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From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and <i>force majeure</i> in the field of migration and asylum - Adoption of a mandate for negotiations with the European Parliament

1. On 23 September 2020 the Commission presented the new Pact on Migration and Asylum, consisting of a Commission Communication, five legislative proposals (to replace or complement the 2016 proposals for a new Common European Asylum System) and four recommendations. On four of the five proposals the Council has already established its negotiation position. The one outstanding of these five new legislative proposals is a proposal for a Regulation addressing situations of crisis and force majeure in the area of migration and asylum (the Crisis Regulation). This Regulation would notably contain derogations from the Asylum and Migration Management Regulation (AMMR), the Asylum Procedure Regulation (APR) and the recast Return Directive in situations of migration crisis and solidarity measures.

2. In October 2020, the examination of the new Pact started at technical level. However, as the specific rules contained in the Crisis Regulation derogate from the general rules in the AMMR and the APR, the Crisis Regulation was not examined in a Working Party until 20 December 2022. During the Swedish Presidency, the Crisis Regulation was discussed during the Informal SCIFA in April, more specifically the procedures to apply the derogations and the extension of the scope to situations of instrumentalisation. Once the general approach on AMMR and APR was reached in the Council, discussions at technical level were stepped up in July 2023 under the Spanish Presidency.
3. Following a number of JHA Counsellors meetings in July, the meeting of the Permanent Representatives Committee on 26 July and the further consultation of delegations after the summer break on the compromise text, the Spanish Presidency considers that the current text represents a balanced compromise reflecting the wide range of positions by Member States. The current text places all references to other legislative instruments in square brackets, thus avoiding to pre-empt the outcome of the interinstitutional negotiations on the respective files.
4. The latest draft of the proposal is contained in the annex. Text deleted from the Commission proposal is marked with [...]. Additions are marked in **bold**. The latest deletion is marked with ~~strikethrough~~.
5. In view of the above, the Permanent Representatives Committee is invited to adopt the mandate for negotiations with the Parliament, as set out in the annex to this note.

2020/0277 (COD)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

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,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons and frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) To this end, a comprehensive approach is required with the objective of building mutual trust between Member States.
- (3) The comprehensive approach should bring together policies in the areas of asylum, migration management, returns, external border protection and partnership with relevant third countries, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and in an integrated manner. The comprehensive approach should ensure that the Union has at its disposal specific rules to effectively manage migration including the triggering of a compulsory solidarity mechanism and that all the necessary measures are put in place to prevent crisis to happen.
- (4) Notwithstanding the putting in place of the necessary preventive measures, it cannot be excluded that a situation of crisis or *force majeure* in the field of migration and asylum arises due to circumstances beyond the control of the Union and its Member States. **Such exceptional situation can include the mass influx of third-country nationals and stateless persons into the territory of one or several Member States or a situation of instrumentalisation of migrants by a third country or non-state actor with the objective to destabilise the Member State or the Union or a situation of *force majeure* in the Member State. In those circumstances, the measures and flexibility provided under Regulation XXX/XXX [Asylum and Migration Management Regulation] and Regulation XXX/XXX [Asylum Procedure Regulation] may not be sufficient to address such exceptional situations. These exceptional situations are different from those in which a Member State is facing a significant migratory situation due to the cumulative effect of arrivals on its well-prepared system or where a Member State is under migratory pressure because of a large number of arrivals, which do not reach the levels of mass influx, but place a disproportionate burden on its well- prepared system, and for which said situations the Regulation XXX/XXX [*Asylum and Migration Management Regulation*] provides the measures applicable.**

- (5) This Regulation should contribute to and complete the comprehensive approach by **providing the Member States to have recourse to legal tools to react swiftly to situations of crisis and *force majeure* and** setting out the specific procedures and mechanisms in the field of international protection and return that should apply in **such** situations of crisis. It should ensure, in particular, the effective application of the principle of solidarity and fair sharing of responsibility **between Member States** and the adaptation of the relevant rules on asylum and return procedures, so that the Member States and the Union have the necessary tools at their disposal including sufficient time to carry out those procedures.
- (5a) **This regulation provides Member States facing a situation of crisis, including instrumentalisation, or *force majeure* with the necessary measures to react to such situations, including those measures based on solidarity between Member States, which are fair towards the third-country nationals and stateless persons involved and in full compliance with their fundamental rights.**
- (6) A mass influx of persons crossing the border [...] **in particular** within a short period of time may lead to a situation of crisis in a particular Member State, **taking into account, *inter alia*, its population, GDP and geographical specificities, including the size of the territory, that** may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, **as a result of which, the concerned Member State is not in a position, including** due to unauthorised movements and the **significantly increased caseload on that** Member State, to process the applications for international protection of third-country nationals **and stateless persons in accordance with the rules set out in Regulation XXX/XXX [*Asylum and Migration Management Regulation*] and Regulation XXX/XXX [*Asylum Procedure Regulation*], thus making its system non-functional.** It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

- (6-a) Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States to ensure their asylum, reception or return system is well prepared, including preparedness and contingency planning and that each component has sufficient capacity.**
- (6a) A situation of instrumentalisation of migrants may arise where a third country or non-state actor instigates irregular migration into the Union by encouraging or facilitating, or even forcing the movement of third-country nationals or stateless persons to the external borders, onto or from within its territory and then onwards to those external borders or to the territory of one or more Member States, where such actions are indicative of an intention of a third country or a non-state actor to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security. Furthermore, any violent acts at the border must be avoided or, when necessary, addressed in a proportionate manner, not only to protect the territorial integrity and security of the Member State facing a situation of instrumentalisation but also to ensure the security and safety of the third-country nationals or stateless persons, including families and children that are awaiting their opportunity to apply for asylum in the Union peacefully. Member State concerned may, in particular in a situation of instrumentalisation of migrants, where third-country nationals or stateless persons attempt to force entry *en masse* by using violent means, take the necessary proportional measures, in accordance with their national law, to preserve security, law and order and ensure the effective application of this Regulation.**

- (6b) Situations in which non-state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.**
- (6c) Humanitarian aid operations according to European standards should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.**
- (6d) Following several European Council conclusions, including those of 22 October 2021, the Union continues countering hybrid attacks and exploring any necessary changes to the Union’s legal framework and concrete measures to ensure an immediate and appropriate response to the hybrid threat in line with Union law and international obligations, including the fundamental rights. These measures, by the own nature of the hybrid threat, go beyond instrumentalisation of third-country nationals and stateless persons and the migration area as a whole. Thus, this Regulation focuses on the specific measures applicable in the area of migration aimed at addressing the situations of instrumentalisation, without prejudice to measures applicable under other policy fields and legal instruments. It contributes to establishing a permanent framework to equip the Member States facing such a situation with the necessary tools to respond effectively and swiftly to that situation in full respect of the fundamental rights of the third-country nationals and stateless persons involved and international law.**
- (6e) Considering that it may happen that a Member State faces a situation of mass influx and instrumentalisation of third-country nationals and stateless persons at the same time, it should be possible for that Member States to request and be authorised concomitantly to apply or benefit from the measures set out in this Regulation, which are conceived as complementary.**

- (7) In addition to situations of crisis, a Member State may be faced with abnormal and unforeseeable circumstances outside **its** control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of *force majeure* **could prevent the Member State to comply with obligations under Union law and could have consequences not only in that Member State but in the Union as a whole. [...]** Examples of a situation of *force majeure* include, among others, pandemic or natural disasters with the elements and consequences referred above.
- (7a) In a situation of crisis or *force majeure*, it is of particular importance that all measures are taken to prevent irregular secondary migration while at the same time providing full support to one or more Member State faced with the arrival of third-country nationals or stateless persons as a consequence of such situation. Furthermore, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (7b) This Regulation respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Articles 1, 4, 7, 24, 18 and 19 (1) and (2) thereof, as well as the Geneva Convention Relating to the Status of Refugees of 28 July of 1951, as amended by the New York Protocol of 31 January 1967 ('Geneva Convention'). In particular, in order to reflect, the primary consideration that must be given to the best interests of the child, the need to respect family life, and to ensure the protection of the health of the persons concerned, this Regulation provides for specific rules and safeguards applying in respect of minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] should continue to apply in respect of persons subject to the derogations foreseen in this Regulation, except where this Regulation provides otherwise. The rules set out in Directive XXX/XXX [*Reception Conditions Directive recast*], including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made.

- (7c) **The rules and guarantees set out in Regulation (EU) XXX/XXX [*Screening Regulation*], Regulation (EU) XXX/XXX [*Eurodac Regulation*], Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] should continue to apply irrespective of derogations under this Regulation. Member States may only apply the measures provided for in this Regulation under the conditions established thereto, to the extent provided in the Council Implementing Decision foreseen therein and where it is strictly necessary and proportionate.**
- (8) [...]
- (9) The adoption of measures in respect of a particular Member State should be without prejudice to the possibility for the Council to adopt provisional measures on a proposal from the Commission pursuant to Article 78(3) of the Treaty on the Functioning of the European Union in the event of an emergency situation in a Member State characterised by a sudden inflow of third-country nationals **and stateless persons**.
- (10) [...]
- (11) [...]
- (12) In a situation of crisis, **characterised by a mass influx of third-country nationals and stateless persons**, Member States might need a wider set of measures in order to manage **such** [...] mass influx [...] in an orderly [...] **manner** and **prevent** [...] unauthorised movements. Such measures **may** include **solidarity and support measures as well as targeted derogations from the** [...] asylum [...] and [...] return [...] **procedures**.

- (12a) In a situation of instrumentalisation, many third-country nationals and stateless persons may apply for international protection at the external border or in a transit zone of a Member State, often being persons apprehended in connection with unauthorised crossings of the external border by land, sea or air or who are disembarked following search and rescue operations. It may particularly lead to an unexpected significant increased caseload of applications for international protection at the external borders. In this regard, effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention.**
- (12aa) As regards Cyprus, Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Although the line does not constitute an external border, it follows that a situation where a third country or non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to cross the line should be considered as instrumentalisation.**

(12b) When confronted with a situation of crisis or *force majeure*, the Member State concerned might need to divert resources to manage the influx of third-country nationals and stateless persons arriving at its borders. As a result, the Member State concerned may need time to reorganise its resources and increase its capacity, including with the support of the relevant EU agencies. Furthermore, the number of applicants for international protection under the border procedure may be higher than under normal circumstances, and therefore the Member State facing a situation of crisis or *force majeure* may need more time to be able to take decisions on their applications without allowing entry into the territory. In such situation, it should be possible for the Member State concerned to register applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum duration of twenty weeks. If the decision on the merits of the application, including a decision on a possible appeal against a negative decision, which should not have automatic suspensive effect, is not taken within the such period of twenty weeks, the provisions of [Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] should apply *mutatis mutandis*, unless the person is subject to the return procedure as stated in [Article 41g of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]]. In those situations, the Member State concerned should prioritise the registration of applications of persons with special reception needs as defined in [Article 2(13) of Directive XXX/XXX [*Reception Conditions Directive recast*]], especially minors and their family members.

- (12c) Where a Member State applies one or more of the measures in this Regulation, the Member State should inform third-country nationals and stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the derogations applied and the duration of the measures. Information panels may be used for this purpose. Member States are obliged to address special procedural and special reception needs of the applicants that may arise and provide information by an appropriate manner accordingly. Moreover [Article 8 on provision of information and Article 35(2a) with regard to the information on the possibility to appeal the decision on the application, of the Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] should apply.
- (12d) Where derogations from the asylum procedure are applied, the safeguards for applicants with special procedural and special reception needs, including medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of crisis or *force majeure* should not apply or should cease to apply the derogations from the asylum procedure 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 Procedure Regulation*]] or where the necessary support cannot be provided to applicants with special procedural needs in line with [Article 41e(2)(c) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]]. The Member State concerned should prioritise the examination of applications from persons with special procedural needs in line with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and with special reception needs as defined in [Article 2(13) of Directive XXX/XXX [*Reception Conditions Directive recast*]], especially minors and their family members.
- (13) [...]

- (14) In order to ensure that Member States have the necessary flexibility when confronted with a [...] **situation of crisis characterised by a mass influx of third-country nationals and stateless persons applying** for [...] **international protection, it could be necessary to broaden the scope of the** application of the border procedure, established by [Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] [...] **and to allow** Member States to take a decision in the framework of a border procedure also on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection Union-wide is 75% or lower. As a result, [...], Member States should continue applying the border procedure as provided by [Articles 41 to 41h of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] but could extend the application of the border procedure to **third-country nationals or stateless persons** who come from third countries where the EU-wide average recognition rate is above 20% but under 75%, **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. At the same time, given the need for flexibility in such situations, it could be necessary to allow Member States to lower the threshold for the mandatory application of the border procedure foreseen in [Article 40(1)(i) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]]. In any event, the reduced threshold should not go below 5%. Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 40(1) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]].**

- (14-a) Moreover, given the need for flexibility in situations of crisis, characterised by a mass influx of third-country nationals and stateless persons, or force majeure, it could be necessary to allow Member States not to apply the border procedure in respect of persons who come from third countries where the EU-wide average recognition rate is below 20%. In order to apply this derogation, the Council Implementing Decision should assess that the measures contained in the contingency plan of the concerned Member State referred to in [Article 28 of Directive (EU) XXX/XXX [*Reception Conditions Directive*]] are not sufficient to address that situation. In any event, Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 40(1) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]].**
- (14-aa) The Member State concerned should be able to request from among several options with regard to the application of the border procedure, taking into account the composition of the flows and their diverse nature depending on the precise situation of crisis. Some of these options include the broadening of the scope of the border procedure, namely the possibility to apply the border procedure to applicants who belong to nationalities with a recognition rate up to 75% or all cases. This broadening of the scope of the border procedure should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation XXX/XXX [*Asylum Procedure Regulation*]. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to [Article 41bb] or counted for the application of the annual cap pursuant to [Article 41be of Regulation XXX/XXX [*Asylum Procedure Regulation*]].**

- (14a) In a situation of instrumentalisation, it is essential to prevent the entry of those third-country nationals and stateless persons who do not fulfil entry conditions, while ensuring the protection of fundamental rights of such persons. In order to ensure that the Member State facing such a situation has the necessary flexibility and avoid that a hostile third country or non-state actor targets specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible to derogate from the asylum procedure set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in [Articles 41 to 41h of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] on the merits of all applications for international protection. The principles and guarantees set out in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] have to be respected. The Council Implementing Decision authorising the Member State to apply the referred derogations should specify the third-country nationals or stateless persons subject to the situation of instrumentalisation.
- (14b) Specific rules should be set out for situations of crisis, characterised by a mass influx, or *force majeure*, to allow Member States to extend the time limits set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply simultaneously to the time limits set out for sending and replying to take charge requests and take back notifications as well as the time limit to transfer an applicant to the Member State responsible. The time limits should be extended irrespective of whether Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] provides for shorter time limits for certain situations.

- (14c) In order to ensure an effective access to the procedure for granting international protection, where the transfer does not take place due to the persistence of the situation of crisis characterised by a mass influx, or *force majeure* or the transferring Member State does not implement the transfer when the applicant is available to the competent authorities of the transferring Member State, a maximum time limit to carry out the transfer to a Member State facing that situation should be set out. That time limit should not be longer than 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 (EU) No XXX/XXX [*Asylum and Migration Management Regulation*]]. This is without prejudice to the possibility to extend the time limits pursuant to [Article 35(2) of Regulation XXX/XXX [*Asylum and Migration Management Regulation*]] for carrying out a transfer.
- (14d) In order to avoid that the Common European Asylum System would become non-functional due to a mass influx of such an extraordinary scale and intensity that, if not addressed by the Union as a whole, even if a Member State has a well-prepared asylum, reception and return system, it may create a serious risk of serious deficiencies in the treatment of applicants for international protection, a Member State should, in these most exceptional circumstances, be able to derogate from the obligation to take back an applicant pursuant to [Articles 8(2) and 28(4) of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]]. However, in order to ensure that such derogation does not lead to additional pressure on the Member State facing that situation, it should only apply retroactively to applications already registered in that Member State within four months before the date on which the Council Implementing Decision is adopted.

(14f) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Minors should, as a rule, not be detained but be placed in accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention could be used, in line with Union law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation or any other facility destined for law enforcement purposes. Minors should not be separated from their parents or care givers, and the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible must be done to ensure that a viable range of adequate alternatives to detention of minors is available and accessible.

- (15) The screening of third-country nationals **and stateless persons** according to the rules laid down in Regulation (EU) No XXX/XXX [*Screening Regulation*] should apply with the possibility to extend the **five day** [...] deadline by another five days, as specified in [**Article 6(3)** of that Regulation].
- (16) [...]
- (17) The return **border procedure** [...] should facilitate, in a situation of crisis, the return of illegally staying third-country nationals whose applications were rejected in the context of a **crisis in the asylum border procedure** and who have no right to remain and are not allowed to remain, by providing the competent national authorities with the necessary tools and sufficient timeframe to carry out return procedures with due diligence. To be able to respond to situations of crisis in an effective manner, the return [...] **border procedure** should apply also to applicants, third-country nationals and stateless persons subject to the border procedure referred to in [Article 41g of the Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]], whose applications were rejected before the adoption of **the Council Implementing Decision** [...] declaring that a Member State is confronted with a situation of crisis, and who have no right to remain and are not allowed to remain after such a decision.

- (18) When applying the return [...] procedure **in a situation of crisis**, illegally staying third-country nationals or stateless persons who have no right to remain and are not allowed to remain should not be authorised to enter the territory of the Member State concerned and should be kept at the locations referred to in [Article 41g(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] for a period that may be longer than the one established by that Article in order to enable authorities to cope with the situations of crisis and finalise return procedures; for this purpose, the maximum duration of 12 weeks of the border procedure for carrying out return set out in [Article 41g(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] could be prolonged by an additional period that may not exceed eight weeks. During that period, it should be possible to keep the illegally staying third-country nationals in detention, in application of [Article 41h of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]], provided that the guarantees and conditions for detention laid down in Directive XXX/XXX [*recast Return Directive*] are respected, including the individual assessment of each case, judicial control of detention and adequate conditions of detention.
- (19) [...]
- (20) [...]
- (20a) In a situation of crisis, the Member State facing such situation should have the possibility to request from other Member States solidarity and support measures that are most suited to its needs to manage that situation. The solidarity and support measures could take the form of relocations, responsibility offsets, financial contributions, alternative solidarity measures or measures aimed at responding to the situation of crisis, including cooperation to support return, or a combination of the above.**

- (20b) To that end, the Commission should, where appropriate and in consultation with the Member State facing the situation of crisis, include in its proposal a draft Solidarity Response Plan indicating the relevant solidarity measures and their level required for the specific situation. The Council Implementing Decision should establish the said Solidarity Response Plan, indicating the specific solidarity and support measures required and their levels, as well as the pledges made by the contributing Member States. To that end, the pledging exercise should take place in the framework of the adoption of the Council Implementing Decision. It is important to ensure the full discretion of the contributing Member State to choose between the types of solidarity and support measures. In the context of the situation of crisis, only measures consisting of relocations, responsibility offsets, financial contributions or alternative solidarity measures within the meaning of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] would be considered towards the mandatory fair share of the specific contributing Member State.
- (20c) In a situation of crisis, it is important that all solidarity needs of the Member State concerned are addressed. For this reason, when the Council Implementing Decision establishes the Solidarity Response Plan, the Member State facing the situation of crisis should have priority to use the unallocated solidarity pledges or those that have not been implemented yet and are available in the Solidarity Pool under Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]. If that is not possible, or if the Solidarity Pool does not contain sufficient pledges to cover the identified needs, the Member State facing the situation of crisis should also make use of the contributions contained in the Council Implementing Decision, recognising that the various types of solidarity are of equal value. With a view to addressing all the needs of the Member State concerned, if the combination of the relocation pledges available in the Solidarity Pool and in the Council Implementing Decision is not sufficient, responsibility offsets should become mandatory to cover the needs set out in the Solidarity Response Plan. For this to happen, there need to be persons present on the territory of the contributing Member State to whom the offsets apply.

- (20d) The implementation of the Solidarity Response plan could potentially lead to one or several contributing Member States taking responsibility for examining applications for international protection above their fair share. In such cases, such a Member State should be entitled to reduce proportionally the part above the fair share from the implementation of solidarity pledges under the upcoming annual cycles of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] over a period of five years. Such reduction could also be applied in a Council Implementing Decision adopted pursuant to Article 8x(4) with the corresponding amount of applications beyond the fair share and 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. The reductions under the upcoming annual cycles and in a Council Implementing Decision may be applied alternatively or simultaneously, provided that they correspond to and do not go beyond the amount of applications for which that Member State went above its fair share.**
- (20f) Without prejudice to the above and where relevant, in a situation of crisis, all mechanisms for crisis foreseen in the Permanent EU Migration Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with their respective legislation. The Commission should consider the measures taken by the Member State facing a situation of crisis when preparing the draft Solidarity Response plan. Thereafter, the Commission should, in the context of the Technical-Level Migration Forum, ensure coordination and exchange of information with other platforms that are relevant to manage the crisis situation, including the EU Migration Preparedness and Crisis Management Network in accordance with Commission Recommendation (EU) 2020/1366, and the Integrated Political Crisis Response ('IPCR') arrangements.**

(20g) The procedural rules set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] for carrying out relocation should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, taking into account the gravity and urgency of that situation.

(21) [...]

(22) [...]

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(31) [...]

(32) [...]

(33) To support Member States who undertake relocation as a solidarity measure, financial support from the EU budget should be provided, **including pursuant to Regulation (EU) 2021/1147 (AMIF Regulation).**

- (33a) **A Member State facing a situation of crisis or *force majeure* may request support from the EU Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. In addition and as appropriate, the EU Asylum Agency may propose assistance on its own initiative in accordance with Article 16(1)(d) of Regulation 2021/2303 ('EUAA Regulation'), whereas the European Border and Coast Guard Agency may propose assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned and Europol may propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794.**
- (34) [...]
- (35) [...]
- (36) [...]
- (36a) **In situations of crisis or *force majeure*, the request for authorisation of the derogations contained in this Regulation should include the measures already taken 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. Together with this request, the Member State concerned may notify the Commission of its intention to apply the derogation from the registration deadline before it is authorised in the Council Implementing Decision as well as the precise reasons for which an immediate action is required, which should not exceed 15 days from the day following the request, unless authorised in the Council Implementing Decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to avoid the existence of a time gaps between the end of such period and the adoption of the corresponding Council Implementing Decision.**

- (36b) Where a Member State requests the application of the relevant derogations set out in this Regulation on the basis of conclusive evidence demonstrating the existence of a situation of crisis or *force majeure*, the Commission should bring forward a proposal authorising a Member State to apply those derogatory rules. The Commission should also be able to make such a proposal where it considers it appropriate on the basis of information provided by the requesting Member State.
- (36c) To ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is necessary to take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.
- (36d) Situations of crisis characterised by a mass influx of persons or situations of *force majeure* are also liable to put at risk those essential functions of a Member State. Therefore, implementing powers should be conferred upon the Council to adopt an Implementing Decision authorising a Member State to apply the derogations provided for by this Regulation where the conditions laid down are met. The Council should also be empowered to repeal, or prolong by up to six months, the derogations provided for in this Regulation on the basis of a Commission proposal depending on whether the circumstances justifying the introduction of the derogations persist or have come to an end. The prolongation decision may include amendment of the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principles of proportionality and necessity are respected.

- (36da)** Given the importance to apply the measures set out in this Regulation for as long and to the extent strictly necessary, the Commission should keep the the situation under constant monitoring and review. In this context, the Commission should pay particular attention to compliance with fundamental rights and humanitarian standards and may request the European Union Asylum Agency to initiate a monitoring exercise of the concerned Member State's asylum or reception system pursuant to Article 15(2) of Regulation 2021/2303/EU.
- (36e)** This Council Implementing Decision should include an authorisation of the specific derogations that the Member State facing a situation of crisis or *force majeure* could or would have to apply, depending on the nature of each derogation, and set the date from which they should apply, as well as their duration that should not exceed an initial period of six months. Moreover, the Decision should state the grounds on which it is based and the personal scope of the derogations.
- (36f)** In order to support the Member State concerned in providing the necessary assistance to third-country nationals and stateless persons falling under the scope of this Regulation, including by promoting voluntary return activities or by carrying out the humanitarian duties of that Member State, United Nations agencies, and the United Nations High Commissioner for Refugees in particular, and other relevant partner organisations entrusted with specific tasks by Member States, in particular the International Organization for Migration and the International Federation of Red Cross and Red Crescent Societies, should have effective access to the border under the conditions set out in the Directive (EU) XXX/XXX [*Reception Conditions Directive recast*] and Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]. The United Nations High Commissioner for Refugees should be allowed access to applicants for international protection, including to those at the border. To this end, the Member State concerned should maintain cooperation with these organisations.

- (36g) **The EU and its Member States may be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations. This Regulation sets out rules that are complementary to and may be applied at the same time as those set out in Council Directive 2001/55/EC.**
- (37) [...]
- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union (TEU) and to the **Treaty on the Functioning of the European Union (TFEU)**, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that **Articles 4x and 4xa** of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention³, Denmark has to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.
- (39) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified their wish to take part in the adoption and application of this Regulation]

OR

³ OJ L 66, 8.3.2006, p. 38.

- (40) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (41) As regards Iceland and Norway, **Articles 4x and 4xa** of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway⁴.
- (42) As regards Switzerland, **Articles 4x and 4xa** of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland⁵.
- (43) As regards Liechtenstein, **Articles 4x and 4xa** of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland⁶ refers,

⁴ OJ L 93 , 3.4.2001 p. 40.

⁵ OJ L 53, 27.2.2008, p. 5.

⁶ OJ L 160, 18.6.2011, p. 37.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation addresses **exceptional** situations of crisis, **including instrumentalisation**, and *force majeure* in the field of migration and asylum within the Union and provides for **solidarity and support measures Member States can benefit from and for** 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*], **where it is strictly necessary and proportionate for responding to such exceptional situations.**

Member States may only apply the measures provided for in Chapter II and benefit from the measures provided for in Chapter III upon request and to the extent provided for in the Council Implementing Decision referred to in Article 8x(4).

This Regulation shall not affect the fundamental principles and guarantees, established by the acts from which derogations are allowed pursuant to this Regulation.

2. For the purposes of this Regulation, a situation of crisis **means**:

- (a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving [...] in a Member State or disembarked on its territory 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 or return system non-functional [...] **such that there may be** serious consequences for the functioning the Common European Asylum System of the Common Framework as set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*], or
- (b) [...]
- (bx) a situation of instrumentalisation where a third country or 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.**

~~Humanitarian aid operations according to European standards shall not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.~~

Member States may request the authorisation to apply the measures included in Chapter II and III 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 8x(4) of this Regulation in the situation referred to in point (bx) 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.

Agence Europe

CHAPTER II [...]

Article 2 [...]

CHAPTER II X

DEROGATIONS APPLICABLE IN SITUATIONS OF CRISIS

OR *FORCE MAJEURE*

Article 2x⁷

Registration of applications for international protection in situations of crisis or force majeure

1. In a [...] situation of **crisis or force majeure**, by way of derogation from [Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]], a 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 [...].
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.
3. Where applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well founded.

⁷ Article 6 in Commission proposal.

CHAPTER III – [...]

Article 3 [...]

Article 3x

[...] *Measures applicable to the asylum border procedure in a situation of crisis or force majeure*

1. In a situation of crisis referred to in Article 1(2)(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) XXX/XXX [*Reception Conditions Directive*]] are not sufficient to address that situation.
 - 1a. In a situation of crisis referred to in Article 1(2)(a), by way of derogation from [Article 41b(1) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]], Member States may reduce the threshold foreseen in Article 40(1)(i) to 5%.

2. In a situation of crisis referred to in Article 1(2)(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, 75% 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.
3. In a situation of crisis referred to in Article 1(2)(bx), by way of derogation from [Articles 41a(b) and 41e(2)(a) of Regulation (EU) XXX/XXX [*Asylum Procedure 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 registered within the period during which this paragraph is applied.
4. Where applying paragraphs 1a, 2 or 3, 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 recast*] and in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], and minors and their family members. The Member State concerned may also prioritise the examination of applications for international protection which are likely to be well founded.

[...]

6. **In a situation of crisis or *force majeure*, by way of derogation from [Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]], the duration of the border procedure shall last no more than twenty weeks including appeal starting from the date of the registration of that application.**

Article 4 [...]

Article 4x

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(2)(a) or force majeure [...]

- 1. **In a situation of crisis referred to in Article 1(2)(a) or in *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. [...]**
1. **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:**
 - (a) submit a take charge request as referred to in [Article 29] within four months of the date on which the application was registered;
 - (b) reply to a take charge request as referred to in [Article 30] within two months of receipt of the request;

- (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
- (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 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.
2. 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 1**, 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.
3. **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(2)(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(2)(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.
4. [...]

Article 4xa

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

1. In a situation of crisis referred to in Article 1(2)(a), where the mass influx 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 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 8x(4) and not exceeding four months before the date of adoption of this Council Implementing Decision.

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*]].

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 5 [...]

Article 6 [...]

Article 6x

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

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 3x(1a), (2) and (3) 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 [*Asylum Procedure Regulation*] as follows:
 - (a) By way of derogation from [**Article 41g(2)**] of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], 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 eight weeks;
 - (b) By way of derogation from [**Article 41h(3)**] of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], the period of detention set in that Article shall not exceed the period referred to in point (a);
 - (c) In addition to the cases provided for by [**Article 6(2)**] of Directive XXX [*recast Return Directive*], Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when the criterion referred to in [**Article 6(1), point (r)**] of Directive XXX [*recast Return Directive*] is fulfilled or when the applicant, third-country national or stateless person concerned is manifestly and persistently not fulfilling the obligation to cooperate established by [**Article 7**] of that Directive].

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 [*Asylum Procedure Regulation*] whose application has been rejected before the adoption [...] **of the Council Implementing Decision referred to in Article 8x(4)**, and who have no right to remain and are not allowed to remain after the adoption of that Decision.

CHAPTER IV [...]

*Article 7 [...]*⁸

Agence Europe

⁸ Moved to Article 2x

CHAPTER IIIx

SOLIDARITY MEASURES APPLICABLE IN A SITUATION OF CRISIS

Article 7x

Solidarity and support measures in a situation of crisis

1. Where a Member State is facing a situation of crisis, it may request support and solidarity measures from other Member States in order to manage that situation. The Member State facing that situation may request the following types of contributions:
 - (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*]],
 - (i) of applicants for international protection;
 - (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, or for the purpose of return of illegally staying third-country nationals or stateless persons;
 - (b) responsibility offsets, as referred to in [Article 44h of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]] and following the procedure set out in Article 58a thereof;
 - (c) 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*]];

- (d) 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 concrete value shall be established based on objective criteria; or
- (e) measures aimed at responding to the situation of crisis, including specific measures to support return, through cooperation with third countries or outreach to the relevant third countries.

2. The Member State facing a situation of crisis shall send a reasoned request to the Commission specifying the type and level of solidarity measures needed.

The Member State facing that situation may submit this reasoned request together with the request referred to in Article 8x(1).

3. Following the submission of the reasoned request referred to in the first subparagraph of paragraph 2, the Commission, in close cooperation with the requesting Member State concerned and relevant Union agencies, shall expeditiously assess the situation and the type and level of the solidarity measures needed and, in consultation with the requesting Member State, prepare, where appropriate, a draft Solidarity Response Plan indicating the types and levels of the solidarity and support measures needed.
4. Where it is established in the Council Implementing Decision referred to in Article 8x(4) that the requesting Member State is facing a situation of crisis, the following rules set out in paragraphs 5 to 7 shall apply.

5. **Where the Solidarity Pool under Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*] contains unallocated solidarity pledges or solidarity pledges that have not been implemented yet and are available, the Member State facing a situation of crisis shall make use of the Solidarity Pool under Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].**
6. **Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in Article 8x(4)(d), the Member States facing a situation of crisis shall also make use of contributions contained in that Council Implementing Decision as referred to in Article 8x(4).**
7. **Where the relocation pledges or responsibility offsets set out in the Council Implementing Decision referred to in Article 8x(4) or the pledges available in the Solidarity Pool are below the relocation or responsibility offsets needs established in the Solidarity Response Plan included in the Council Implementing Decision:**
 - (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 the relocation needs identified in the Solidarity Response Plan established in the Council Implementing Decision.**
 - (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 [*Asylum and Migration Management Regulation*]].**

(c) Where applying (a) and (b), [Article 44h(5), except for its third subparagraph, (6) and (7) of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]] shall apply mutatis mutandis.

8. Where a contributing Member State has become responsible for applications above its fair share in accordance with paragraph 7(b) or Article 4xa, it shall be entitled to :

(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

(b) reduce from its fair share in relation to future solidarity contributions set out in a Council Implementing Decision adopted pursuant to Article 8x(4) 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.

8a. Where a Member State intends to avail itself of the possibility provided for in paragraph 8, 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 8x(4).

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 8x(4) within the period referred to in paragraph 8 to support another Member State, or where responsibility offsets are required pursuant to paragraph 7(b).

9. 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 paragraph 5, 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*]]].
10. 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 8x(4)(d), another Member States 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 Article.

When assessing the Member State's request, the Commission shall also take into account if this Member State has taken responsibility for examining applications for international protections 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*]].

Article 8⁹ [...]

Agence Europe

⁹ Moved to Article 4x

**CHAPTER IVX –
PROCEDURAL RULES**

Article 8x

Authorisation procedure and adoption of implementing acts

- 1. A Member State facing a situation of crisis or *force majeure* may, given those exceptional circumstances, request the authorisation to apply the relevant derogations provided for in Articles 2x to 6x. The concerned Member State shall send a reasoned request to the Commission specifying the derogations that it considers necessary, 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.**

- 2. Where the requesting Member State submits to the Commission conclusive evidence demonstrating the existence of the conditions referred to in Article 1(2)(a) or (bx) or of a situation of *force majeure*, the Commission shall, on the basis of that evidence, without delay, make a proposal for an appropriate Council Implementing Decision referred to in paragraph 4.**

The Commission may also make such a proposal where it considers it appropriate on the basis of information provided by the requesting Member State and any other information available to it.

3. The Commission proposal referred to in paragraph 2 shall include:

- (a) a description of the situation faced by the Member State concerned, the measures taken so far, justifying that those are not sufficient to address the situation, and whether it is a situation of crisis as referred to in Article 1(2)(a) or (bx) or a situation of *force majeure*;**
- (b) where appropriate, the relevant derogations required for the specific situation that the Member State concerned should be authorised to apply;**
- (c) where appropriate, the draft Solidarity Response Plan and the relevant solidarity measures and their level required for the specific situation while ensuring the respect of the full discretion of the contributing Member State in choosing between the types of solidarity measures.**

Where setting up the solidarity needs of the Member State facing a situation of crisis, the Commission shall take into account whether the Member State concerned is already a benefitting Member State pursuant to [Articles 44c and 44d of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]].

4. As a matter of urgency, the Council shall assess the proposal referred to in paragraph 2 and, depending on the outcome of such assessment, expeditiously adopt an Implementing Decision authorising the Member State concerned to apply the specific derogations provided for in Articles 2x to 6x and allowing the Member State to benefit from the specific solidarity measures provided for in Article 7x.

The Council Implementing Decision shall:

- (a) establish the existence of a situation of crisis referred to in Article 1(2)(a) or (bx), or a situation of *force majeure* as appropriate;**

- (b) identify the Member State or Member States affected by the situation referred to in point (a) of this paragraph and benefitting from the measures set out in the Decision;**
- (c) where relevant, identify the specific derogations provided for in Articles 2x to 6x that the Member State concerned is authorised to apply;**
- (d) where relevant, establish a Solidarity Response Plan, including the specific solidarity measures provided for in Article 7x required to address the situation and their levels, as well as the specific contributions by each Member State except those referred to in point (b) of this subparagraph pledged in accordance with the mandatory fair share set out in [Article 44k of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*]], and ensuring the respect of the full discretion of the contributing Member State in choosing between the types of solidarity measures.**

However, only those measures listed in points (a), (b), (c) and (d) of Article 7x shall count towards the mandatory fair share. Member States pledging alternative solidarity measures shall indicate their financial value based on objective criteria.

When the Council Implementing Decision authorises the Member State concerned to apply Article 4xa, mandatory offsets pursuant to Article 7x(7) shall not apply.

When Directive 2001/55/EC is activated in relation to the same situation as referred to in point (a) and Member States agree at the moment of activation not to apply Article 11 thereof, mandatory offsets pursuant to Article 7x(7) shall not apply.

5. The Council Implementing Decision referred to in paragraph 4x shall state the grounds on which it is based, and shall set the date from which the rules laid down in Articles 2x to 7x may be applied, as well as the time period for their application, which shall not exceed an initial period of six months.

In case of a situation of crisis referred to in Article 1(2)(bx), the Decision shall specify the third-country nationals or stateless persons subject to that situation.

6. The Commission and the Council shall keep the situation of crisis or *force majeure* under constant monitoring and review. The Commission shall pay particular attention to compliance with fundamental rights and humanitarian standards and may request the EUAA to initiate a specific monitoring exercise pursuant to Article 15(2) of the EUAA Regulation. Where the Commission considers it appropriate on the basis of relevant information, it may propose the repeal of the Council Implementing Decision referred to in paragraph 4 or the adoption of a new Council Implementing Decision authorising the amendment or prolongation of the specific derogations referred to in Articles 2x to 6x or of the Solidarity Response Plan referred to in point (d) of paragraph 4 for a period, which shall not exceed an additional six months. Alternatively, where the requesting Member State submits conclusive evidence to the Commission demonstrating the continued existence of the conditions referred to in Article 1(2)(a) or (bx) or a situation of *force majeure*, the Commission shall, on the basis of such evidence, submit a proposal for a new Council Implementing Decision to amend or prolong the specific derogations referred to in Articles 2x to 6x or the Solidarity Response Plan referred to in point (d) of paragraph 4 for a period, that shall not exceed an additional six months. The Member State concerned shall provide the Commission with the specific information needed for it to carry out this review 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.

7. **Member States shall continue for the maximum period as referred to in Article 3x to apply the procedural derogations set out in the Council Implementing Decision referred to in paragraph 4 in respect of those applicants whose applications for international protection have been registered within the period during which those derogations may be applied until a final decision is taken on their application or until the third-country nationals or stateless persons concerned are returned in accordance with Article 6x.**
8. **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.**
9. **When submitting the request referred to in paragraph 1, a Member State may notify the Commission that it considers it necessary to apply the derogation set out in Article 2x before it is authorised to do so in the Council Implementing Decision referred to in paragraph 4. In such a case, the Member State concerned may apply the derogation laid down in Article 2x from the day following the request and for a period not exceeding 15 days, unless the Member State concerned is authorised to continue applying that derogation in the Council Implementing Decision referred to in paragraph 4. The Member State shall indicate in the request the precise reasons for which an immediate action is required.**

Article 9 [...]

CHAPTER V – [...]

Article 10 [...]

CHAPTER VX FINAL PROVISIONS

Article 10x

Specific provisions and guarantees

- 1. In a situation of crisis, where applying the derogations referred to in Articles 2x to 6x, 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. Information may be provided via information panels, this being without prejudice to [Articles 8 and 20(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]].**
- 2. The extension of the time limit for registration of applications for international protection in accordance with Article 2x 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*]].**

3. The derogations in accordance with Article 3x do not affect the process of determining the Member State responsible within the framework of [*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 shall be completed in the territory of the determining Member State.
4. The Member State facing a situation of crisis or *force majeure*, shall not apply Articles 2x to 6x longer than what is strictly necessary to address such situation, and in any case, no longer than the period set out in the Council Implementing Decision referred to in Article 8x(4).

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CHAPTER VI – [...]

Article 11 [...]

Article 11x

Cooperation and assessment

- 1. In order to ensure the smooth functioning of the measures included in the Council Implementing Decision as referred to in Article 8x(4)(d), the Commission shall convene a first meeting of the Technical Level EU Migration 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 of the Technical-Level EU Migration Forum shall meet as many times as necessary.**
- 2. The Commission, relevant European Union institutions and 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 8x(4). The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation, via the EU Migration Preparedness and Crisis Management Network.**
- 3. 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 12 [...]

Article 14 [...]

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [the first day of the twenty-fifth month following its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
