



Council of the
European Union

Brussels, 10 October 2022
(OR. en)

13110/22

LIMITE

**MIGR 285
ASILE 87
JAI 1297
FRONT 358
RELEX 1315**

NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Asylum and migration
– *Progress report and way forward*

Since the onset of its semester, the Presidency has been focusing on all strains of EU asylum and migration policy, taking into account the complex nature of the respective legislative and non-legislative files.

The Presidency is paying specific attention to legal migration and visa packages that are well on track at the technical level. Efforts on Schengen governance have been stepped up through organising the Third Schengen Council, with a particular focus on management of external borders and relating matters to current developments in the migration situation. At the same time, the Presidency has been further coordinating efforts on the external dimension in view of the need to improve relations with the key countries of origin and transit and to improve the preparedness of the EU to face the current situation, including the risks of instrumentalisation. Amongst other things, the response to the situation arising from Russia's war of aggression remains high on the agenda, with the aim of supporting the implementation of the 10-point plan, notably through the temporary protection directive and the work of the IPCR and the Solidarity Platform.

As regards asylum reform, building on the gradual approach agreed under the French Presidency, the Czech Presidency has continued work on the reform, maintaining the balance between responsibility and solidarity. In this regard, and following a Roadmap agreed between the European Parliament and the outgoing, current and three incoming Presidencies, the Czech Presidency is also paying due attention to finding a compromise on the solidarity and responsibility components of the reform, while reflecting on the positions of all Member States. To this end, a Presidency proposal for a concept on solidarity - the ‘*Way forward on EU migration solidarity and crisis response mechanism*’ - was presented and discussed at the technical and strategic levels in the Council, building on the concept of mandatory flexible solidarity and responsibility. These technical and strategic debates confirmed the readiness of Member States to pursue this concept, while showing the need to elaborate further on guarantees for adequate solidarity and on the scope of flexible responsibility. The Presidency takes the view that the political level should acknowledge these efforts and task the technical and strategic level with further elaboration of the concept, with a view to translating it into the respective legislative proposals. The proposed way forward, revised on the basis of Member States’ comments (already presented at the SCIFA meeting on 4 October 2022), is in Annex II to this document. Annex I contains a state of play on asylum and migration.

1. *Do Ministers agree with the main principles anchored in the Presidency’s concept on solidarity (see Annex II), which builds on the mandatory flexible solidarity and responsibility, and do they agree on the proposed way forward?*
2. *Would Ministers like to highlight any other issue related to the state of play presented on asylum and migration (see Annex I)?*

Asylum***Roadmap with the European Parliament***

On 7 September 2022, the outgoing, current and three incoming Presidencies of the Council and the European Parliament signed a Roadmap in which they committed to make efforts towards the conclusion of all asylum files before the end of the legislative period of the current European Parliament. The Roadmap states that the negotiations between the co-legislators should start by the end of 2022. To this end, the Presidency is cooperating closely with the European Parliament in order to start, as soon as possible, inter-institutional negotiations on proposals on which a general approach was adopted in the Council under the French Presidency (Eurodac and Screening regulations) and agree on the way forward for the other proposals.

Way forward on EU migration solidarity and crisis response mechanism

Based on the outcomes of the informal SCIFA debate and on further discussions organised at a technical level, the Czech Presidency, in close cooperation with the incoming Presidencies, developed a proposal (see Annex II) for a ‘Way forward on EU migration solidarity and crisis response mechanism’, which was presented and discussed for the first time at a meeting of JHA Counsellors on 16 September. Based on the debate and written comments received, the Czech Presidency identified two major elements – (1) the issue of predictability and guarantees of adequate solidarity and (2) a need for more details regarding the scope of the concept of flexible responsibility. Both elements were discussed at a SCIFA meeting on 4 October 2022 and will require further work. Therefore, and building upon the constructive outcomes achieved so far at technical and strategic level, the Czech Presidency aims to further elaborate the concept at the technical level in order to prepare the ground for translation of the concept into the respective legal proposals (the Asylum and Migration Management Regulation and the Crisis and Force Majeure Regulation).

In parallel, the Czech Presidency is supporting the implementation of the voluntary solidarity mechanism agreed during the French Presidency, under the Solidarity Platform ‘Pact’, in close coordination with the European Commission.

Instrumentalisation Regulation

In July 2022, the Presidency continued the work on the proposed Regulation aiming to address the instrumentalisation situation from the migration, asylum and return perspective and support those Member States which might be facing this type of situation. An article-by-article examination of the proposal, conducted by the Asylum Working Party, built on the initial presentation and general discussion held under the French Presidency in March 2022. The Presidency has successfully concluded the examination of the entire operative part and presented a compromise proposal in September 2022. Following further discussion, a new version of the compromise text is to be presented in the first half of October 2022.

Asylum Procedure Regulation

Also within the framework of the Asylum Working Party, the Presidency has relaunched the work on the Asylum Procedure Regulation, aimed at achieving greater convergence in the EU asylum system, and following on the work carried out by the previous presidencies. Nevertheless, the Presidency opted this time to examine the entire text of the legislative proposal, and not only the provisions amended by the 2020 proposal. The first meeting was held on 21 September 2022 and the examination will continue in October and, most likely, in November 2022. The intention of this exercise is to ascertain which parts of the text can be considered as stable, which provisions need additional fine-tuning, and which provisions need to be discussed at a higher, political level in order to achieve an agreement.

Legal migration

The Presidency started work on the two legislative proposals of the Commission's Skills & Talent package, which aim to enhance the EU's attractiveness for global talent by facilitating both the admission of workers with different skills levels to the EU and the intra-EU mobility of third-country nationals already present in the EU. At the same time, on 5 – 6 October 2022 the EMN Czech Presidency Conference on '*EU and Labour Migration: Needs, Strategies and Challenges*' was organised in Prague. The main focus was on labour migration management, cooperation with non-EU countries, assistance and challenges connected with migrant workers already present in the territory of the host country and the attraction of talents, and the changes caused by new technologies and digitalisation. Also, special attention was paid to the impact on the EU labour market of refugees fleeing Ukraine.

Single Permit Directive

The first reading of the proposal for a recast Single Permit Directive was completed by the Working Party on Integration, Migration and Expulsion (IMEX (admission)) in July, focusing on the main proposed changes to the single application procedure for a combined work and residence permit. On the basis of the initial comments from Member States, the Presidency will table a first set of compromise proposals in November.

Long-term Residence Directive

The first reading of the proposal for a recast Long-term Residence Directive began in the IMEX (admission) Working Party in September and should be completed by the end of November 2022. Discussions have so far covered some of the main proposed changes to the conditions for acquiring EU long-term resident status and the rights of long-term residents.

External dimension of asylum and migration

Three meetings of the Working Party on External Aspects of Asylum and Migration (EMWP) have so far been organised under the CZ Presidency: on 15 July and 6 and 28 September 2022. Two additional meetings will take place on 7 November and in December 2022.

Following the whole-of-route approach, the Presidency looked at the situation along the Eastern land route, notably in relation to Ukraine and Moldova, and the Western Balkan route. Moreover, the Presidency has examined the implementation of some of the action plans - Tunisia, Nigeria, Niger and Morocco – and presented revised versions of the action plans on Pakistan and Egypt. The Presidency also looked at some intergovernmental processes (Prague Process, Budapest Process, Khartoum process and Rabat Process), especially in relation to support for the implementation of the action plans. In preparation for two ministerial meetings on migration process planned by the end of the year, EMWP discussed the Prague Process' draft Joint Declaration and Action Plan 2023-2027 to be adopted at the Ministerial Conference on 24/25 October 2022. On 28 September 2022, Coreper confirmed its agreement on both texts, which the Council will be invited to adopt on 13 October 2022. The discussion is also ongoing on the Rabat Process' draft text of the Ministerial Declaration and Action Plan to be adopted on 12-14 December 2022 at the Ministerial Conference. To support these endeavours, the Presidency organised the very first EMWP meeting, which was attended by the chosen CSDP missions' representatives (EUCAP Sahel Niger and EUBAM Libya - Mediterranean routes - and EUAM Ukraine - Eastern migration route), with a view to improving overall awareness and looking into possible synergies. Moreover, the EMWP delegates meeting on 29 September 2022 in COSI supported the discussions on the migration and security challenges along the Silk Route.

In the remaining meetings, the Presidency will focus on the remaining migration routes, financing of the external aspects of migration and an overall evaluation of the progress achieved through the action plans.

Two meetings of the JHA Counsellors (MOCADDEM (Operational Coordination Mechanism for the External Dimension of Migration Roundtable)) were held on 7 and 30 September 2022 under the CZ Presidency.

The first meeting focused on the revised action file on Bosnia and Herzegovina and on the revised implementation reports on Iraq, Niger, Tunisia and Nigeria. The latter showed good progress in implementation of planned actions vis-à-vis Nigeria and Niger. Due to the difficult political and economic situation in Iraq and Tunisia, there was less progress to report for these countries.

At the meeting on 30 September, a new action file on Egypt was discussed as well as a draft proposal for a toolbox on instrumentalisation aiming to improve overall preparedness and ensure responsiveness.

Return

The Presidency has continued in the general long-standing efforts to improve implementation of fair, humane and effective returns. The Presidency is paying due attention to the implementation of the EU strategy on voluntary return and reintegration as well as the development of Frontex mandate in the area of return, notably the Frontex Joint Reintegration Services (JRS). At the same time, the Czech Presidency has been paying particular attention to the implementation of Article 25a of the Visa Code with the aim to develop, in cooperation with the Commission, an indicative timeline for the annual process of evaluating the readmission cooperation of third countries with a view to using this instrument to its full potential. Moreover, the Presidency also supports the recent appointment of the EU Return Coordinator and the establishment of the High-Level Network on Return, which should contribute to creating a whole-of-Commission and whole-of-EU approach on returns. The Presidency also looks forward to advancing on the negotiations with the Parliament on the recast Return Directive, once its position will be established.

Visas

Suspension of the whole of the Visa Facilitation Agreement with Russia

On 6 September 2022, the Commission submitted a proposal for a Council Decision on the suspension of the whole of the Visa Facilitation Agreement with Russia. The agreement had previously been partially suspended. The Council adopted the decision on 9 September 2022 and it entered into force on 12 September 2022. The suspension of the agreement means that the general rules of the Visa Code will apply by default to Russian nationals applying for short-stay visas.

Following the abovementioned Council decision, the Commission issued Guidelines to Member States on the procedures and conditions for issuing visas to Russian applicants in order to ensure coherence, clarity and transparency during the visa procedure. The Guidelines were discussed in the Visa Working Party on 13 September.

Decision on the non-recognition of Russian travel documents

The issue of non-recognition of Russian travel documents issued in the occupied foreign regions was discussed in the Visa Working Party on 13 July 2022. On 6 September 2022, the Commission submitted a proposal for a Decision of the European Parliament and of the Council on the non-recognition of Russian travel documents issued in occupied foreign regions. According to the proposed decision, Russian travel documents issued to residents in Russian-occupied territories should not be recognised by Member States for the purposes of issuing of a visa and of crossing the external borders. The proposal was presented at a JHA Counsellors' meeting on 8 September 2022. In the light, *inter alia*, of legal issues concerning the proposal and questions raised by Member States, a Presidency compromise proposal was issued, which was presented to and discussed by the JHA Counsellors on 29 September 2022. On 12 October 2022 Coreper will be asked to agree on a mandate for interinstitutional negotiations.

Proposal for a Regulation on the digitalisation of the visa procedure

Building on the work carried out by the French Presidency, the Presidency started the article-by-article examination of the proposal, while organising in parallel a policy discussion on the mandatory nature of the EU visa applications platform. The Presidency is currently redrafting the main article of the proposal, comprising the amendments to the Visa Code, on the basis of delegations' comments, and it intends to submit the revised Presidency text to delegations, while continuing in parallel the first reading of the proposal. The overall objective is to make as much progress as possible towards the definition of a Coreper mandate on the proposal and then hand the file over to the Swedish Presidency. The European Parliament should adopt its report in LIBE in December.

Visa liberalisation for Kuwait and Qatar

On the basis of the negotiation mandate adopted by Coreper in June, the Presidency stands ready to start interinstitutional negotiations with the European Parliament as soon as the latter has adopted its position on this file.

Visa liberalisation for Kosovo

The Czech Presidency is ready to put this file back on the agenda of the Council and work towards the definition of a Coreper mandate.

Way forward on EU migration solidarity and crisis response mechanism*CZ PRES proposal*

The EU Pact on Migration and Asylum proposed by the European Commission includes the Asylum and Migration Management and the Crisis Situations and Force Majeure Regulations, which act as the two main components of the reform, together providing for a unified response in terms of solidarity and crisis. Since the reform was proposed, several major events have affected the EU and many lessons can be learnt from them to shape a common EU migration solidarity and crisis response mechanism.

The instrumentalisation of migrants at the EU's external borders, the arrival of large numbers of Ukrainian refugees, the growing uncertainty of the volume of mixed flows along various migratory routes and the large scale secondary movements of migrants across the EU call for a progress on the reform, including the solidarity mechanism that should take into account the articulated need for sustainability, predictability and simplicity as well as for flexibility, proportionality and fair-sharing of responsibility.

In view of the above, respecting the need for a balanced approach between the principles of responsibility and solidarity and building on the progress achieved under previous Council Presidencies, the Presidency invites the Council to consider the below proposal on how to amend the solidarity mechanism as proposed by the Commission in the Asylum and Migration Management Regulation (AMMR) and in the Crisis and Force Majeure Regulation, by amending the respective chapters in these draft regulations. The aim of the Presidency with this concept is to advance on the solidarity aspects of the reform, while acknowledging that AMMR covers both solidarity and responsibility. The discussion will continue also on the responsibility part of the proposed text, following the same balanced and flexible approach outlined for the solidarity mechanism.

The proposed mechanism¹ would allow for a legally binding, but tailor-made and needs-based approach (mandatory, but flexible solidarity mechanism), reflecting the ever-evolving migratory challenges the EU and its Member States are facing, including the structural phenomenon of disembarkation after search and rescue operations or secondary movements. Moreover, acknowledging and building upon past and current experiences, including the solidarity declaration supported, under the French Presidency, by the largest number of Member States in recent years, a balanced and flexible approach, as key principles, should be applied within the solidarity mechanism, as well as in the area of responsibility.

KEY ELEMENTS OF THE PROPOSED MECHANISM:

I. Annual Migration Management Cycle and the Solidarity Mechanism

a. Annual Migration Management Report of the Commission

The whole mechanism would be based on an *Annual Migration Management Report* (Report) that would assess the situation along all migratory routes and in all Member States, serving as an early warning and awareness tool for the Union in the area of migration and asylum, while acknowledging the possible rapid nature of developments in terms of migratory flows towards the EU. The Report would be prepared, for each coming year, before the end of the third quarter of the previous year by the Commission, following close consultation with all Member States and relevant EU agencies. Existing reporting mechanisms, primarily the ISAA and Blueprint reports, would be used to their full potential to avoid duplication of efforts. Other relevant sources should be also taken into consideration while drafting the Report (e. g. EEAS, Eurostat, EMN, JRC, UNHCR, IOM, etc.).

¹ This concept is drawn without prejudice to other existing mechanisms, such as the one provided for in the EU-Turkey statement of 18 March 2016.

The Report would focus on all relevant areas, notably on possible developments in the area of irregular arrivals through EU external borders, disembarkations after search and rescue operations, applications for international protection, secondary movements, cooperation with key third countries especially in the area of returns, as well as on push factors (including possible situations of instrumentalisation of migrants). The compilation and the analysis of all these qualitative and quantitative data would create a strategical situational picture, both at the level of the EU and at the level of individual Member States. Moreover, the report would provide forward-looking projections for the coming year.

Based on the overall experience of the previous year and on the current situation, a forecast for the following year will be developed. A list of selected permanent EU tools, suitable to react to these possible future developments, would also be highlighted in the report (based on the *Permanent EU Migration Support Toolbox* as described below in point b).

The Report would, furthermore, assess whether tailor-made solidarity is needed to support the Member States most likely-to-be affected in the coming year, taking fully into account all migratory routes, as well as the specificities of disembarkations after search and rescue operations or secondary movements. For the purpose of such assessment, Member States would have an opportunity to identify their likely support and solidarity needs for the coming year, to be taken into account by the Commission.

Based on such assessment, the Report could also include recommendations for concrete annual solidarity measures (and their numerical scale) required for the upcoming year, following a close consultation with Member States. These recommendations, together with the main outcomes of the Report, would then be assessed and addressed during the *annual High-Level Forum*, while the respective solidarity contributions would be collected in an *Annual Solidarity Pool*, as described below. The above-mentioned recommendations should not be made public.

The Report should also consider the level of Member States preparedness and may propose recommendations on relevant actions in the area of preparedness and resilience that could mitigate, on the level of Member States, the impacts of possible situations of migratory pressure or a crisis.

b. Permanent EU Migration Support Toolbox

A ***Permanent EU Migration Support Toolbox*** (Toolbox) for Member States (likely to be) under migratory pressure or in a crisis would be developed in order to provide for a wide range of responses consisting of the following tools (not exclusively) that are currently, or should soon be, at the disposal of the EU:

- *(enhanced) Support by the EU Agencies*
- *Enhanced support through the EU Funds*
- *Flexible responsibility, notably by way of targeted derogations from the respective acquis (such derogations could be tailor-made to specific migratory challenge and not limited to instrumentalisation. This would include flexibility set in the respective legal instruments of the asylum acquis, or in the amended Crisis regulation proposal - for more details see below)*
- *Activities in the external dimension of migration*
- *Cross-sectoral initiatives and actions applicable in the external dimension*
- *Enhanced return actions*
- *Tools and actions available in the area of visa policy*
- *Support provided through the Union Civil Protection Mechanism*
- *Diplomatic and political outreach*
- *Communication strategies*

c. Annual Solidarity Pool

This Pool should serve as the main stand-ready solidarity response tool. Annual contributions, being pledged each year during the annual High-Level Forum, will bring significant element of predictability for both the Member States in need and for the contributing Member States. While contributing to this Pool shall be mandatory, Member States will determine the nature and the volume of their contributions (taking into due account the overall needs and responsibilities identified in the Report). The Pool could consist (not exclusively and selectively) of the following measures:

- *Voluntary relocations*
- *Direct financial contributions by Member States* primarily aiming at projects related to the area of migration, border management and asylum or at projects in third countries that may have a direct impact on the flows at the external borders, thus reducing the migratory pressure on these borders.
- *Other alternative forms of solidarity to be provided directly by Member States²* primarily focusing on capacity building, services, skilled personnel, facilities and technical equipment - in fields such as registration, reception, border management, screening, detention and return.

There should be a recognition that the various types of solidarity are of equal value.

² Such solidarity should always be complementary Member States' contributions to the activities of the respective EU Agencies.

d. High-Level EU Migration Forum

Following the publication of the Report, a *High-Level EU Migration Forum* (Forum) would be organised each year as part of the JHA Council meeting (possibly in the last quarter) in order to take stock of the overall situation and agree on a follow-up, including regarding possible urgent actions in terms of preparedness and contingency, as well as in the area of external dimension of migration, to be implemented by the relevant EU bodies at appropriate level and as necessary.

At this Forum, Member States would be obliged to pledge a contribution to the Pool, taking into account the recommendations by the Commission included in the Report. For the sake of maximum level of preparedness and predictability, these recommendations should be understood as a base-line level of solidarity needed for the coming year. Member States would retain full flexibility to decide on the concrete type of their contributions. Each Member State should contribute adequately, based on the overall needs identified in the Report and on its capacities. Those Member States benefiting from solidarity in the time of pledging (or very likely to be) may be excluded from pledging for the following year.

As a result, a concrete Pool consisting of numerical contributions of each Member State would be established for the following year. The outcome of this exercise (the content of the annual Pool) shall be adopted by the JHA Council and would not be made public.

II. *Simplified* procedure in case of a sudden and/or continuous and significant migratory pressure³, on a notification of the affected Member State(s) - making use of the Permanent EU Migration Support Toolbox and the Annual Solidarity Pool

In case a Member State is confronted with a sudden increase and/or continuous *and* significant migratory pressure, including where it stems from disembarkations after search and rescue operations or secondary movements, it should notify the Commission and the Council on its intent to make use of the Toolbox and the Pool, highlighting which individual components the Member State would need to benefit from to address the situation.

Such notification to the Commission and the Council should always include a duly-substantiated reasoning describing clearly the requesting Member State's solidarity needs and the significance of the migratory pressure on the affected Member State and how the proposed Toolbox and/or the Pool components should stabilise the situation. The notification should also mention in what way the notifying Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.

Following this notification, the Commission should proceed with a fast-track, simplified and speedy assessment of the notification, taking into account (comparatively) the overall situation in the EU and the needs expressed by the notifying Member State. As soon as a positive assessment is presented to the Council, the Technical-Level EU Migration Forum (see in part IV) would be tasked to immediately operationalise the specific measures needed by the affected Member State (both from the Toolbox and the Pool), in close cooperation with the benefiting Member State. A definite timeframe for its implementation should also be set. Such simplified procedure should not take more than a few working days.

³ As defined in the draft Regulation on asylum and migration management (art. 2).

In cases where the Solidarity Pool is likely to be insufficient and/or the overall situation would call for further assistance and additional solidarity support, the Council (on its own initiative or on the initiative of the Commission) should further discuss the situation and agree on a way forward in order to meet the possible additional needs. If needed, the Council should agree on additional solidarity contributions, retaining full flexibility of the Member States to decide on the concrete type of their contributions, based on the additional needs identified.

The above-described procedure for the adoption of the Solidarity Pool, as well as the simplified procedure would be anchored in a modified version of the Commission's proposal for Asylum and Migration Management Regulation.

III. *Full-fledged* procedure in case of a crisis⁴, on a request of the affected Member State(s)

If a Member State finds itself in a situation that might require mobilising additional measures and contributions, it should request a formal, full-fledged, assessment of the situation. Following such request, the Commission, in close cooperation with the requesting Member State and relevant EU agencies, would make an assessment taking into account the particular situation in that Member State and on the basis of a number of criteria and the information available to avoid duplication of efforts. Where this joint assessment indicates that the Member State is in a crisis, it would identify appropriate specific measures needed both, in the area of solidarity and responsibility, to address the situation.

– Solidarity Response Plan(s) for crisis situations

The results of the assessment would be in a format of a draft *Solidarity Response Plan* (the Plan) indicating specific solidarity and responsibility measures needed, taking full advantage of the Toolbox and/or the Pool. The draft Plan would be prepared jointly by the Commission and the affected Member State.

⁴ As defined in the draft Regulation addressing situations of crisis and force majeure in the field of migration and asylum (art. 2).

Should the contributions to the solidarity Pool not be sufficient or appropriate for the given situation, the Plan should also identify additional solidarity measures or contributions needed and their scope.

The Plan should be, without undue delay, presented to the Council (the High-Level EU Migration Forum), which (on its own initiative or on the initiative of the Commission) could call, if necessary, for an extraordinary meeting so as to enable the Member States to agree speedily on the additional solidarity response and formally adopt the Plan. Member States would be obliged to contribute adequately, while retaining the flexibility to decide on the concrete type of their contributions and taking into account the overall needs identified in the draft Plan.

As a principle, the time needed to agree on the Plan should be as short as possible and the whole process should be treated with the upmost priority.

If needed, the Plan could be subsequently amended and adopted by the Council, reflecting the actual situation and adjusting the actions and measures as needed.

The above-described procedure for the adoption of a Solidarity Response Plan would be anchored in an amended version of the Commission's proposal for the Crisis and Force Majeure Regulation (see below).

IV. Operationalisation of the Permanent EU Support Toolbox and the Annual Solidarity Pool and the Solidarity Response Plans: Technical-Level EU Migration Forum

As soon as the notification of the affected Member State to use the Toolbox and/or the Pool is approved by the Council or the Plan is adopted by the Council, a meeting of the *Technical-Level EU Migration Forum* (Technical Forum) would be organised in order to promptly operationalise the agreed solidarity measures or operationalise the Plan. The operationalisation should be coordinated by the Commission.

The share of each Member State's solidarity contributions to be implemented in concrete situations should reflect the share of their overall annual pledge to the Pool for the given year or to the Plan.

A Member State may request a reduction of its contribution as committed to in the Pool or the Plan, should it be able to demonstrate clearly that a significant migratory situation on its own territory, leading to its reduced capacities in the area of asylum, reception and/or irregular migration, does not allow its (full) participation in providing solidarity to other Member States.

V. Other crisis-related elements to complement the proposed system:

This proposal also foresees modifications to the Commission's proposal for the Crisis and Force Majeure Regulation, reinforcing the elements related to derogations with a view to having a comprehensive legal tool to react to situations of crisis of any nature (including in cases of instrumentalisation of migration).

The objective would be to provide for maximum flexibility in the EU's ability to react to the ever-evolving migratory reality and cover various types of crises, notably in cases where the existing flexibility set in the respective legal instruments would be deemed inadequate. While such instrument must respect all necessary safeguards, it would bring the necessary flexibility specifically for the Member States in a crisis and would allow for temporarily easing their obligations in the area of responsibility.

Within the limits set in the Regulation, any derogations to be triggered for the specific crisis should be used selectively, should be tailor-made to each individual situation and should be closely monitored. The scope of such derogations should be set in a Solidarity Response Plan, based on the assessment made by the Commission and in close cooperation with the affected Member State. Any derogations should always be limited in time and respect all fundamental rights of migrants.

The concrete scope of the flexible responsibility anchored in respective legal instruments and the specific scope of the derogations to be set in the Crisis Regulation and Force Majeure, should be subject to further discussions and analysis.

Additionally, the part related to the immediate protection should be subject to further analysis, notably in relation to the recent activation of the Temporary Protection Directive and the respective lessons learned.

