingency plan of the concerned Member State referred to in [Article 28 of Directive (EU)

## Draft Agreement

XXX/XXX [Reception Conditions Directive]] are not sufficient to address that situation.

### Article 11(4)

132dj

4. In a situation of crisis referred to in Article 1(4)(a), by way of derogation from [Article 41b(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may reduce the threshold provided for in Article 40(1)(i) to 5%.

### Article 11(5)

132dk

5. In a situation of crisis referred to in Article 1(4)(a), by way of derogation from [Article 41a(b) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may, in a border procedure, take decisions on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, is a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 50 % or lower, in addition to the cases referred to in [Article 40(1)(i) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in quarterly updates of Eurostat data.

### Article 11(6)

132dl

6. Where applying paragraphs 4 or 5, the Member State concerned shall prioritise the examination of those applications for international protection lodged by persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedures Regulation], and minors and their family members.

Where applying paragraphs 4, 5 or 7, the concerned Member State may also prioritise the examination of applications for international protection which are likely to be well founded.

### Article 11(7)

132dm

7. In a situation of crisis referred to in Article 1(4)(b), by way of derogation from [Articles 41a(b) and 41e(2)(a) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]], Member States may in a border procedure take decisions on the merits of all applications made by any third-country national or stateless person who is subject to instrumentalisation and registered within the period during which this paragraph is applied.

### Article 11(8)

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|  |  |
|--|--|
| 132dn  | 8. Where applying paragraph 7, Member States shall:  |
| Article 11(8), first subparagraph, point (a)     |  |
| 132do  | (a) exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedures Regulation]; or                |
| Article 11(8), first subparagraph, point (b)     |  |
| 132dp  | (b) cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded:  |
| Article 11(8), first subparagraph, point (b)(i)  |  |
| 132dq  | (i) minors under the age of 12 and their family members; and   |
| Article 11(8), first subparagraph, point (b)(ii) |  |
| 132dr  | (ii) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation].   |
| Article 11(8), second subparagraph               |  |
| 132ds  | The application of this paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in [Article 41b] of Regulation (EU) XXX/XXX [Asylum Procedures Regulation].  |
| Article 11(9)                                    |  |
| 132dt  | 9. When the concerned Member State is authorised to apply the derogation referred to in paragraph 7, the Council implementing decision referred to in Article 4(3) shall specify whether paragraph 8(a) or paragraph 8(b) applies based on the indication made by the concerned Member State in Article 2(2)(d). |



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### Article 11(10)

132du

10. The Member State facing a situation of crisis or force majeure should not apply or should cease to apply the derogation from the asylum procedure provided for in paragraph 5 and paragraph 7 in cases where there are medical reasons for not applying the border procedure in line with [Article 41e(2)(d) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*]] or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive XXX/XXX [*Reception Conditions Directive*] or with special procedural needs in line with [Article 41e(2)(c) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*]].

### Article 11(11), first subparagraph

132dv

11. Where applying the derogations referred to in this Article, the basic principles of the right to asylum and the respect of the principle of non-refoulement as well as the guarantees foreseen in Chapters I and II of the Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected.

### Article 11(11), second subparagraph

132dw

Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible.

### Article 11(12)

132dx

12. The derogations in accordance with this Article do not affect the process of determining the Member State responsible within the framework of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]. In case the process of determining the Member State responsible is longer than the maximum duration of the asylum border procedure in a situation of crisis or force majeure, the process and the remainder of the asylum procedure shall be completed in the territory of the determining Member State in accordance with Article [...] of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*].

### Article 12

132dy

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### Article 12

Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of crisis referred to in Article 1(4)(a) or force majeure

#### Article 12(1)

132dz

1. In a situation of crisis referred to in Article 1(4)(a) or force majeure which renders it impossible for a Member State facing that situation to comply with the time limits set out in [Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] or to receive persons it is responsible for pursuant to that Regulation, Member States may derogate from the time limits set out in [Articles 29, 30, 31 and 35(1) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] simultaneously.

#### Article 12(2)

132ea

2. Where applying paragraph 1, by way of derogation from [Articles 29, 30, 31 and 35(1) of that Regulation], the Member State facing that situation shall:

#### Article 12(2), point (a)

132eb

(a) submit a take charge request as referred to in [Article 29] within four months of the date on which the application was registered;

#### Article 12(2), point (b)

132ec

(b) reply to a take charge request as referred to in [Article 30] within two months of receipt of the request;

#### Article 12(2), point (c)

132ed

(c) submit a take back notification as referred to in [Article 31] within one month of receiving the Eurodac hit or confirm the receipt within one month of such notification; and

#### Article 12(2), point (d)

132ee

(d) carry out a transfer as referred to in [Article 35(1)] within one year of the acceptance of the take charge request or of the confirmation of the take back

## Draft Agreement

notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation.

### Article 12(3)

132ef 3. Where the Member State referred to in paragraph 1 does not comply with the time limits set out in points (a), (b) or (d) of paragraph 2, the responsibility for examining the application for international protection pursuant to Regulation XXX/XXX [Asylum and Migration Management Regulation] shall lie with it or be transferred to it.

### Article 12(4)

132eg 4. Where paragraph 1 is applied, transfers pursuant to [Article 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] to the responsible Member State facing a situation of crisis referred to in Article 1(4)(a) or force majeure, shall not be carried out until that Member State is no longer facing that situation, unless, due to the individual circumstances of the applicant, the responsible Member State has agreed to receive the person concerned. Where, the transfer does not take place within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with [Article 33(3) of Regulation XXX/XXX [Asylum and Migration Management Regulation]], including due to the persistence of the situation of crisis referred to in Article 1(4)(a) or force majeure, by way of derogation from [Article 35(1) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], the Member State responsible, facing that situation, 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.

### Article 13

132eh 

Article 13

  
Derogations from the obligation to take back an applicant in a situation of extraordinary mass influx

### Article 13(1)

132ei 1. In a situation of crisis referred to in Article 1(4)(a), where the mass arrivals is of such extraordinary scale and intensity that it may create a serious risk of serious deficiencies in the treatment of applicants for international protection, thereby creating a serious risk that it renders the Common European Asylum System non-functional, by way of derogation from [Article 26(1)(b) and Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], a Member State facing that situation may be relieved of its obligation to take back an applicant or a third-country national or stateless person

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in relation to whom that Member State has been indicated as the Member State responsible under [Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]] where that responsibility was determined pursuant to [Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], or to take back an applicant pursuant to [Article 28(4) of that Regulation].  
This paragraph shall only apply where the application was registered in the Member State facing that situation within a period to be defined in the Council Implementing Decision referred to in Article 4(3) and not exceeding four months before the date of adoption of this Council Implementing Decision.

### Article 13(2)

132ej

2. Where paragraph 1 is applied, and the Member State facing that situation was determined as responsible pursuant to [Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], it shall be relieved of its obligation to take back the person concerned and responsibility shall be transferred to the Member State where the second application was registered.  
The Member State which becomes responsible pursuant to the first subparagraph of this paragraph shall indicate that it has become the Member State responsible pursuant to [Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation]].

### Article 13(3)

132ek

3. Where paragraph 1 is applied, and the Member State facing that situation is obliged to take back an applicant pursuant to [Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], by way of derogation from [paragraphs 2 and 4 of Article 28 of that Regulation], the Member State where the second application is registered shall apply the procedures set out in [Part III of that Regulation, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5) and Article 21(1) and (2)], and the obligation to take back an applicant pursuant to [Article 28(4)] shall be transferred to that Member State.  
Where no Member State responsible can be designated under the first subparagraph, the Member State where the second application was registered shall be responsible for examining the application for international protection.  
Applications for international protection for which a Member State has sent a take back notification pursuant to [Article 31 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] before the date of adoption of the Council Implementing Decision shall not be affected by this provision.  
The Member State that becomes responsible shall indicate its responsibility in Eurodac pursuant to [Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]].

### Article 14

132el

Article 14  
Measures applicable to the return border procedure in a situation of crisis

### Article 14(1)

## Draft Agreement

|                          |  |
|--------------------------|--|
| 132em                    | 1. In a situation of crisis, Member States may, in relation to illegally staying third-country nationals or stateless persons whose applications were rejected in the context of border procedure pursuant to Article 11(4), (5) and (7) of this Regulation, and who have no right to remain and are not allowed to remain, derogate from [Article 41g(2) and 41h(3) of Regulation (EU) XXX/XXX [ <i>Asylum Procedure Regulation</i> ]] as follows:  |
| Article 14(1), point (a) |  |
| 132en                    | (a) By way of derogation from [Article 41g(2) of Regulation (EU) XXX/XXX [ <i>Asylum Procedure Regulation</i> ]], the maximum period during which third-country nationals or stateless persons shall be kept at the locations referred to in that Article may be prolonged by an additional period of maximum six weeks;   |
| Article 14(1), point (b) |  |
| 132eo                    | (b) By way of derogation from [Article 41h(3) of Regulation (EU) XXX/XXX [ <i>Asylum Procedure Regulation</i> ]], the period of detention set in that Article shall not exceed the period referred to in point (a) and shall be included in the maximum periods of detention set in Article 15(5) and (6) of Directive XXX/XXX [ <i>Return Directive</i> ];  |
| Article 14(2)            |  |
| 132ep                    | 2. Paragraph 1 shall also apply to applicants, third-country nationals and stateless persons subject to the procedure referred to in [Article 41 of Regulation (EU) XXX/XXX [ <i>Asylum Procedure Regulation</i> ]] whose application has been rejected before the adoption of the Council Implementing Decision referred to in Article 4(3), and who have no right to remain and are not allowed to remain after the adoption of that Decision.   |
| Article 14(3)            |  |
| 132eq                    | 3. Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible. |
| Chapter V                |  |
| 132er                    |  |

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### Chapter V Expedited procedure

#### Article 15

132es

### Article 15 Expedited procedure

#### Article 15(1)

132et

1. Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from Regulation (EU) XXX/XXX [Qualification Regulation] could be well-founded the Commission may, after consultation with the High Level EU Solidarity Forum, adopt a recommendation for the application of an expedited procedure by providing all relevant information in view of facilitating, in particular, the application by the determining authorities of Articles 12(5)(a) and 33(5)(a) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*].

#### Article 15(2)

132eu

2. When following the Recommendation referred to in paragraph 1 the determining authority applies Articles 12(5)(a) to omit the personal interview and 33(5)(a) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] to prioritise the examination of the application because it is likely to be well-founded, it shall ensure, by way of derogation from Article 34(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], that the examination of the merits of the application is concluded no later than four weeks from the lodging of the application.

#### Article 15(3)

132ev

3. When considering whether to adopt a Recommendation referred to in paragraph one, the Commission may consult the relevant Union agencies, UNHCR and other relevant organisations.

#### Chapter VI

132ew

### Chapter VI Final provisions

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### Article 16

132ex

Article 16  
Specific provisions and guarantees

### Article 16, first subparagraph

132ey

In a situation of crisis, where applying the derogations referred to in Articles 10 to 14 the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures.

### Article 17

132ez

Article 17  
Crisis preparedness

### Article 17(1)

132fa

1. National strategies established by Member States in accordance with [Article 5a] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] shall also include

### Article 17(1), point (a)

132fb

(a) preventive measures to ensure a sufficient level of preparedness and to reduce the risk of situations of crisis and contingency planning, taking into account the contingency planning pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council, Regulation (EU) 2019/18961 and Directive (EU) XXX/XXX [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint.

### Article 17(1), point (b)

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|               |  |
|---------------|--|
| 132fc         | (b) an analysis of measures needed to respond to and resolve situations of crisis and force majeure in the Member State concerned, including measures to protect the rights of applicants for and beneficiaries of international protection and other forms of protection  |
| Article 17(2) |  |
| 132fd         | 2. When applying paragraph 1, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as regional and local authorities, as appropriate and in accordance with national law.  |
| Article 17(3) |  |
| 132fe         | 3. The Member State shall revise, where necessary, the national strategies established in accordance with [Article 5a] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] and in any case, no later than one year from the date on which the situation of crisis ended in accordance with Article 5 of this Regulation.   |
| Article 18    |  |
| 132ff         | Article 18<br>Cooperation and assessment   |
| Article 18(1) |  |
| 132fg         | 1. In order to ensure the smooth application of the measures included in the Council Implementing Decision referred to in Article 4(3), the Commission shall convene a first meeting of the Technical Level Solidarity Forum as referred to in [Article 7d(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] immediately following the adoption of that Council Implementing Decision. Following that first meeting, the Technical-Level Solidarity Forum shall meet as many times as necessary. |
| Article 18(2) |  |
| 132fh         | 2. The Member State in a situation of crisis may request the assistance of all authorities that are able to increase, at short notice, the human resources of its responsible authorities in accordance with Article 5(3) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] and the assistance of experts deployed by the EUAA in accordance with Article 5(4), point (b) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], and Article 16(2), point  |



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(b) and Article 21(3), point (d) of Regulation (EU) 2021/2303.

### Article 18(3)

132fi 3. The Commission, the Council, the European Parliament, the relevant EU agencies and the Member State facing a situation of crisis or force majeure shall closely cooperate and regularly inform each other on the implementation of the Council Implementing Decision referred to in Article 4(3).

### Article 18(4)

132fj 4. The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation. The Member State concerned shall also provide the Commission with the specific information needed for it to carry out the review under Article 6(3) and to make the proposal for repeal or prolongation of the Council Implementing Decision as well as any other information the Commission may request on that basis.

### Article 18(5)

132fk 5. The Member State facing a situation of crisis or force majeure shall maintain close cooperation with the United Nations High Commissioner for Refugees and any other organisations entrusted by the Member State with tasks in accordance with this Chapter and Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Directive XXX/XXX [Reception Conditions Directive recast].

### Article 18(6)

132fl 6. In exercising their powers and carrying out their responsibilities pursuant to this Article, the Commission and the Council shall ensure at all times that the principles of necessity and proportionality are respected.

### Article 19

132fm Article 19  
Financial support

### Article 19(1)

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|                                 |  |
|---------------------------------|--|
| 132fn                           | 1. Member States undertaking relocation as a solidarity measure shall be able to benefit from EU financial support under the conditions set out in Article 11(9) of Regulation 2021/1147, including for early integration measures implemented by regional and local authorities.  |
| Article 19(2)                   |  |
| 132fo                           | 2. Emergency funding support for a Member State in a situation of crisis may be allocated pursuant to Article 31(1), point (a) of Regulation (EU) 2021/1147, including for the construction, maintenance and renovation of reception facilities required for the application of this Regulation, in line with the standards provided for in Directive XXX/XXX/EU [Reception Conditions Directive]. |
| Article 19(3)                   |  |
| 132fp                           | 3. In Regulation (EU) 2021/1147, Chapter II, Section 4, Article 31 is amended as follows:<br>In paragraph 1, point (ba) is added:<br>(ba) a situation of crisis within the meaning of [Article 1(4)(a)] of Regulation (EU) XXX/XXX [Crisis Regulation].]   |
| Article 20                      |  |
| 132fq                           | Article 20<br>Entry into force   |
| Article 20, first subparagraph  |  |
| 132fr                           | This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.<br>It shall apply from [the first day of the twenty-fifth month following its entry into force].  |
| Article 20, second subparagraph |  |
| 132fs                           | This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.   |
| Formula                         |  |

## Draft Agreement

|   |         |                             |   |
|---|---------|-----------------------------|---|
| G | 133     | Done at Brussels,           | G |
|   | Formula |                             |   |
| G | 134     | For the European Parliament | G |
|   | Formula |                             |   |
| G | 135     | The President               | G |
|   | Formula |                             |   |
| G | 136     | For the Council             | G |
|   | Formula |                             |   |
| G | 137     | The President               | G |



Council of the European Union  
General Secretariat

Brussels, 22 January 2024

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

WK 864/2024 INIT

**LIMITE**

**ASILE**

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**CODEC**

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## WORKING DOCUMENT

|                |   |
|----------------|---|
| From:          | General Secretariat of the Council  |
| To:            | Delegations   |
| N° prev. doc.: | WK 17000/2023 INIT  |
| N° Cion doc.:  | ST 11207/20 (COM (2020) 613 final)  |
| Subject:       | Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum – Column table |

Delegations will find in Annex a Column table on the above proposal.

The provisions marked green have been agreed by the Rapporteur and the Presidency and reflect the overall agreement that was made between the Spanish Presidency and the Rapporteur on 20 December 2023.

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