



Plenary sitting

A9-0152/2023

14.4.2023

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]
(COM(2020)0610 – C9-0309/2020 – 2020/0279(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tomas Tobé

not

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (COM(2020)0610 – C9-0309/2020 – 2020/0279(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0610),
 - having regard to Article 294(2) and Article 78(2), point (e), and Article 79(2), points (a), (b) and (c), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0309/2020),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate, the Hungarian Parliament and the Slovak Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 25 February 2021¹,
 - having regard to the opinion of the Committee of the Regions of 19 March 2021²,
 - having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0152/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to the Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

Amendment 1

Proposal for a regulation Citation 1

Text proposed by the Commission

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

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) and Article 79(2)(a)(b) and (c) **and Article 80** thereof,

Amendment 2

Proposal for a regulation Recital 1

Text proposed by the Commission

(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 management of the external borders of the Union, based on solidarity between Member States, which is fair towards third-country nationals.

Amendment

(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 management of the external borders of the Union, based on solidarity **and fair sharing of responsibility** between Member States, which is fair towards third-country nationals **and fully respects the rights of asylum-seekers, refugees and migrants**.

Amendment 3

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management **and towards relations with relevant third countries**, recognising that the effectiveness of such an approach

Amendment

(2) To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management, recognising that the effectiveness of such an approach depends on all components being jointly addressed,

depends on all components being jointly addressed **and** in an integrated manner.

in an integrated manner **and properly implemented**.

Amendment 4

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) This Regulation should contribute to that comprehensive approach by setting out a common framework for the actions of the Union and of the Member States in the field of asylum and migration management policies, by elaborating on the principle of solidarity and fair sharing of responsibility in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). Member States should therefore take all necessary measures, inter alia, to provide access to international protection and adequate reception conditions to those in need, to enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to return **illegally staying** third-country nationals, to prevent irregular migration and unauthorised movements between them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

Amendment

(3) This Regulation should contribute to that comprehensive approach by setting out a common framework for the actions of the Union and of the Member States in the field of asylum and migration management policies, by **upholding and** elaborating on the principle of solidarity and fair sharing of responsibility in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). Member States should therefore take all necessary measures, inter alia, to provide access to international protection and adequate reception conditions to those in need, to **promote safe and legal pathways, to** enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to **fairly and effectively** return **those** third-country nationals **who do not fulfil the conditions for residence in the territory of the Member States**, to prevent irregular migration and unauthorised movements between them, **to prevent and fight migrant smuggling and human trafficking whilst protecting the rights of smuggled and trafficked people**, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

Amendment 5

Proposal for a regulation
Recital 4

Text proposed by the Commission

Amendment

(4) The common framework should bring together the management of the Common European Asylum System and that of migration policy. The objective of migration policy should be to ensure the efficient management of migration flows, the fair treatment of third-country nationals residing legally in Member States and the prevention of, and enhanced measures to combat, illegal migration and migrant smuggling.

deleted

Amendment 6

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(5) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and those who are not and in recognition that the *challenge* of irregular *arrivals of* migrants in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. *To ensure that Member States have the necessary tools to effectively manage this challenge in addition to applicants for international protection, irregular migrants should also fall within the scope of this Regulation. The scope of this Regulation should also include beneficiaries of international protection, resettled or admitted persons as well as persons granted immediate protection.*

(5) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and those who are not and in recognition that the *responsibility for arrivals of* irregular migrants *and asylum-seekers* in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole.

Amendment 7

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) In order to ***reflect the whole of government approach and*** ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, which is part of the ***comprehensive*** approach.

Amendment

(6) In order to ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, ***in compliance with international and Union law, ensuring coherence between asylum and migration management policies*** which is part of the ***integrated policy-making*** approach.

Amendment 8

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) 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.

Amendment

(7) Member States should have sufficient human, ***material*** and financial resources and infrastructure to effectively implement asylum and migration management policies, ***and allocate adequate staff for their competent authorities, in terms of level, expertise, training and independence, in particular for the determination of the Member State responsible for examining and application for international protection*** and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.

Amendment 9

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) ***Taking a strategic approach***, the Commission should adopt a European Asylum and Migration Management Strategy on the implementation of asylum and migration management policies. The Strategy should be based on relevant reports and analyses produced by Union agencies and on the national strategies of the Member States.

Amendment

(8) The Commission should adopt a ***long-term*** European Asylum and Migration Management Strategy (***the 'Strategy'***) on the implementation of asylum and migration management policies ***at Union level, in accordance with the principles set out in this Regulation and in Union primary law and applicable international law***. The Strategy should be based on relevant reports and analyses produced by Union agencies, ***bodies and offices***, and on the national strategies of the Member States, ***setting out the approach to managing asylum and migration at Union level. It should include access to asylum procedures and should take into account the relevant jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights***.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) National strategies of the Member States should include information on contingency planning and on the implementation of the principles of integrated policy-making and of solidarity and fair sharing of responsibility of this Regulation and legal obligations stemming therefrom at national level.

Amendment

(9) National strategies of the Member States should ***serve to ensure their capacity to effectively implement their asylum and migration management system, in full compliance with their obligations under Union and international law***. They should include ***preventive measures to reduce the risk of migratory pressure as well as*** information on contingency planning and on the implementation of the principles of integrated policy-making and of solidarity and fair sharing of responsibility of this Regulation and legal obligations stemming therefrom at national level. ***To this end, the duties of the Member States in respect of their competences should be clearly***

defined. The Commission and relevant Union bodies, offices and agencies, and in particular the Asylum Agency, should be able to support the Member States when establishing their national strategies.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order to ensure that an effective monitoring system is in place to ensure the application of the asylum acquis, the results of the monitoring undertaken by the European Union Asylum Agency and *Frontex*, of the evaluation carried out in accordance with Council Regulation *No 1053/2013* as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] should also be taken into account in these strategies.

Amendment

(10) In order to ensure that an effective monitoring system is in place to ensure the application of the asylum acquis, the results of the monitoring undertaken by, the European Union Asylum Agency and *the European Border and Coast Guard Agency, and other relevant bodies, offices, agencies or organisations*, of the evaluation carried out in accordance with Council Regulation (EU) 2022/922^{1a} as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] should also be taken into account in these strategies.

^{1a} *Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).*

Amendment 12

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) *Bearing in mind* the importance of ensuring that the Union is prepared and

Amendment

(11) *Considering* the importance of ensuring that the Union is prepared and

able to adjust to the developing and evolving realities of asylum and migration management, the Commission should annually adopt a ***Migration Management Report setting out*** the likely evolution of the migratory situation and the preparedness of the Union and the Member States to respond and adapt to ***it***. ***The Report*** should also include the results of the reporting on monitoring foreseen in the national strategies and should propose improvements where weaknesses are apparent.

able to adjust to the developing and evolving realities of asylum and migration management, the Commission should ***monitor and provide information on the asylum, reception and migratory situation over the previous 12-month period as a whole. The Commission should*** annually adopt a ***situational report, including an evaluation of its strategy. The situational report should set out, inter alia,*** the likely evolution of the migratory situation and the preparedness of the Union and the Member States to respond and adapt to ***the evolution of the migratory situation, ensuring their engagement and participation in solidarity and responsibility sharing. The situational report should also include the results of the reporting on monitoring foreseen in the national strategies, assessing Member States' implementation and compliance with relevant Union law*** and should propose improvements where weaknesses are apparent.

Amendment 13

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that may arise due to the presence on their territory of third-country nationals that are vulnerable applicants for international protection, regardless of how they crossed the external borders, the Report should also indicate whether the said Member States are faced with such challenges. Those Member States should also be able to rely on ***the use of the 'solidarity pool' for the relocation of vulnerable persons***.

Amendment

(12) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that may arise due to the presence on their territory of third-country nationals that are vulnerable applicants for international protection, regardless of how they crossed the external borders, the ***annual situational*** report should also indicate whether the said Member States are faced with such challenges. Those Member States should also be able to rely on solidarity ***contributions foreseen in this Regulation and the relocation of persons in a vulnerable situation should be prioritised***.

Amendment 14

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) For the effective implementation of the common framework and to identify gaps, address challenges and prevent the building up of **migratory** pressure, the Commission should monitor and regularly report on the migratory situation.

Amendment

(13) For the effective implementation of the common framework and to identify gaps, address challenges and prevent the building up of pressure **on asylum and reception systems**, the Commission should monitor and regularly report on the migratory situation **and the implementation of the Union asylum acquis**.

Amendment 15

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) An effective return policy is an essential element of a well-functioning system of Union asylum and migration management, whereby those who do not have the right to stay on Union territory should return. Given that a significant share of applications for international protection may be considered unfounded, it is necessary to reinforce the effectiveness of the return policy. By increasing the efficiency of returns and reducing the gaps between asylum and return procedures, the pressure on the asylum system would decrease, facilitating the application of the rules on determining the Member State responsible for examining those applications as well as contributing to effective access to international protection for those in need.

Amendment

deleted

Amendment 16

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) To strengthen cooperation with third countries ***in the area of return and readmission of illegally staying third-country nationals***, it is necessary to ***develop a new mechanism, including all relevant EU policies and tools, to improve the coordination of the different actions in various policy areas other than migration that the Union and the Member States may take for that purpose. That mechanism should build on the analysis carried out in accordance with Regulation (EU) 810/2019 of the European Parliament and of the Council³⁸ or of any other information available, and take into account the Union's overall relations with the third country. That mechanism should also serve to support the implementation of return sponsorship.***

³⁸ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

Amendment

(15) To strengthen cooperation with third countries ***on asylum and migration, including*** readmission it is necessary to ***promote and build tailor-made and mutually beneficial partnerships with those countries. Close cooperation and partnerships with third countries should address causes and drivers of irregular migration and forced displacement. Such partnerships should provide a framework for better coordination of policies with third countries, and be based on human rights, rule of law and the respect of the Union's common values. The Commission should evaluate the efficiency and fundamental rights compliance of those partnerships annually.***

³⁸ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

Amendment 17

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to take actions to promote joint objectives and cooperation with third countries, the Union should fully apply the Neighbourhood, Development and International Cooperation Instrument - Global Europe, established by Regulation (EU) 2021/947 of the European

^{1a} Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14.6.2021, p. 1).

Amendment 18

Proposal for a regulation Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) Capacity building measures in third countries carried out for the purposes of this Regulation should be limited to those set out in this Regulation and should uphold and promote the Union's values, principles and fundamental interests and be in full compliance with fundamental rights and the rights set out in the Charter of Fundamental Rights, including the right to protection.

Amendment 19

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) In order to ensure a fair sharing of responsibility and a balance of effort between Member States, a solidarity

(16) In order to ensure a fair sharing of responsibility and a balance of effort between Member States, a **binding**

mechanism should be established which is effective and ensures **that applicants have** swift access to **the** procedures for granting international protection. Such a mechanism should provide for **different types of** solidarity **measures** and should **be flexible** and able to adapt to the evolving nature of the migratory challenges facing a Member **State**.

solidarity mechanism should be established which is effective and ensures swift access to **fair and efficient** procedures for granting international protection. Such a mechanism should provide for **true** solidarity **as enshrined in Article 80 of the TFEU** and should **prioritise relocation while also allowing for capacity building measures within the Union. Measures should be predictable** and able to adapt **quickly** to the evolving nature of the migratory challenges facing a Member **States, in particular those under migratory pressure, including as a result of recurring arrivals by sea and through disembarkations following search and rescue operations. Relocation of applicants and beneficiaries should ensure that family and other meaningful links of the applicant are taken into account.**

Amendment 20

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) To ensure a smooth functioning of the relocation of applicants and beneficiaries under this Regulation, an EU Relocation Coordinator should be appointed by the Commission. The EU Relocation Coordinator should monitor and coordinate the operational aspects of relocations and should act as a central point of contact. The EU Relocation Coordinator should assist in solving conflicts arising between Member States in the implementation of this Regulation. The EU Relocation Coordinator should, in cooperation with the Asylum Agency, also promote coherent working methods for the verification of any meaningful links persons eligible for relocation might have with Member States of relocation. The office of the EU Relocation

Coordinator should be provided with sufficient staff and resources to effectively fulfil this role.

Amendment 21

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Given the need to ensure the smooth functioning of the solidarity mechanism established in this Regulation, a Solidarity Forum comprising the representatives of all Member States should be established and convened *by* the Commission.

Amendment

(17) Given the need to ensure the smooth functioning of the solidarity mechanism established in this Regulation, a Solidarity Forum comprising the representatives of all Member States should be established and *should be convened and chaired by the EU Relocation Coordinator on behalf of the Commission. The Asylum Agency and, where appropriate and invited by the EU Relocation Coordinator, the European Border and Coast Guard and the European Union Agency for Fundamental Rights, should participate in the Solidarity Forum. To ensure the effectiveness of the Solidarity Forum meetings, Member State representatives should be empowered to take decisions.*

Amendment 22

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Given the specific characteristics of disembarkations arising in the context of search and rescue operations *conducted by Member States or private organisations whether under instruction from Member States or autonomously in the context of migration*, this Regulation should provide for *a specific process applicable to people disembarked following those operations*

Amendment

(18) Given the specific characteristics of *recurring arrivals by sea, in particular of* disembarkations, arising in the context of search and rescue operations, this Regulation should *take into account the vulnerability of persons arriving from such disembarkations and* provide for *fast and effective solidarity measures.*

irrespective of whether there is a situation of migratory pressure.

Amendment 23

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) *Given the recurring nature of disembarkations from search and rescue operations on the different migratory routes, the annual Migration Management Report should set out the short-term projections of disembarkations anticipated for such operations and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation.* The Commission should adopt *an implementing* act establishing a pool of solidarity *measures* ('the solidarity pool') with the aim of assisting the Member State *of disembarkation to address the challenges of such* disembarkations. Such measures should comprise applicants for international protection *that are not in the border procedure* or measures *in the field of* strengthening of capacity in the field of asylum, reception *and return*, or operational support, *or measures in the external dimension.*

Amendment 24

Proposal for a regulation

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19) The Commission should adopt *annually a delegated* act establishing a pool of solidarity *contributions* ('the solidarity pool') with the aim of assisting the Member State *under migratory pressure or likely to be under such pressure, including where this pressure is caused by recurring arrivals by sea, including* disembarkations *following search and rescue operations or activities.* Such measures should comprise applicants for international protection *or beneficiaries of international protection* or measures *to* strengthening of capacity in the field of asylum *and* reception, or operational support.

(19a) *Where the annual solidarity pool has not been used, in whole or in part, at the end of a one year period, the anticipated solidarity contributions with regard to which no action has yet been*

taken as to their use should lapse.

Amendment 25

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) In order to provide a timely response to the *specific* situation *following disembarkations from search and rescue operations, the Commission, with the assistance of Union Agencies*, should *facilitate* the swift relocation of eligible applicants for international protection *who are not in the border procedure. Under the coordination of the Commission, the European Union Asylum Agency and the European Border and Coast Guard Agency* should draw up the list of eligible persons to be relocated indicating the distribution of those persons among the contributing Member States.

Amendment

(20) In order to provide a timely response to the situation *of migratory pressure, the EU Relocation Coordinator* should *support* the swift relocation of eligible applicants for *and beneficiaries of* international protection. *The benefitting Member State, in close cooperation with the EU Relocation Coordinator and the contributing Member State and the Asylum Agency*, should draw up the list of eligible persons to be relocated indicating the distribution of those persons among the contributing Member States. *Applicants should be informed and consulted and should have the right to present relevant information in the procedure of determination of meaningful links.*

Amendment 26

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) *Persons disembarked should be distributed in a proportionate manner among the Member States.*

Amendment

deleted

Amendment 27

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) ***The overall contribution of each Member State*** to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute. Where Member States contributions are insufficient to provide for a sustainable solidarity response the Commission should be empowered to ***adopt an implementing act setting out the total number of third-country nationals*** to be covered by relocation and the share of this number for each Member State calculated according to a ***distribution*** key based on the population and the GDP of each Member State. ***Where the indications from Member States to take measures in the field of capacity or the external dimension would lead to a shortfall of greater than 30% of the total number of relocations identified in the Migration Management Report, the Commission should be able to adjust the contributions of these Member States which should then contribute half of their share identified according to the distribution key either by way or relocation, or when so indicated, through return sponsorship.***

Amendment

(22) Member ***States' contributions*** to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute. Where Member States contributions are insufficient to provide for a sustainable solidarity response the Commission should be empowered to ***distribute the remaining needs*** to be covered by relocation and the share of this number for each Member State calculated according to a ***reference*** key based on the population and the GDP of each Member State.

Amendment 28

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) In order to ensure that ***support measures*** are available at all times ***to address the specific situation of disembarkations from search and rescue operations, where the number of disembarkations following search and rescue operation have reached 80% of the solidarity pools for one or more of the benefitting Member States, the***

Amendment

(23) In order to ensure that ***solidarity contributions*** are available at all times, the solidarity ***forum*** should ***meet at least twice a year and as frequently as necessary.***

Commission should adopt amended implementing acts increasing the total number of contributions by 50%.

Amendment 29

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) The solidarity mechanism should also address situations of migratory pressure in particular for those Member States which due to their geographical location are exposed to or likely to be exposed to migratory pressure. For this purpose, the Commission should adopt a report identifying whether a Member State is under migratory pressure and setting out the measures that could support that Member State in addressing the situation of migratory pressure.

Amendment

deleted

Amendment 30

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) When assessing whether a Member State is under migratory pressure the Commission, based on a broad qualitative assessment, should take account of a broad range of factors, including the number of asylum applicants, irregular border crossings, return decisions issued and enforced, *and relations with relevant third countries*. The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question.

Amendment

(25) When assessing whether a Member State is under migratory pressure the Commission, based on a broad qualitative *and quantitative* assessment, should take account of a broad range of factors, *including the relevant recommendations provided by the Asylum Agency and information gathered pursuant to the Union Mechanism for Preparedness and Management of Crisis related to Migration* including the number of asylum applicants, irregular border crossings, return decisions issued and enforced, *transfer decisions issued and carried out, level of arrivals by sea including through*

disembarkations following search and rescue operations, vulnerabilities of asylum applicants and the capacity of a Member State in managing its asylum and reception caseload. The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question.

Amendment 31

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) Only persons who are more likely to have a right to stay in the Union should be relocated. Therefore, the scope of relocation of applicants for international protection should be limited to those who are not subject to the border procedure set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Amendment

deleted

Amendment 32

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) The solidarity mechanism should include measures to *promote* a fair sharing of responsibility and a balance of effort between Member States also in the area of *return*. *Through return sponsorship*, a Member State should commit to support a Member State under migratory pressure *in carrying out the necessary activities to return illegally staying third-country nationals, bearing in mind that the benefitting Member State remains responsible for carrying out the return while the individuals are present on its territory. Where such activities have been*

Amendment

(27) The solidarity mechanism should include measures to *ensure* a fair sharing of responsibility and a balance of effort between Member States, also in the area of *transfers within this Regulation. With the agreement of the benefitting Member State*, a Member State should *be able to* commit to support a Member State under migratory pressure *by taking responsibility for applications for international protections*.

unsuccessful after a period of 8 months, the sponsoring Member States should transfer these persons in line with the procedures set out in this Regulation and apply Directive 2008/115/EC; if relevant, Member States may recognise the return decision issued by the benefitting Member State in application of Council Directive 2001/40³⁹. Return sponsorship should form part of the common EU system of returns, including operational support provided through the European Border and Coast Guard Agency and the application of the coordination mechanism to promote effective cooperation with third countries in the area of return and readmission.

³⁹ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, p. 34.

Amendment 33

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) Member States should notify the type of solidarity contributions that they will take through the completion of a solidarity response plan. Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to *other* Member States. At the same time, where a Member State has *incurred a heavy migratory burden in previous years, due to a high number* of applications for international protection it should be possible for a Member State to request a reduction of its share of the solidarity contribution to Member States under migratory pressure *where such contribution consists of*

Amendment

(28) Member States should notify the type of solidarity contributions that they will take through the completion of a solidarity response plan. Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to Member States. At the same time, where a Member State has *examined twice the Union average per capita* of applications for international protection *over the preceding ten years*, it should be possible for a Member State to request a reduction *of 10 %* of its share of the solidarity contribution to Member States under migratory pressure. That reduction should be shared proportionately

relocation or return sponsorship. That reduction should be shared proportionately among the other Member States taking such measures.

among the other Member States taking such measures.

Amendment 34

Proposal for a regulation Recital 29

Text proposed by the Commission

Amendment

(29) Where the Migration Management Report identifies needs in a Member State under migratory pressure in the field of capacity measures in asylum, reception and return or in the external dimension, contributing Member States should be able to make contributions to these needs instead of relocation or return sponsorship. In order to ensure that such contributions are in proportion to the share of the contributing Member State the Commission should be able to increase or decrease of such contributions in the implementing act. Where the indications from Member States to take measures in the field of capacity or the external dimension would lead to a shortfall greater than 30% of the required number of persons to be relocated or subject to return sponsorship, the Commission should be able to adjust the contributions of these Member States in order to ensure that they contribute half of their share to relocation or return sponsorship.

deleted

Amendment 35

Proposal for a regulation Recital 30

Text proposed by the Commission

Amendment

(30) In order to ensure a comprehensive

(30) In order to ensure a, comprehensive

and effective solidarity response and in order to give clarity to Member States receiving support, the Commission should adopt an implementing act specifying the contributions to be made by each Member State. Such contributions should **always** be based on the type of contributions indicated by the Member State concerned in the solidarity response plan, except where **that** Member State **failed to submit one**. In such cases, the measures set out in the implementing act for the Member State concerned should be determined by the Commission.

and effective solidarity response and in order to give clarity to Member States receiving support, the Commission should adopt an implementing act specifying the **type and number of** contributions to be made by each Member State. Such contributions should be based on the type of contributions indicated by the Member State concerned in the solidarity response plan, except where **the measures do not cover the identified need of the benefitting** Member State. In such cases, the measures set out in the implementing act for the Member State concerned should be determined by the Commission.

Amendment 36

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) *A distribution key based on the size of the population and of the economy of the Member States should be applied as a point of reference for the operation of the solidarity mechanism enabling the determination of the overall contribution of each Member State.*

Amendment

deleted

Amendment 37

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) A Member State should be able to **take**, at its own initiative or at the request of another Member State, other **solidarity measures** on a voluntary basis to assist that Member State in addressing the migratory situation or to prevent migratory pressure. Those contributions **should** include measures aimed at strengthening the

Amendment

(32) A Member State should be able to **make**, at its own initiative or at the request of another Member State, other **contributions** on a voluntary basis to assist that Member State in addressing the migratory situation or to prevent migratory pressure. Those contributions **may** include **relocations of applicants and beneficiaries**

capacity of the Member State *under pressure or at responding to migratory trends* through cooperation with third countries. *In addition, such solidarity measures should include relocation of third-country nationals that are in the border procedure as well as illegally staying third-country nationals. In order to incentivise voluntary solidarity, where Member States make voluntary contributions in the form of relocation or return sponsorship, those contributions should be taken into account in the implementing act provided for in respect of situations of migratory pressure.*

of international protection and measures aimed at strengthening the capacity of the Member State *in the field of asylum, reception, return and reintegration and operational support, including* through cooperation with third countries. Those contributions *are without prejudice of the solidarity contributions established* in the implementing act.

Amendment 38

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) Union bodies, offices and agencies in the field of asylum and border and migration management should be able to provide support to the Member States and the Commission in implementing this Regulation by providing expertise and operational support as foreseen by their respective mandates.

Amendment 39

Proposal for a regulation Recital 33

Text proposed by the Commission

Amendment

(33) The Common European Asylum System (CEAS) has been built progressively as a common area of protection based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New

(33) The Common European Asylum System (CEAS) has been built progressively as a common area of protection based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New

York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that no person is sent back to persecution, in compliance with the principle of non-refoulement. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, **all respecting** the principle of non-refoulement, are considered as safe countries for third-country nationals.

York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that no person is sent back to persecution, in compliance with the principle of non-refoulement. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, **are responsible for upholding human rights and** the principle of non-refoulement, **and as such** are considered as safe countries for third-country nationals.

Amendment 40

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection should be included in the Common European Asylum System⁴⁰. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

⁴⁰ As set out by the European Council at its special meeting in Tampere on 15 and 16

Amendment

(34) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection should be included in the Common European Asylum System⁴⁰. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible **and with which applicants have meaningful links as set out in this Regulation**, so as to guarantee **swift and effective** access to the **fair and efficient** procedures for granting international protection and not to compromise the objective of the rapid **and fair** processing of applications for international protection. **Member State should provide applicants with all the relevant information regarding the application of this Regulation in a language that they understand.**

⁴⁰ As set out by the European Council at its special meeting in Tampere on 15 and 16

October 1999.

October 1999.

Amendment 41

Proposal for a regulation

Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) In order to increase understanding of the CEAS and solidarity provided under this Regulation, it is necessary to improve the provision of information. Investing in the early provision of accessible information will greatly increase the likelihood that persons concerned by this regulation will understand the procedures linked to it. The Asylum Agency should in this regard develop suitable information material, in close cooperation with national authorities. That agency should also develop audio-visual information material complementary to written information material. The information material should be translated and made available in different languages.

Amendment 42

Proposal for a regulation

Recital 35

Text proposed by the Commission

Amendment

(35) This Regulation should be based on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council⁴¹ ***while developing*** the principle of solidarity and fair sharing of responsibility as part of the common framework. To that end, ***a*** new solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory

(35) This Regulation should be based on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council⁴¹ ***and*** the principle of solidarity and fair sharing of responsibility as part of the common framework, ***in line with Article 80 of TFEU***. To that end, ***the*** new solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced

pressure and to facilitate regular solidarity support among Member States.

with migratory pressure and to facilitate regular solidarity support among Member States. ***The effective implementation of such solidarity contributions is a key prerequisite to the functioning of the whole CEAS.***

⁴¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31.

⁴¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31.

Amendment 43

Proposal for a regulation Recital 37

Text proposed by the Commission

Amendment

(37) Persons granted immediate protection pursuant to Regulation (EU) XXX/XXX [Regulation addressing situations of crisis and force majeure in the field of asylum and migration] should continue to be considered as applicants for international protection, in view of their pending (suspended) application for international protection within the meaning of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. As such, they should fall under the scope of this Regulation and be considered as applicants for the purpose of applying the criteria and mechanisms for determining the Member State responsible for examining their applications for international protection or the procedure for relocation as set out in this Regulation.

deleted

Amendment 44

Proposal for a regulation Recital 38

Text proposed by the Commission

(38) ***In order to limit unauthorised movements and*** to ensure that the Member States have the necessary tools to ensure transfers of beneficiaries of international protection who entered the territory of another Member State ***than the Member State responsible*** without fulfilling the conditions of stay ***in that other Member State to the Member State responsible***, and to ensure effective solidarity between Member States, this Regulation should also apply to beneficiaries of international protection. Likewise, this Regulation should apply to persons resettled or admitted by a Member State in accordance with Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or who are granted international protection or humanitarian status under a national resettlement scheme.

Amendment

(38) To ensure that the Member States have the necessary tools to ensure transfers of beneficiaries of international protection who entered the territory of another Member State without fulfilling the conditions of stay and to ensure effective solidarity between Member States, this Regulation should also apply to beneficiaries of international protection. Likewise, this Regulation should apply to persons resettled or admitted by a Member State in accordance with Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or who are granted international protection or humanitarian status under a national resettlement scheme.

Amendment 45

Proposal for a regulation Recital 39

Text proposed by the Commission

(39) ***At the same time, and*** given the importance of facilitating the full integration of beneficiaries of international protection in the Member State of residence, the prospect of obtaining long-term resident status in a shorter period of time should be provided for. Beneficiaries of international protection should be able to obtain long-term resident status in the Member State which granted them international protection after three years of legal and continuous residence in that Member State. As regards other conditions

Amendment

(39) Given the importance of facilitating the full integration of beneficiaries of international protection in the Member State of residence, the prospect of obtaining long-term resident status in a shorter period of time should be provided for. Beneficiaries of international protection, ***as well as beneficiaries of protection under the 1954 Convention Relating to Stateless Persons***, should be able to obtain long-term resident status in the Member State which granted them international protection after three years of

to obtain the status, beneficiaries of international protection should be required to fulfil the same conditions as other third-country nationals. Council Directive 2003/109/EC⁴² should therefore be amended accordingly.

legal and continuous residence in that Member State. As regards other conditions to obtain the status, beneficiaries of international protection should be required to fulfil the same conditions as other third-country nationals. Council Directive 2003/109/EC⁴² should therefore be amended accordingly.

⁴² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.1.2004, p. 44.

⁴² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.1.2004, p. 44.

Amendment 46

Proposal for a regulation Recital 40

Text proposed by the Commission

(40) For reasons of efficiency and legal ***certainly***, it is essential that the Regulation is based on the principle that responsibility is determined only once, unless the person concerned has left the territory of the Member States in compliance with a return decision or removal order.

Amendment

(40) For reasons of efficiency and legal ***certainty***, it is essential that the Regulation is based on the principle that responsibility is determined only once, unless the person concerned has left the territory of the Member States in compliance with a return decision or removal order.

Amendment 47

Proposal for a regulation Recital 41

Text proposed by the Commission

(41) Directive XXX/XXX/EU [Reception Conditions Directive] of the European Parliament and of the Council⁴³ should apply to ***the procedure for the determination of the Member State responsible as*** regulated under this Regulation, subject to the limitations in the application of that Directive.

Amendment

(41) Directive XXX/XXX/EU [Reception Conditions Directive] of the European Parliament and of the Council⁴³ should apply to ***all procedures*** regulated under this Regulation, subject to the limitations in the application of that Directive.

Amendment 48

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. ***In assessing the best interests of the child***, Member States should, ***in particular, take*** due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

Amendment

(43) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. Member States should ***carry out an individual assessment of the best interest of the child, taking*** due account of the minor's well-being and social development, safety and security considerations ***in the short, medium and long term***, and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability, ***including the appointment of an independent guardian and access to free legal assistance.***

Amendment 49

Proposal for a regulation

Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) Staff who deal with requests concerning unaccompanied minors should have received and continue to receive, appropriate training on the rights of the child and child psychology and development, and on risk assessment to target care and protection depending on the individual needs of the minor, with a

specific focus on early identification of victims of trafficking in human beings and of abuse as well as training on good practices to prevent disappearance.

Amendment 50

Proposal for a regulation Recital 44

Text proposed by the Commission

(44) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

Amendment

(44) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for *private and* family life, *as well as for the principle of non-discrimination* should be a primary consideration of Member States when applying this Regulation.

Amendment 51

Proposal for a regulation Recital 44 a (new)

Text proposed by the Commission

Amendment

(44a) In applying this Regulation, Member States should respect their international obligations towards stateless persons, including under the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954, and in accordance with other international human rights law instruments. Where necessary, the treatment of stateless persons should be distinguished from third-country nationals with due consideration to their particular protection needs.

Amendment 52

Proposal for a regulation
Recital 45

Text proposed by the Commission

(45) In order to prevent **that** persons who represent a security risk **are** transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the **responsibility** criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider the person concerned a **danger to national security or public order**.

Amendment 53

Proposal for a regulation
Recital 46

Text proposed by the Commission

(46) The processing together of the applications for international protection of the members of one family by a single Member State should make it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

Amendment 54

Proposal for a regulation
Recital 47

Amendment

(45) In order to prevent persons who represent a security risk **from being** transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the **responsibility** criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider the person concerned a **threat to internal** security.

Amendment

(46) ***In order to ensure family unity***, the processing together of the applications for international protection of the members of one family by a single Member State should make it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated, ***with a view also to promoting integration and reduce unauthorised movements. This should be without prejudice to the right of an applicant to lodge an application individually.***

Text proposed by the Commission

(47) The definition of a family member in this Regulation should include the sibling or siblings of the applicant. ***Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements.*** The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, ***but before their arrival on the territory of the Member State.*** This limited and targeted enlargement of the scope of the definition is ***expected to reduce the incentive for some unauthorised movements of asylum seekers*** within the EU.

Amendment 55

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should be a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion. ***In order to discourage unauthorised movements of unaccompanied minors, which are not in***

Amendment

(47) The definition of a family member in this Regulation should include the sibling or siblings of the applicant. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin. This limited and targeted enlargement of the scope of the definition is ***of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements*** within the EU.

Amendment

(48) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent, ***including*** on account of the applicant's pregnancy or maternity, state of health or old age, should be a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion, ***if it is in the best interest of the minor.*** In the absence of a family member or a relative,

their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied *minor's application for international protection was first registered*, unless it is demonstrated that this would not be in the best interests of the child. Before transferring an unaccompanied minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and in particular the prompt appointment of a *representative or representatives* tasked with safeguarding respect for all the rights to which they are entitled. Any decision to transfer an unaccompanied minor should be preceded by an assessment of his or her best interests by staff with the necessary qualifications *and* expertise.

Amendment 56

Proposal for a regulation Recital 49

Text proposed by the Commission

(49) The rules on evidence should allow for a swifter family reunification than until now. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection.

the Member State responsible should be that where the unaccompanied *minor is present* unless it is demonstrated that this would not be in the best interests of the child. Before transferring an unaccompanied minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and in particular the prompt appointment of a *guardian* tasked with safeguarding respect for all the rights to which they are entitled. Any decision to transfer an unaccompanied minor should be preceded by an assessment of his or her best interests by staff with the necessary qualifications, *training*, expertise *and independence*.

Amendment

(49) The rules on evidence should allow for a swifter family reunification than until now. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection. *Member States' authorities should consider all available evidence including photos, proof of contact and witness statements to make a fair appraisal of the relationship. A light procedure should be envisaged to ensure swift family reunification and access to the asylum procedures for applicants where there are sufficient indicators that*

they are likely to have the right to family reunification.

Amendment 57

Proposal for a regulation

Recital 50

Text proposed by the Commission

(50) Where persons are in possession of a diploma or other qualification, the Member State where the diploma was issued should be responsible for examining their application. This would ensure a swift examination of the application in the Member State with which the applicant has meaningful links based on such a diploma.

Amendment

(50) Where persons are in possession of a diploma or other qualification, the Member State where the diploma was issued should be responsible for examining their application. This would ensure a swift examination of the application in the Member State with which the applicant has meaningful links based on such a diploma. ***Without prejudice to online training following restrictions imposed by Member States, online training or other forms of distance learning should not be considered to be relevant.***

Amendment 58

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) Considering that a Member State should remain responsible for a person who has irregularly entered its territory, it is also necessary to include the situation when the person enters the territory following a search and rescue operation. A derogation from this responsibility criterion should be laid down for the situation where a Member State has relocated persons having crossed the external border of another Member State irregularly or following a search and rescue operation. In such a situation, the Member State of relocation should be responsible if the person applies for

Amendment

deleted

international protection.

Amendment 59

Proposal for a regulation

Recital 52

Text proposed by the Commission

(52) Any Member State should be able to derogate from the responsibility criteria in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection registered with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

Amendment

(52) Any Member State should be able to derogate ***at its own discretion*** from the responsibility criteria in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations ***or to support a Member State under migratory pressure*** and examine an application for international protection registered with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

Amendment 60

Proposal for a regulation

Recital 53

Text proposed by the Commission

(53) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding and unauthorised movements between Member States, it is necessary to establish clear obligations to be complied with by the applicant in the context of the procedure, of which ***he or she*** should be duly informed in a timely manner. ***Violation of those*** legal obligations should ***lead to appropriate and proportionate procedural consequences for the applicant and to appropriate and proportionate consequences in terms of his or her***

Amendment

(53) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding and unauthorised movements between Member States, it is necessary to establish clear obligations to be complied with by the ***Member State and the*** applicant in the context of the procedure, of which ***the applicant*** should be duly informed in a timely manner. ***Information to applicants about rights and*** legal obligations should ***be provided in writing and, where necessary, also orally in a concise and transparent manner and, when the***

reception conditions. In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.

applicant *is a minor, in a child-friendly manner. Applicants should fully cooperate with the competent authorities of the Member States in matters covered by this Regulation and they should be duly informed of the requirements and of the consequences of non-compliance.* In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.

Amendment 61

Proposal for a regulation Recital 54

Text proposed by the Commission

Amendment

(54) In order to limit the possibility for applicants' behaviour to lead to the cessation or shift of responsibility to another Member State, rules allowing for cessation or shift of responsibility where the person leaves the territory of the Member States for at least three months during examination of the application or absconds to evade a transfer to the Member State responsible for more than 18 months should be deleted. The shift of responsibility when the time limit for sending a take back notification has not been respected by the notifying Member State should also be removed in order to discourage circumventing the rules and obstruction of procedure. In situations where a person has entered a Member State irregularly without applying for asylum, the period after which the responsibility of that Member State ceases and another Member State where that person subsequently applies becomes responsible should be extended, to further incentivise persons to comply with the rules and apply in the first Member State of entry and hence limit unauthorised

deleted

movements and increase the overall efficiency of the CEAS.

Amendment 62

Proposal for a regulation

Recital 55

Text proposed by the Commission

(55) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible. As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, the fact that the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights as well as of the obligations under this Regulation and of the consequences of not complying with them.

Amendment

(55) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded ***and is not available to the authorities***, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible ***and the applicant does not request to be heard***. As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, the fact that the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights as well as of the ***his or her*** obligations under this Regulation and of the consequences of not complying with them. ***The information should be provided in a language that the applicant understands and can communicate in, in a concise and easily accessible form, using clear and plain language.***

Amendment 63

Proposal for a regulation

Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) The person conducting the interview should have received sufficient training to take account of the personal and general circumstances of the applicant, including their cultural origin, age, gender, sexual orientation, gender identity and vulnerability. Staff interviewing applicants should also have acquired general knowledge and possess awareness of issues which could adversely affect the applicant's ability to be interviewed, such as indicators that the person may have been the victim of torture or gender-based violence in the past.

Amendment 64

Proposal for a regulation Recital 55 b (new)

Text proposed by the Commission

Amendment

(55b) In accordance with Directive 2011/36/EU¹, particular attention should be paid to identifying victims of trafficking in human beings, in order to offer protection and prevent them from being trafficked further into the Union.

¹ ***Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).***

Amendment 65

Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred. ***The scope of the effective remedy should be limited to an assessment of whether applicants' fundamental rights to respect of family life, the rights of the child, or the prohibition of inhuman and degrading treatment risk to be infringed upon.***

Amendment 66

Proposal for a regulation
Recital 57

Text proposed by the Commission

(57) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying a transfer, as well as in cases where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily responsible due to

Amendment

(56) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

Amendment

(57) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying ***out*** a transfer, as well as in cases ***of relocation or*** where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily

systemic deficiencies resulting in a risk of inhuman or degrading treatment and subsequently another Member State is determined as *reponsible*.

responsible due to *a real risk of violations of the applicant's fundamental rights or* systemic deficiencies resulting in a risk of inhuman or degrading treatment and subsequently another Member State is determined as *responsible*.

Amendment 67

Proposal for a regulation Recital 58

Text proposed by the Commission

(58) In order to ensure the speedy determination of responsibility, the deadlines for making and replying to requests to take charge, for making take back *notifications*, as well as for making and deciding on appeals, should be streamlined and shortened.

Amendment

(58) In order to ensure the speedy determination of responsibility, the deadlines for making and replying to requests to take charge, for making take back *requests*, as well as for making and deciding on appeals, should be streamlined and shortened, *to the greatest extent possible, while respecting the fundamental rights of applicants. The transfer and relocation of applicants with specific reception or procedural needs should be prioritised.*

Amendment 68

Proposal for a regulation Recital 59

Text proposed by the Commission

(59) 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. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality thereby only being allowed as a measure of last resort. *In particular*, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The

Amendment

(59) 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. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality thereby only being allowed as a measure of last resort. *Minors, as a rule, should not be detained and efforts should be made to place them in accommodation with special*

procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive XXX/XXX/EU [Reception Conditions Directive] also to persons detained on the basis of this Regulation.

provisions for minors. The detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive XXX/XXX/EU [Reception Conditions Directive] also to persons detained on the basis of this Regulation.

Amendment 69

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out. The rules and safeguards relating to transfers set out in this Regulation should apply to transfers for the purpose of relocation ***except where they are not relevant for such a procedure.***

Amendment

(62) In order to ensure a clear and efficient relocation procedure, specific ***binding*** rules for a benefitting and a contributing Member State should be set out. The rules and safeguards relating to transfers set out in this Regulation should apply to transfers for the purpose of relocation.

Amendment 70

Proposal for a regulation Recital 63

Text proposed by the Commission

(63) ***To support*** Member States ***who*** undertake relocation as a solidarity ***measure***, financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be

Amendment

(63) ***Where*** Member States undertake relocation as a solidarity ***contribution, appropriate and proportionate*** financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive

provided.

contribution should be provided.

Amendment 71

Proposal for a regulation Recital 63 a (new)

Text proposed by the Commission

Amendment

(63a) Member States should take into account the support offered by cities and regions, as relocation and integration relies to a large extent on those actors. They are key players in the achievement of meaningful solidarity and successful relocation and integration trajectories. To that end, Member States should take measures to support local and regional authorities, such as by providing them with financial support, information, technical support, and by reducing unnecessary administrative barriers.

Amendment 72

Proposal for a regulation Recital 64

Text proposed by the Commission

Amendment

(64) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States ***for*** improving communication between competent departments, reducing time limits ***for procedures or simplifying the processing of take charge requests or take back notifications, or establishing*** procedures ***for the performance of transfers.***

(64) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States ***in order to carry out transfers more efficiently. Such arrangements may include*** improving communication between competent departments, ***or*** reducing time limits ***and*** simplifying procedures.

Amendment 73

Proposal for a regulation Recital 66

Text proposed by the Commission

(66) A network of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

Amendment

(66) A network of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance. ***The network should organise regular meetings to enhance trust-building and common understanding of the challenges of the implementation of the CEAS in different Member States.***

Amendment 74

**Proposal for a regulation
Recital 69**

Text proposed by the Commission

(69) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

Amendment

(69) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the ***Court of Justice of the European Union and the*** European Court of Human Rights.

Amendment 75

**Proposal for a regulation
Recital 70**

Text proposed by the Commission

(70) Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁷ applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and

Amendment

(70) Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁷ applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and

organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks.

organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks. ***In particular, data subjects should be notified without undue delay when a security incident is likely to result in a high risk to their rights and freedoms in accordance with Regulation (EU) 2016/679.***

⁴⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

⁴⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

Amendment 76

Proposal for a regulation Recital 70 a (new)

Text proposed by the Commission

Amendment

(70a) Member States as well as the Union agencies should take all proportionate and necessary measures to ensure that the data is stored in a secure way.

Amendment 77

Proposal for a regulation

Recital 72

Text proposed by the Commission

(72) The examination procedure should be used for the adoption of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge **requests** and take back **notifications**; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

Amendment

(72) The examination procedure should be used for the adoption of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge and take back **requests**; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health **and vulnerabilities** certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

Amendment 78

Proposal for a regulation

Recital 73

Text proposed by the Commission

(73) The Commission should adopt immediately applicable implementing acts in duly justified imperative grounds of urgency due to the situation of migratory pressure present in a Member States.

Amendment

(73) The Commission should adopt immediately applicable **delegated and** implementing acts in duly justified imperative grounds of urgency due to the situation of migratory pressure present in a Member States.

Amendment 79

Proposal for a regulation Recital 77

Text proposed by the Commission

(77) This Regulation respects the fundamental rights and observes the principles which are **acknowledged, in particular**, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. **This Regulation** should therefore **be applied** accordingly.

Amendment

(77) This Regulation respects the fundamental rights and observes the principles which are **guaranteed in Union and international law, including** in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. **Member States** should therefore **apply this Regulation** accordingly.

Amendment 80

Proposal for a regulation Recital 78

Text proposed by the Commission

(78) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection **lodged** in one of the Member States by a third-country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing a situation of migratory pressure, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article,

Amendment

(78) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection **registered** in one of the Member States by a third-country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing a situation of migratory pressure, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article,

this Regulation does not go beyond what is necessary in order to achieve that objective.

this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) sets out a common framework for the management of asylum and migration in the Union;

Amendment

(a) sets out a common framework for the management of asylum and migration in the Union, ***and the functioning of the Common European Asylum System***;

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point b

Text proposed by the Commission

(b) establishes a mechanism for solidarity;

Amendment

(b) establishes a mechanism for solidarity ***and fair sharing of responsibility, as enshrined in Article 80 Treaty of the Functioning of the European Union (TFEU)***;

Amendment 83

Proposal for a regulation

Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the ***Treaty*** and who is not a person enjoying the right ***to*** free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council⁵³ ;

Amendment

(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the ***TFEU*** and who is not a person enjoying the right ***of*** free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council⁵³;

⁵³ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

⁵³ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

Amendment 84

Proposal for a regulation

Article 2 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ‘stateless person’ means a person who is not considered a national by any State under the operations of its law, as referred to in the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954;

Amendment 85

Proposal for a regulation

Article 2 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, ***or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether the applicant has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [Regulation addressing situations of crisis and force majeure in the field of asylum***

(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a ***final*** decision has not been taken;

and migration];

Amendment 86

Proposal for a regulation

Article 2 – paragraph 1 – point g – introductory part

Text proposed by the Commission

(g) ‘family members’ means, *insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States*, the following members of the applicant’s family who are present on the territory of the Member States:

Amendment

(g) ‘family members’ means the following members of the applicant’s *or beneficiary’s* family who are present on the territory of the Member States:

Amendment 87

Proposal for a regulation

Article 2 – paragraph 1 – point g – point i

Text proposed by the Commission

(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

Amendment

(i) the spouse of the applicant *or beneficiary* or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

Amendment 88

Proposal for a regulation

Article 2 – paragraph 1 – point g – point ii

Text proposed by the Commission

(ii) the minor children of couples referred to in the first indent or of the applicant, *on condition that they are unmarried and* regardless of whether they were born in or out of wedlock or adopted as defined under national law,

Amendment

(ii) the minor *or adult dependent* children of couples referred to in the first indent or of the applicant, *or beneficiary* regardless of whether they were born in or out of wedlock or adopted as defined *or recognised* under national law,

Amendment 89

Proposal for a regulation

Article 2 – paragraph 1 – point g – point iii

Text proposed by the Commission

(iii) where the applicant is a minor **and unmarried**, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

Amendment

(iii) where the applicant is a minor **or adult dependent child**, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

Amendment 90

Proposal for a regulation

Article 2 – paragraph 1 – point g – point iv

Text proposed by the Commission

(iv) where the beneficiary of international protection is a minor **and unmarried**, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,

Amendment

(iv) where the beneficiary of international protection is a minor **or adult dependent child**, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,

Amendment 91

Proposal for a regulation

Article 2 – paragraph 1 – point g – point v

Text proposed by the Commission

(v) the sibling or siblings of the applicant;

Amendment

(v) the sibling or siblings of the applicant **or beneficiary**;

Amendment 92

Proposal for a regulation

Article 2 – paragraph 1 – point g – point v a (new)

Text proposed by the Commission

Amendment

(va) by way of derogation from points (ii), (iii) and (iv), on the basis of an individual assessment, where the minor is married, the adult spouse constitutes a family member provided that the marriage is in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

Amendment 93

Proposal for a regulation

Article 2 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(k) ‘**representative**’ means a person or an organisation **appointed** by the competent **bodies** in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation **with a view to ensuring** the best interests of the child and exercising legal capacity for the minor where necessary;

(k) ‘**guardian**’ means a **natural** person or an organisation **including a public body designated** by the competent **authorities** in order to assist, and represent **and act on behalf of** an unaccompanied minor in procedures provided for in this Regulation **in order to ensure that the unaccompanied minor can benefit from the rights and comply with the obligations under this Regulation, while safeguarding** the best interests of the child **and his or her well-being**, and exercising legal capacity for the minor where necessary;

Amendment 94

Proposal for a regulation

Article 2 – paragraph 1 – point n

Text proposed by the Commission

Amendment

(n) ‘diploma or qualification’ means a diploma or qualification which is obtained after at least a three months’ period of study in a recognised, state or regional

(n) ‘diploma or qualification’ means a diploma or qualification which is obtained after at least a three months’ period of study **achieved on the territory of a**

programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

Member State in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

Amendment 95

Proposal for a regulation

Article 2 – paragraph 1 – point p

Text proposed by the Commission

(p) ‘absconding’ means the action by which an applicant does not remain available to the competent administrative or judicial authorities, ***such as by leaving the territory of the Member State without authorisation from the competent authorities*** for reasons which are not beyond the applicant’s control;

Amendment

(p) ‘absconding’ means the action by which an applicant does not remain available to the competent administrative or judicial authorities, for reasons which are not beyond the applicant’s control;

Amendment 96

Proposal for a regulation

Article 2 – paragraph 1 – point q

Text proposed by the Commission

(q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant who is subject to a transfer procedure may abscond;

Amendment

(q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, ***following an individual assessment***, which are based on objective criteria ***clearly*** defined by national law to believe that an applicant who is subject to a transfer procedure may abscond;

Amendment 97

Proposal for a regulation

Article 2 – paragraph 1 – point r

Text proposed by the Commission

(r) ‘benefitting Member State’ means the Member State benefitting from the solidarity *measures* in situations of migratory pressure *or for disembarkations following search and rescue operations as set out in Chapters I-III of Part IV of this Regulation*;

Amendment

(r) ‘benefitting Member State’ means the Member State benefitting from the solidarity *contributions as set out in Article 45* in situations of migratory pressure;

Amendment 98

Proposal for a regulation

Article 2 – paragraph 1 – point s

Text proposed by the Commission

(s) ‘contributing Member State’ means a Member State that *contributes* or is obliged to *contribute to the* solidarity *measures* to a benefitting Member State set out in *Chapters I-III of Part IV of this Regulation*;

Amendment

(s) ‘contributing Member State’ means a Member State that *provides* or is obliged to *provide* solidarity *contributions* to a benefitting Member State, *as set out in Article 45*;

Amendment 99

Proposal for a regulation

Article 2 – paragraph 1 – point t

Text proposed by the Commission

(t) ‘*sponsoring Member State*’ means a Member State that *commits to return illegally staying third-country nationals to the benefit of another Member State, providing the return sponsorship referred to in Article 55 of this Regulation*;

Amendment

deleted

Amendment 100

Proposal for a regulation

Article 2 – paragraph 1 – point t a (new)

Text proposed by the Commission

Amendment

(ta) ‘transfer’ means the action taken by the Member States and practical arrangements made by that Member State in order to take charge or to take back an applicant pursuant to Article 26 of this Regulation;

Amendment 101

Proposal for a regulation

Article 2 – paragraph 1 – point u

Text proposed by the Commission

Amendment

(u) ‘relocation’ means ***the transfer of a third-country national or a stateless person*** from the territory of a benefitting Member State to the territory of a contributing Member State;

(u) ‘relocation’ means ***transferral of an applicant or a beneficiary of international protection*** from the territory of a benefitting Member State to the territory of a contributing Member State;

Amendment 102

Proposal for a regulation

Article 2 – paragraph 1 – point v

Text proposed by the Commission

Amendment

(v) ‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979;

(v) ‘search and rescue operations’ means operations of search and rescue ***activities***, as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979, ***and operations as referred to in Article 10 of Regulation (EU) No 656/2014 of the European Parliament and of the Council^{1a}***;

^{1a} Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for

Amendment 103

Proposal for a regulation Article 2 – paragraph 1 – point w

Text proposed by the Commission

(w) ‘migratory pressure’ means a situation ***where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;***

Amendment

(w) ‘migratory pressure’ means, ***without prejudice to the definition of crisis in Article XX of Regulation (EU) xx/xx [Crisis Regulation], a situation, whereby the arrivals or applications of third-country nationals or stateless persons, including recurring arrivals by sea, in particular disembarkations following search and rescue operations and activities place a disproportionate responsibility even on well-prepared asylum, reception and migration systems, which requires solidarity contributions pursuant to Article 45 of this Regulation;***

Amendment 104

Proposal for a regulation Article 2 – paragraph 1 – point w a (new)

Text proposed by the Commission

Amendment

(wa) ‘reception conditions’ means the ***reception conditions, as defined in Article 2(6) of Directive (EU) XXX/XXX [Reception Conditions Directive];***

Amendment 105

Proposal for a regulation Article 2 – paragraph 1 – point x a (new)

Text proposed by the Commission

Amendment

(xa) ‘EU Relocation Coordinator’ means the person appointed by the Commission and with the mandate as defined in Article 58 a of this Regulation;

Amendment 106

Proposal for a regulation

Article 2 – paragraph 1 – point z

Text proposed by the Commission

Amendment

(z) ‘return decision’ means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council⁵⁴;

deleted

⁵⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

Amendment 107

Proposal for a regulation

Article 2 – paragraph 1 – point aa

Text proposed by the Commission

Amendment

(aa) ‘illegally staying third-country national’ means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.

deleted

Amendment 108

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

The Union and the Member States shall take actions in the field of asylum and migration management on the basis of a comprehensive approach. ***That comprehensive approach shall address the entirety of the migratory routes that affect asylum and migration management and shall consist*** of the following components:

Amendment

The Union and the Member States shall take ***common*** actions in the field of asylum and migration management on the basis of a comprehensive approach ***including the principle of integrated policy-making, in compliance with international and Union law, ensuring coherence between*** asylum and migration management ***policies and consisting*** of the following components:

Amendment 109

Proposal for a regulation

Article 3 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

deleted

Amendment 110

Proposal for a regulation
Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) full implementation of the common visa policy;

deleted

Amendment 111

Proposal for a regulation
Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) effective management and prevention of irregular migration;

deleted

Amendment 112

Proposal for a regulation
Article 3 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

(e) effective management of the Union's external borders, based on the European integrated border management *as set out in Article 3 of Regulation (EU) 2019/1896 of the European Parliament and of the Council*^{1a};

^{1a} Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

Amendment 113

Proposal for a regulation
Article 3 – paragraph 1 – point g

Text proposed by the Commission

(g) access to procedures for granting **and withdrawing** international protection on Union territory and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection;

Amendment

(g) **swift** access to **fair and efficient** procedures for granting international protection on Union territory, **including at Union borders** and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection;

Amendment 114

Proposal for a regulation Article 3 – paragraph 1 – point h

Text proposed by the Commission

(h) determination of the Member State responsible for the examination of an application for international protection, based on shared responsibility and rules and mechanisms for solidarity;

Amendment

(h) determination of the Member State responsible for the examination of an application for international protection, based on shared responsibility and rules and mechanisms for solidarity, **as enshrined in Article 80, TFEU**;

Amendment 115

Proposal for a regulation Article 3 – paragraph 1 – point i

Text proposed by the Commission

(i) access for applicants to adequate reception conditions;

Amendment

(i) access for applicants to adequate reception conditions, **in accordance with the Reception Conditions Directive**;

Amendment 116

Proposal for a regulation Article 3 – paragraph 1 – point j

Text proposed by the Commission

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

Amendment

(j) return of **irregularly** staying third-country nationals **in accordance with the**

Amendment 117

Proposal for a regulation

Article 3 – paragraph 1 – point l

Text proposed by the Commission

Amendment

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

deleted

Amendment 118

Proposal for a regulation

Article 3 – paragraph 1 – point m

Text proposed by the Commission

Amendment

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

(m) *where applicable,* deployment and use of the operational tools set up at Union level, notably the Asylum Agency;

Amendment 119

Proposal for a regulation

Article 3 – paragraph 1 – point n

Text proposed by the Commission

Amendment

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

deleted

Amendment 120

Proposal for a regulation

Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Principle of integrated policy-making

- 1. The Union and Member States shall ensure coherence of asylum and migration management policies, including both the internal and external components of those policies.***
- 2. The Union and Member States acting within their respective competencies shall be responsible for the implementation of the asylum and migration management policies.***
- 3. Member States, with the support of Union Agencies, shall ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the comprehensive approach referred to in Article 3, including the necessary human and financial resources and infrastructure.***

Amendment 121

**Proposal for a regulation
Article 4 a (new)**

Text proposed by the Commission

Amendment

Article 4a

A long-term European Asylum and Migration Management Strategy

The Commission shall adopt a five-year European Asylum and Migration Management Strategy (the ‘Strategy’) setting out the strategic approach to ensure access to asylum procedures and the functioning and implementation of asylum and migration policies at Union level, in accordance with the principles set out in this Part and in Union primary law and applicable international law. The

Commission shall transmit the Strategy to the European Parliament and the Council.

The first Strategy shall be adopted by ... [18 months after the entry of this Regulation] and every five years thereafter.

The Strategy shall include the components listed in Article 3, and also take into account:

(a) the implementation of the national asylum and migration management strategies of the Member States, referred to in Article 5, and their compliance with Union and international law;

(b) relevant information gathered by the Commission under the Commission Recommendation No XXX on an European Preparedness and Crisis Management Mechanism (the 'Migration Preparedness and Crisis Blueprint');

(c) information collected by the Commission and the Asylum Agency on implementation of the asylum acquis;

(d) information gathered from the European External Action Service and relevant Union bodies, offices and agencies, in particular reports by the Asylum Agency, European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights;

(e) any other relevant information, including from Member States, monitoring authorities, international organisations, and any other relevant body and organisations;

(f) the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

Amendment 122

Proposal for a regulation Article 4 b (new)

Article 4b

Annual Situational Report

1. The Commission shall monitor and provide information on the asylum, reception and migratory situation over the previous 12 month period as a whole through annual situational reports based on qualitative data and information provided by the Member States, the European External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, the European Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Fundamental Rights, and other relevant bodies, offices, agencies or organisations. The Commission shall transmit the annual situational reports to the European Parliament and the Council by [...] of each year.

The annual situational reports shall include:

(a) the total number of applications for international protection and the nationalities of the applicants, including the numbers of applications lodged by unaccompanied minors and other vulnerable persons;

(b) the reception capacity of the Member States;

(c) the number of third-country nationals who have been identified by Member States authorities that do not fulfil the conditions for entry, stay or residence in the Member State, including overstayers within the meaning of Article 3(1), point (19), of Regulation (EU) 2017/2226 of the European Parliament and of the Council^{1a};

(d) the number of return decisions issued by the Member States and the number of third-country nationals who

left the territory of the Member States in accordance with a return decision;

(e) the number of third-country nationals admitted by the Member States through resettlement or humanitarian admission schemes;

(f) the number of incoming and outgoing take charge or take back requests, the number of transfer decisions and the numbers of transfers carried out in accordance with this Regulation;

(g) the number and nationality of third-country nationals disembarked following search and rescue operations and activities, and the number of applications for international protection lodged by those third-country nationals;

(h) the Member States which experienced recurring arrivals by sea, in particular through disembarkations following search and rescue operations and activities;

(i) the number of third-country nationals subject to the border procedure provided for in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and their nationalities;

(j) the support provided by Union bodies, offices and agencies to the benefitting Member States;

(k) an annual evaluation of the implementation of the Strategy.

2. In addition to the annual situational reports, the Commission shall, where necessary or upon request, provide information to the European Parliament and to the Council on the asylum, reception and migratory situation.

^{1a} Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of

third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

Amendment 123

Proposal for a regulation Article 4 c (new)

Text proposed by the Commission

Amendment

Article 4c

Projected Annual Solidarity Needs

1. *The Commission shall, together with the transmission of the annual situational report as referred to in Article 4b, adopt a delegated act in accordance with Article 68, setting out the anticipated evolution of the migratory situation in the Member States and anticipated number of arrivals, including arrivals by sea, in particular through disembarkation following search and rescue operations or activities, in the following 12 months.*

That delegated act shall also identify the Member States that experienced recurring arrivals by sea, in particular through disembarkation following search and rescue operations or activities in the previous 12 months.

2. *Where the Commission anticipates that one or more Member States could face a situation of migratory pressure, the delegated act shall also, for the upcoming year, set out the projected annual solidarity needs in the form of:*

(a) *the total number of required relocations pursuant to Article 45(1), points (a) and (c);*

(b) the total number of required relocations allocated for applicants arriving by sea, in particular through disembarkation following search and rescue operations or activities;

(c) the total need of capacity-building measures pursuant to Article 45(2a).

The delegated act shall give priority to measures set out in Article 45(1).

The Commission shall consult with the Member State of Member States identified.

3. Where a Member State is identified as having experienced recurring arrivals by sea, in particular through disembarkation following search and rescue operations or activities in the previous 12 months, the Commission shall, for the purpose of paragraph 2, in any case consider that that Member State could face a situation of migratory pressure.

4. The Commission shall review the evolution of the migratory situation six months after the adoption of the delegated act, taking into account qualitative data and information from relevant agencies, bodies, offices, agencies or organisations.

The Commission shall transmit the review to the European Parliament and to the Council.

5. Where necessary, the Commission shall amend the delegated act by adjusting the anticipated number of arrivals, including by sea, in particular through disembarkation following search and rescue operations or activities, the projected annual solidarity needs as well as the indication as regards their type and increase.

Amendment 124

Proposal for a regulation
Article 5 – title

Text proposed by the Commission

Principle of solidarity and fair sharing *of* responsibility

Amendment

Principle of solidarity and fair sharing *or* responsibility ***and the duties of the Member States***

Amendment 125

Proposal for a regulation
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. In implementing their obligations, the Member States shall observe the principle of solidarity and fair sharing of responsibility and shall take into account the shared interest in the effective functioning of the Union’s asylum and migration management policies. ***Member States shall:***

Amendment

1. In implementing their obligations, the Member States shall observe the principle of solidarity and fair sharing of responsibility ***as enshrined in Article 80, TFEU,*** and shall take into account the shared interest in the effective functioning of the Union’s asylum and migration management policies.

Amendment 126

Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In fulfilling their duties, Member States shall:

Amendment 127

Proposal for a regulation
Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) establish and maintain national asylum and migration management systems that provide access to international

Amendment

(a) establish and maintain national asylum and migration management systems that provide access to international

protection procedures, grant such protection to those who are in need and ensure the return of those who are *illegally* staying;

and national protection procedures, *provide and invest in adequate reception and* grant such protection to those who are in need and ensure the *effective and dignified* return of those who are *irregularly* staying;

Amendment 128

Proposal for a regulation

Article 5 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) ensure that sufficient funding and qualified and well-trained staff is allocated in all circumstances and, where they consider it necessary or where applicable, request support from Union bodies, offices and agencies for that purpose;

Amendment 129

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) take all measures necessary and proportionate to reduce and prevent irregular migration *to the territories of the Member States, in close cooperation and partnership with relevant third countries*, including *as regards* the prevention and fight against migrant smuggling;

(b) take all measures necessary and proportionate, *in full compliance with fundamental rights*, to reduce and prevent irregular migration, including the prevention and fight against migrant smuggling *and human trafficking, whilst protecting the rights of smuggled and trafficked people*;

Amendment 130

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) apply correctly and expeditiously the rules on the determination of the Member State responsible for examining an application for international protection and, where necessary, carry out the transfer to the Member State responsible pursuant to Chapters I-VI of Part III;

Amendment

(c) apply correctly and expeditiously the rules on the determination of the Member State responsible for examining an application for international protection and, where necessary, carry out the transfer to the Member State responsible pursuant to Chapters I-VI of Part III **and Chapter I of Part IV**;

Amendment 131

**Proposal for a regulation
Article 5 – paragraph 1 – point d**

Text proposed by the Commission

(d) provide support to other Member States in the form of solidarity contributions on the basis of needs set out in Chapters I-III of Part IV;

Amendment

(d) provide **effective** support to other Member States in the form of solidarity contributions on the basis of needs set out in Chapters I-III of Part IV;

Amendment 132

**Proposal for a regulation
Article 5 – paragraph 1 – point e**

Text proposed by the Commission

(e) **take all reasonable and proportionate measures to prevent and correct unauthorised movements between Member States.**

Amendment

deleted

Amendment 133

**Proposal for a regulation
Article 5 – paragraph 1 b (new)**

Text proposed by the Commission

Amendment

1b. When implementing their obligations under paragraph 1a, Member

States shall cooperate closely.

Amendment 134

Proposal for a regulation

Article 5 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. Member States shall have national strategies in place that establish the strategic approach to ensure they have the capacity to effectively implement their asylum and migration management system, in full compliance with their obligations under Union and international law, taking into account their specific situation, especially their geographical location. The Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency shall, within their respective mandates, be able to support the Member States when establishing their national strategies. Those strategies shall, at least, include:

(a) preventive measures to reduce the risk of migratory pressure and contingency planning, taking into account the contingency planning pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council^{1a}, Regulation (EU) 2019/1896 and Directive (EU) XXX/XXX [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint;

(b) information on how the Member States implement the principles set out in this Part and legal obligations stemming therefrom at national level;

(c) the results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Regulation (EU)

2022/922 as well as of the monitoring carried out in accordance with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation].

The national strategies shall take into account other relevant strategies and existing support measures in particular those support measures under Regulation (EU) 2021/1147 of the European Parliament and of the Council^{1b} and Regulation (EU) 2021/2303 and be coherent with and complementary to the national strategies for European integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896.

When establishing their national strategies, Member States shall consult local and regional authorities.

Member States shall transmit their national asylum and migration management strategies to the Commission six months before the adoption of the Strategy as referred to in Article 4a.

^{1a} Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

^{1b} Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

Amendment 135

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. Financial and operational support

Amendment

2. Financial and operational support

by the Union for *the* implementation of the obligations shall be provided in accordance with the Regulation (EU) XXX/XXX [*Asylum and Migration Fund*] and Regulation (EU) XXX/XXX [*Integrated Border Management Fund*].

by the Union for implementation of the obligations, *including operational support from its agencies*, shall be provided in accordance with the Regulation (EU) 2021/2303, Regulation (EU) 2019/1986, Regulation (EU) 2021/1147 and Regulation (EU) 2021/1148^{1a}.

^{1a} Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).

Amendment 136

Proposal for a regulation Article 6

Text proposed by the Commission

[...]

Amendment

deleted

Amendment 137

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Governance and monitoring of the asylum and migration management

1. The Commission, the Council and the Member States shall ensure the consistent implementation of asylum and migration management policies, including both the internal and external components of those policies, in consultation with and with full respect for the competencies of the institutions and agencies of the Union and Member States

responsible for external policies.

2. The Commission, the Council and the Member States, acting within their respective competences, shall be responsible for the implementation of the asylum and migration management policies that comply fully with Union and international law, including with regard to fundamental rights, taking into account the comprehensive approach referred to in Article 3.

Amendment 138

Proposal for a regulation Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Cooperation with third countries to facilitate return and readmission

1. Where the Commission, on the basis of the analysis carried out in accordance with Article 25a(2) or (4) of Regulation (EU) No 810/2009 of the European Parliament and of the Council⁵⁷ and of any other information available, considers that a third country is not cooperating sufficiently on the readmission of illegally staying third-country nationals, and without prejudice to Article 25(a)(5) of that Regulation, it shall submit a report to the Council including, where appropriate, the identification of any measures which could be taken to improve the cooperation of that third country as regards readmission, taking into account the Union's overall relations with the third country.

2. Where the Commission considers it appropriate, it shall also identify in its report measures designed to promote cooperation among the Member States to facilitate the return of illegal staying

third-country nationals.

3. On the basis of the report referred to in paragraph 1, the Commission and the Council, within their respective competencies, shall consider the appropriate actions taking into account the Union's overall relations with the third country.

4. The Commission shall keep the European Parliament regularly informed of the implementation of this Article.

⁵⁷ *Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.*

Amendment 139

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Cooperation with third countries on asylum, border and migration management

1. The Union and the Member States shall promote and build tailor-made and mutually beneficial partnerships and close cooperation with relevant third countries, in order to

(i) promote legal migration and well-managed mobility for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States;

(ii) support partners hosting large numbers of migrants and refugees in need of protection and build their operational capacities;

- (iii) strengthen bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships;*
- (iv) support effective and human rights based migration policies;*
- (v) reduce the vulnerabilities caused by human trafficking and smuggling;*
- (vi) address drivers of irregular migration and forced displacement;*
- (vii) enhance readmission and reintegration.*

2. The partnerships and close cooperation with third countries shall be implemented in compliance with Union law and based on human rights, rule of law and respect of Union's common values.

3. The Commission and Member States shall also take measures to assess and promote other measures designed to foster and enhance mutually benefitting cooperation with third countries.

4. The Commission, the Council, and the Member States shall, within their respective competences, take actions which promote joint objectives and cooperation with third countries to address causes and drivers of irregular migration and forced displacement, applying fully the Neighbourhood, Development and International Cooperation Instrument - Global Europe.

5. In the application of this Article, the Commission shall, in particular, consider reports by the Asylum Agency, the European Border and Coast Guard Agency, Europol, the European Court of Auditors and the European External Action Service.

6. The Commission shall on an annual basis evaluate the efficiency and fundamental rights compliance of the partnerships referred to in the first paragraph, as well as the implementation

of this Article, and report to the European Parliament and the Council.

The evaluation shall include an assessment of the objectives of external policies as elaborated in Article 21 TEU and assessment of the impact those potential actions may have in the fields of migration, peace and security, development and poverty eradication.

Amendment 140

Proposal for a regulation

Article 8 – title

Text proposed by the Commission

Access to the procedure for examining an application for international protection

Amendment

The procedure *for determining the Member State responsible* for examining an application for international protection

Amendment 141

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II of Part III indicate is responsible.

Amendment

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State *at a time*, which shall be the one which the criteria set out in Chapter II of Part III indicate is responsible.

Amendment 142

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. Where no Member State **responsible** can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

Amendment

2. Where no Member State can be designated **as responsible for the examination of the application for international protection** on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it, **pursuant to Article 21**.

Amendment 143

**Proposal for a regulation
Article 8 – paragraph 3**

Text proposed by the Commission

3. Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure **and** in the reception conditions for applicants in that Member State, **resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union**, the determining Member State shall continue to examine the criteria set out in Chapter II of Part III in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph **to any** Member State designated on the basis of the criteria set out in Chapter II of Part III or to the first Member State with which the application was registered, that Member State shall become the Member State responsible.

Amendment

3. Where it is impossible for a Member State to transfer an applicant **or a beneficiary of international protection** to the Member State primarily designated as responsible because there are substantial grounds for believing that there **is a real risk of violations of the applicant's fundamental rights or there** are systemic flaws in the asylum procedure **or** in the reception conditions for applicants **or the beneficiaries of international protection** in that Member State, the determining Member State shall continue to examine the criteria set out in Chapter II of Part III in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph **and cannot establish whether another** Member State **can be** designated **as responsible** on the basis of the criteria set out in Chapter II of Part III or to the first Member State with which the application was registered, that Member State shall become the Member State responsible **for the examination of that application for**

international protection.

Amendment 144

Proposal for a regulation

Article 8 – paragraph 4 – subparagraph 1

Text proposed by the Commission

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] has not been carried out, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a ***danger to national security or public order*** of that Member State as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Amendment

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] has not been carried out, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a ***threat to internal security*** of that Member State, as soon as possible, ***at the latest within three days*** after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Amendment 145

Proposal for a regulation

Article 8 – paragraph 4 – subparagraph 2

Text proposed by the Commission

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a ***danger to national security or public order*** of that Member State, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to

Amendment

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a ***threat to internal security*** of that Member State, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to

Chapter II or the clauses set out in Chapter III of Part III.

Chapter II or the clauses set out in Chapter III of Part III.

Amendment 146

Proposal for a regulation Article 8 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a ***danger to national security or public order*** of the Member State carrying out the security check, that Member State shall be the Member State responsible.

Amendment

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a ***threat to internal security*** of the Member State carrying out the security check, that Member State shall be the Member State responsible.

Amendment 147

Proposal for a regulation Article 8 – paragraph 5

Text proposed by the Commission

5. Each Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Amendment

deleted

Amendment 148

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Obligations of the applicant

Amendment

Cooperation of the applicant ***with the competent authorities***

Amendment 149

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry.

Amendment

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry ***or the Member State in which that third-country national or stateless person is legally present.***

Amendment 150

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

2. By derogation from paragraph 1, where ***a third-country national or stateless person is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa.***

Amendment

2. By derogation from paragraph 1, where a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or ***a visa, either valid or*** which has expired, the application shall be made and registered in the Member State ***that issued the residence permit or visa.***

Where a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or ***visa*** which has expired, the application shall be made and registered in the Member State ***where he or she is present.***

Amendment 151

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible ***and at the latest during the interview referred to in Article 12***, all the elements and information available to him or her ***relevant for determining*** the Member State responsible. ***Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided***, the competent authority ***may*** set a time limit within the period referred to in Article 29(1) for submitting such evidence.

Amendment

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting ***and disclosing***, as soon as possible all the elements and information available to him or her ***to determine*** the Member State responsible. The competent authority ***shall*** set a ***reasonable*** time limit within the period referred to in Article 29(1) for submitting such evidence, ***taking into account the circumstances of the individual case and shall inform the applicant thereof***.

Amendment 152

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The competent authorities shall consider elements and information submitted also after a take charge request is sent if the elements or information are of such nature that they provide key and reliable evidence which is crucial for determining the Member State responsible, in particular regarding unaccompanied minors and family reunification.

Amendment 153

Proposal for a regulation

Article 9 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The applicant shall be required to be present in:

4. The applicant shall be required, ***within reason***, to be present ***and to remain available to the competent authorities or***

judicial authorities in:

Amendment 154

Proposal for a regulation Article 9 – paragraph 4 – point c

Text proposed by the Commission

(c) the Member State of relocation following a transfer pursuant to Article 57(9).

Amendment

(c) the Member State of relocation following a transfer pursuant to Article 57(8).

Amendment 155

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

5. Where a transfer decision is notified to the applicant in accordance with Article 32(2) and Article 57(8), the applicant shall comply with that decision.

Amendment

5. Where a transfer *or relocation* decision is ***final and*** notified to the applicant in accordance with Article 32(2) and Article 57(7), the applicant shall comply with that decision.

Amendment 156

Proposal for a regulation Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall take into account the individual circumstances of the applicant when applying this Article.

Amendment 157

Proposal for a regulation Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Consequences of non-compliance

1. The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [Reception Conditions Directive] pursuant to Article 17a of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible, provided that the applicant has been informed of that consequence pursuant to Article 8(2), point (b) of Regulation (EU) XXX/XXX [Screening Regulation]. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) shall not be taken into account by the competent authorities.

Amendment 158

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Reception conditions in a Member State other than the one in which the applicant is required to be present

1. Before applying Article 17a of

Directive (EU) xxx/xxx [Reception Conditions Directive], Member States shall ensure that the applicant has been duly informed of the requirement set out in Article 9(4) of this Regulation and of the consequences of non-compliance with that requirement pursuant to Article 8(2), point (b), of Regulation (EU) xxx/xxx [Screening Regulation].

2. Paragraph 1 shall not apply if the applicant is present in a Member State other than the Member State where he or she is required to be present and where his or her presence is due to reasons beyond his or her control.

3. Member States shall take into account the individual circumstances of the applicant, including the real risk of violations of fundamental rights in the Member State where the applicant is required to be present, when applying this Article. Any measures taken by the Member States shall be proportionate.

Amendment 159

Proposal for a regulation

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. As soon as possible and *at the latest* when an application for international protection is registered in a Member State, its competent authorities shall *inform* the applicant of the application of this Regulation *and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10, and* in particular:

Amendment

1. As soon as possible and *in any event by the date* when an application for international protection is registered in a Member State, its competent authorities shall *provide* the applicant *with information* of the application of this Regulation. *That information shall include* in particular *information on:*

Amendment 160

Proposal for a regulation

Article 11 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) that the right to apply for international protection does not encompass a choice by the applicant in relation to either the Member State responsible for examining the application for international protection or the Member State of relocation;

deleted

Amendment 161

**Proposal for a regulation
Article 11 – paragraph 1 – point a a (new)**

Text proposed by the Commission

Amendment

(aa) the objectives of this Regulation;

Amendment 162

**Proposal for a regulation
Article 11 – paragraph 1 – point a b (new)**

Text proposed by the Commission

Amendment

(ab) the cooperation expected by the applicant with the competent authorities as set out in Article 9;

Amendment 163

**Proposal for a regulation
Article 11 – paragraph 1 – point a c (new)**

Text proposed by the Commission

Amendment

(ac) a statement to the effect that the right to apply for international protection does not encompass a choice by the applicant as to which Member State is responsible for examining the application for international protection or is the Member State of relocation;

Amendment 164

Proposal for a regulation Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) ***of the objectives of this Regulation and*** the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present ***pursuant to Article 9(4)***, in particular ***that the applicant shall only be entitled to the reception conditions as set out in*** Article 10(1);

Amendment

(b) the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present ***during the phases of determining the Member State responsible***, in particular Article 10(1);

Amendment 165

Proposal for a regulation Article 11 – paragraph 1 – point c

Text proposed by the Commission

(c) ***of*** the criteria and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration;

Amendment

(c) the criteria ***of this Regulation*** and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, ***including the specific criteria applied by the determining Member States in the individual case***;

Amendment 166

Proposal for a regulation Article 11 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ***the provisions relating to family reunification and, in that regard, the applicable definition of family members and relatives***;

Amendment 167

Proposal for a regulation Article 11 – paragraph 1 – point d

Text proposed by the Commission

(d) *of the aim* of the personal interview pursuant to Article 12 and the obligation to submit *and substantiate* orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;

Amendment

(d) *the right to and purpose* of the personal interview pursuant to Article 12, *the procedure* and the obligation to submit orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;

Amendment 168

Proposal for a regulation Article 11 – paragraph 1 – point e

Text proposed by the Commission

(e) *of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits, visas or educational diplomas;*

Amendment

deleted

Amendment 169

Proposal for a regulation Article 11 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) *the possibility to request that the discretionary clause be applied in accordance with Article 25, as well as the*

specific arrangements relating to the procedure, including the discretion of application for the Member State;

Amendment 170

Proposal for a regulation

Article 11 – paragraph 1 – point f

Text proposed by the Commission

(f) *of* the possibility to challenge a transfer decision within the time *limit* set out in Article 33(2) *and of* the fact that the *scope of that* challenge *is limited as laid down in Article 33(1)*;

Amendment

(f) the possibility *and arrangements* to challenge a transfer decision within the time *limits* set out in Article 33, *as well as the existence of the right to an effective remedy before a court or tribunal, including in a situation where no transfer decision is issued and* the fact that the challenge *to a transfer decision has suspensive effect*;

Amendment 171

Proposal for a regulation

Article 11 – paragraph 1 – point g

Text proposed by the Commission

(g) *of* the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

Amendment

(g) the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

Amendment 172

Proposal for a regulation

Article 11 – paragraph 1 – point h

Text proposed by the Commission

(h) that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing

Amendment

(h) *the fact* that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose

their obligations arising under this Regulation;

of implementing their obligations arising under this Regulation;

Amendment 173

Proposal for a regulation

Article 11 – paragraph 1 – point i

Text proposed by the Commission

(i) *of* the categories of personal data concerned;

Amendment

(i) the categories of personal data concerned;

Amendment 174

Proposal for a regulation

Article 11 – paragraph 1 – point j

Text proposed by the Commission

(j) *of* the right of access to data relating to *him or her* and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

Amendment

(j) the right of access to data relating to *the applicant* and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

Amendment 175

Proposal for a regulation

Article 11 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) the protection of natural persons with regard to the processing of personal data in accordance with Union or national law;

Amendment 176

Proposal for a regulation Article 11 – paragraph 1 – point k

Text proposed by the Commission

(k) in the case of an unaccompanied minor, *of* the role and responsibilities of the *representative and of* the procedure to file complaints against a *representative* in confidence and safety and in full respect of the child's right to be heard in this respect;

Amendment

(k) in the case of an unaccompanied minor, *the guarantees and rights applicable to the applicant*, the role and responsibilities of the *applicant's guardian and* the procedure to file complaints against a *guardian* in confidence and safety and in full respect of the child's right to be heard in this respect;

Amendment 177

Proposal for a regulation Article 11 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) where applicable, the fact that an age assessment or a DNA-test to prove family-link will be carried out;

Amendment 178

Proposal for a regulation Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The competent authorities of the Member States shall keep the applicants informed of the progress of the procedure for determining the Member State responsible on a regular basis with regard to their application. Where the applicant is a minor, the competent authorities shall inform both the minor and the parent or the guardian.

Amendment 179

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 3 for that purpose. *deleted*

Where necessary for the applicant's proper understanding, the information shall also be supplied orally, where appropriate in connection with the personal interview as referred to in Article 12.

Amendment 180

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. The Asylum Agency shall, in close cooperation with the responsible national agencies, draw up common information material, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1. That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [Eurodac Regulation] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common information material shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information. *deleted*

Amendment 181

Proposal for a regulation Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Accessibility of information

1. The information referred to in Article 11 shall be provided in writing in the mother tongue of the applicant or in a language that the applicant understands. The information shall be provided in a concise and transparent manner, in an easily accessible form, and in advance of the personal interview as referred to in Article 12.

Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 2 for that purpose.

The competent authority shall ensure that the applicant understands the information and has the opportunity to ask questions to clarify or follow up on the information.

Where necessary for the applicant's proper understanding, the information shall also be supplied orally, with the support of multimedia equipment.

2. The Asylum Agency shall, in close cooperation with the responsible national authorities, produce common information material, in clear and plain language, as well as a targeted information to specific target groups and specific information for unaccompanied minors and other vulnerable groups, containing at least the information referred to in Article 11. That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [Eurodac Regulation] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac.

The common information material referred to in the first subparagraph shall be available online, on an open and easily accessible platform for applicants.

Member States shall use the common information material referred to in the first subparagraph and shall complement it with additional Member State-specific information.

3. Where the applicant is a minor, the information referred to in Article 11 shall be provided in a child-friendly manner, both in written and oral form, by appropriately trained staff and in the presence of the applicant's guardian.

Amendment 182

Proposal for a regulation Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11b

Right to legal assistance and representation

An applicant shall, in accordance with Article 14 of Regulation (EU) xxx/xxx [Asylum Procedure Regulation] have the right to consult, in an effective manner, a legal representative, admitted or permitted as such under national law, on matters relating, at all stages, to the determination of the Member State responsible for his or her application.

Amendment 183

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. In order to facilitate the process of determining the Member State responsible,

1. In order to facilitate the process of determining the Member State responsible,

the determining Member State shall conduct a personal interview with the applicant. ***The interview shall also*** allow the proper understanding of the ***information supplied to*** the applicant in accordance with Article 11.

the ***competent authorities of the*** determining Member State shall conduct a personal interview with the applicant ***to*** allow the proper understanding of the ***specific individual situation of*** the applicant ***and the information he or she received*** in accordance with Article 11.

Amendment 184

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The determining Member States shall proactively ask question on all aspects of the claim that would allow for the determination of the Member State responsible or aspects that would preclude the transfer of an applicant due to a real risk of serious violations of the applicant’s fundamental rights.

Amendment 185

Proposal for a regulation

Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the applicant has absconded;

(a) the applicant has absconded, ***and is not available to the authorities;***

Amendment 186

Proposal for a regulation

Article 12 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the

(c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the

Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1).

Member State responsible by other means, ***unless the applicant requests the personal interview***. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1), ***unless the applicant requests the personal interview***.

Amendment 187

Proposal for a regulation Article 12 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The personal interview shall take place in a timely manner and, in any event, before any ***decision on the Member State responsible is taken or a take charge or take back*** request is made pursuant to Article 29 ***or Article 31***.

Amendment 188

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

4. The personal interview shall be conducted in a language that the applicant understands ***or is reasonably supposed to understand*** and in which he or she is able to communicate. Interviews of unaccompanied minors shall be conducted in a child-friendly manner, by staff who are appropriately trained and qualified under national law, in the presence of the ***representative*** and, where applicable, the minor's legal advisor. Where necessary, Member States shall have recourse to ***an*** interpreter, and where appropriate a cultural mediator, who is able to ensure

Amendment

4. The personal interview shall be conducted in ***the applicant's mother tongue or in*** a language that the applicant understands and in which he or she is able to communicate. Interviews of unaccompanied minors shall be conducted in a child-friendly manner, by staff who are appropriately trained and qualified under national law, in the presence of the ***guardian*** and, where applicable, the minor's legal advisor. Where necessary, Member States shall have recourse to ***a qualified*** interpreter, and where appropriate a cultural mediator, who is able

appropriate communication between the applicant and the person conducting the personal interview. The applicant may request to be interviewed and assisted by staff of the same sex.

to ensure appropriate communication between the applicant and the person conducting the personal interview. The applicant may request to be interviewed and assisted by staff of the same sex.

Amendment 189

Proposal for a regulation Article 12 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In addition to the presence of the legal advisor and, where applicable, a representative during the interview, the applicant shall have the right to nominate one person of his or her trust to accompany him or her to the interview.

Amendment 190

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

Amendment

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of *special* procedural guarantees pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law, **having received sufficient training to take account of the personal and general circumstances of the applicant. Staff interviewing applicants shall also have acquired general knowledge of problems which could adversely affect the applicant's ability to be interviewed, such as indicators showing that the person may have been the victim of torture or gender-based violence in the past.** Applicants who are identified as being in need of *specific* procedural guarantees pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation], shall be provided

with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.

Amendment 191

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Amendment

6. The Member State conducting the personal interview shall ***make an audio recording of the interview and*** make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. ***The main elements of the summary shall be verified by the applicant, and where relevant, by the guardian or legal representative. The*** summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary, ***as soon as possible after the interview and in any event before the competent authorities take a decision on the Member State responsible.***

Amendment 192

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

Amendment

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. ***Procedures including minors shall be treated with priority.***

Amendment 193

Proposal for a regulation

Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Each Member *State* where *an* unaccompanied *minor is* present shall ensure that *he or she is* represented and assisted by a representative with respect to the *relevant* procedures provided for in this Regulation. The *representative* shall have the qualifications, training *and* expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. *Such representative* shall have access to the content of the relevant documents in the applicant's file including the specific information material for unaccompanied minors.

Amendment

Member *States* where unaccompanied *minors are* present shall ensure that *they are* represented and assisted by a *guardian and legal* representative with respect to the procedures provided for in this Regulation. The *guardian* shall have the *resources, qualifications, training, expertise and independence* to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. *The guardian* shall have access to the content of the relevant documents in the applicant's file including the specific information material for unaccompanied minors *and shall inform the minor accordingly about the procedure.*

The guardian shall be appointed as soon as possible, and in any event prior to the collection of biometric data pursuant to Articles 10, 13 and 14a of Regulation (EU) xxx/xxx [Eurodac Regulation].

Amendment 194

Proposal for a regulation

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where an organisation is appointed as a *representative*, it shall designate a person responsible for carrying out its duties in respect of the minor. The first subparagraph shall apply to that person.

Amendment

Where an organisation is appointed as a *guardian*, it shall designate a person responsible for carrying out its duties in respect of the minor. The first subparagraph shall apply to that person.

Amendment 195

Proposal for a regulation Article 13 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The **representative** provided for in the first subparagraph may be the same person or organisation as provided for in Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Amendment

The **guardian** provided for in the first subparagraph may be the same person or organisation as provided for in Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Amendment 196

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

3. The **representative** of an unaccompanied minor shall be involved in the process of establishing the Member State responsible under this Regulation. **The representative** shall assist the unaccompanied minor to provide information relevant to the assessment of his or her best interests in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose.

Amendment

3. The **guardian** of an unaccompanied minor shall be involved in the process of establishing the Member State responsible **from the start of, and throughout, the procedure** under this Regulation **and any other rights of the minor. The guardian** shall assist the unaccompanied minor to provide information relevant to the assessment of his or her best interests in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose, **with due regard to confidentiality obligations to the minor. The guardian shall keep the unaccompanied minor informed about the progress of the procedures under this Regulation, and ensure that the unaccompanied minor have access to information, legal advice and representation.**

Amendment 197

Proposal for a regulation
Article 13 – paragraph 4 – introductory part

Text proposed by the Commission

4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

Amendment

4. In assessing the best interests of the child, Member States shall closely cooperate **and exchange information** with each other and shall, in particular, take due account of the following **non-exhaustive list of factors and rights of the child**:

Amendment 198

Proposal for a regulation
Article 13 – paragraph 4 – point a

Text proposed by the Commission

(a) family reunification possibilities;

Amendment

(a) **the right to family life, including** family reunification possibilities;

Amendment 199

Proposal for a regulation
Article 13 – paragraph 4 – point b

Text proposed by the Commission

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

Amendment

(b) the minor's well-being and social development **in the short, medium and long term, including situations of vulnerabilities such as trauma, specific health needs and disability**, taking into particular consideration the minor's **ethnic, religious, cultural and linguistic** background, **and having regard to the need for stability and continuity in care and custodial arrangements and access to health and education services**;

Amendment 200

Proposal for a regulation
Article 13 – paragraph 4 – point c

Text proposed by the Commission

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings;

Amendment

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings ***or violence within the family*** ;

Amendment 201

Proposal for a regulation

Article 13 – paragraph 4 – point d

Text proposed by the Commission

(d) the views of the minor, in accordance with his or her age and maturity;

Amendment

(d) the views of the minor, in accordance with his or her age and maturity, ***in accordance with his or her right to be heard***;

Amendment 202

Proposal for a regulation

Article 13 – paragraph 4 – point e

Text proposed by the Commission

(e) where the applicant is an unaccompanied minor, the information provided by the ***representative*** in the Member State where the unaccompanied minor is present.

Amendment

(e) where the applicant is an unaccompanied minor, the information provided by the ***guardian*** in the Member State where the unaccompanied minor is present.

Amendment 203

Proposal for a regulation

Article 13 – paragraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) any other reasons relevant to the assessment of the best interest of the child.

Amendment 204

Proposal for a regulation Article 13 – paragraph 5

Text proposed by the Commission

5. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of relocation, the transferring Member State shall **make sure** that the Member State responsible or the Member State of relocation takes the measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [Reception Conditions Directive] and Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.

Amendment

5. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of relocation, the transferring Member State shall **obtain individual guarantees** that the Member State responsible or the Member State of relocation takes the measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [Reception Conditions Directive] and Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] without delay. **The individual guarantee shall also include the appointment of a guardian in the Member State of transfer, and a guarantee of a handover to a designated guardian.** Any decision **to transfer or not** to transfer an unaccompanied minor shall be preceded by an **individual** assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done swiftly by staff with the **necessary** qualifications and expertise to ensure that the best interests of the minor are taken into consideration.

Amendment 205

Proposal for a regulation Article 13 – paragraph 6 – subparagraph 1

Text proposed by the Commission

For the purpose of applying Article 15, the Member State where **the** unaccompanied

Amendment

For the purpose of applying Article 15, the Member State where **an** unaccompanied

minor's application for international protection was registered shall, ***as soon as possible***, take appropriate action to identify the family members or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

minor's application for international protection was registered shall ***immediately*** take appropriate action to identify the family members or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

Amendment 206

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, in particular if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, as to avoid jeopardising their safety.

Amendment 207

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 3

Text proposed by the Commission

Amendment

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors ***and the identification of vulnerabilities or trauma, and on the right of the child.***

Amendment 208

Proposal for a regulation

Article 13 – paragraph 7

Text proposed by the Commission

7. With a view to facilitating the appropriate action to identify the family members or relatives of ***the*** unaccompanied minor living in the territory of another Member State pursuant to paragraph 6, the Commission shall adopt ***implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).***

Amendment 209

**Proposal for a regulation
Article 13 – paragraph 7 – point a (new)**

Text proposed by the Commission

Amendment 210

**Proposal for a regulation
Article 13 – paragraph 7 – point b (new)**

Text proposed by the Commission

Amendment 211

**Proposal for a regulation
Article 13 – paragraph 7 – point c (new)**

Text proposed by the Commission

Amendment

7. With a view to facilitating the appropriate action to identify the family members or relatives of ***an*** unaccompanied minor living in the territory of another Member State pursuant to paragraph 6, the Commission shall adopt ***delegated acts*** in accordance with Article ***68 on:***

Amendment

(a) common standards on the identification of family members or relatives;

Amendment

(b) the criteria for establishing family links;

Amendment

(c) the criteria for assessing the

capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

Amendment 212

Proposal for a regulation

Article 13 – paragraph 7 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under this Regulation.

Amendment 213

Proposal for a regulation

Article 13 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The Commission shall adopt an implementing act in accordance with Article 67(2) for a standard form for the exchange of relevant information between Member States.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(2).

The implementing acts shall promote the ability of the guardian and legal assistance provider to seek assistance in another Member State to gain information about the circumstances of reception and care arrangements in the other Member State or family reunification possibilities.

The implementing act shall also promote and facilitate cooperation between guardians and legal assistance providers between Member States in the event a

transfer of an unaccompanied minor is contemplated or implemented, including providing for sharing of information about the child, with the informed consent of the child or his or her guardian.

Amendment 214

Proposal for a regulation

Article 14 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Member State with which the applicant has meaningful links, as set out in this Chapter, shall be responsible for examining an application for international protection.

Amendment 215

Proposal for a regulation

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Articles 20a and 20b shall not apply if the applicant arrived irregularly prior in another Member State.

Amendment 216

Proposal for a regulation

Article 15 – title

Text proposed by the Commission

Amendment

Unaccompanied minors

Minors

Amendment 217

Proposal for a regulation

Article 15 – paragraph 1 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

Where a minor is accompanied by one parent, adult sibling or other adult who holds parental responsibility for the minor, whether by law or by the practice of that Member State and one parent or other adult who holds parental responsibility for the minor, whether by law or by practice of that Member State is legally present in a Member State, the determination of the Member State responsible shall be based on the objective of prioritising the family unit, taking into account the best interest of the minor.

Amendment 218

Proposal for a regulation Article 15 – paragraph 2

Text proposed by the Commission

Amendment

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, ***unless*** it is ***demonstrated that it is not*** in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, ***if*** it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

Amendment 219

Proposal for a regulation Article 15 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

For the purpose of this Regulation, on the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

Amendment 220

Proposal for a regulation

Article 15 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Where the applicant is a married minor whose adult spouse is legally present in the territory of the Member States, the Member State responsible shall be the Member State where the parent or other adult who holds parental responsibility for the minor, whether by law or by practice of that Member State, is legally present, unless the applicant expresses in writing a wish to be reunified with his or her spouse and it is in the best interest of the minor.

Amendment 221

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, ***unless it is demonstrated*** that

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, ***provided*** that it is in the best

it is *not* in the best interests of the minor.

interests of the minor.

Amendment 222

Proposal for a regulation Article 15 – paragraph 5

Text proposed by the Commission

5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the *unaccompanied minor's application for international protection was first registered*, unless it is demonstrated that this is not in the best interests of the minor.

Amendment

5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the *minor is present*, unless it is demonstrated that this is not in the best interests of the minor.

Amendment 223

Proposal for a regulation Article 15 – paragraph 6

Text proposed by the Commission

6. *The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:*

(a) *the identification of family members or relatives of unaccompanied minors;*

(b) *the criteria for establishing the existence of proven family links;*

(c) *the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.*

In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 13(4).

Amendment

deleted

Amendment 224

Proposal for a regulation Article 15 – paragraph 7

Text proposed by the Commission

Amendment

7. *The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).*

deleted

Amendment 225

Proposal for a regulation Article 16 – title

Text proposed by the Commission

Amendment

Family members who *are beneficiaries of international protection*

Family members who *legally reside in a Member State*

Amendment 226

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 227

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

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

Amendment

Where the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a **final** decision **as defined in Article 4(2), point (d), of Regulation (EU) xxx/xxx [Asylum Procedure Regulation]**, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Amendment 228

Proposal for a regulation
Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

Where several family members submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

Amendment

1. Where several family members submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

Amendment 229

Proposal for a regulation
Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The processing together of the application of a family is without prejudice to the right of an applicant to make an application individually.

Amendment 230

Proposal for a regulation Article 19 – paragraph 4

Text proposed by the Commission

4. Where the applicant is in possession of one or more residence documents or one or more visas which expired ***less than three years*** before the application was registered, paragraphs 1, 2 and 3 shall apply.

Amendment

4. Where the applicant is in possession of one or more residence documents or one or more visas which expired before the application was registered, paragraphs 1, 2 and 3 shall apply.

Amendment 231

Proposal for a regulation Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Previous stay

If the applicant has resided legally for at least two years in a Member State with a valid residence permit, that Member State shall be responsible for examining his or her application for international protection.

Amendment 232

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State and the application for international protection was registered after the applicant left the territory of the Member States following

Amendment

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State and the application for international protection was registered after the applicant left the territory of the Member States following

the completion of his or her studies, the Member State in which that education establishment is established shall be responsible for examining the application for international protection.

the completion of his or her studies, the Member State in which that education establishment is established shall be responsible for examining the application for international protection. ***Online training or other forms of distance learning shall not be considered to be relevant.***

Amendment 233

Proposal for a regulation Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.

Amendment 234

Proposal for a regulation Article 20 b (new)

Text proposed by the Commission

Amendment

Article 20b

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall

be responsible for examining the application.

Amendment 235

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 236

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. The rule set out in paragraph 1 shall **also** apply where the applicant was disembarked on the territory following a search and rescue operation.

Amendment

2. The rule set out in paragraph 1 shall **not** apply where the applicant was disembarked on the territory following a search and rescue operation **or activity**.

Amendment 237

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

3. **Paragraphs 1 and 2** shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

Amendment

3. **Paragraph 1** shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

Amendment 238

Proposal for a regulation Article 22

Text proposed by the Commission

Article 22

Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.

Amendment

deleted

Amendment 239

Proposal for a regulation Article 23

Text proposed by the Commission

Amendment

Article 23

deleted

***Application in an international transit
area of an airport***

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

Amendment 240

**Proposal for a regulation
Part III – Chapter III – title**

Text proposed by the Commission

Amendment

**DEPENDENT PERSONS *AND*
DISCRETIONARY CLAUSES**

**DEPENDENT PERSONS,
DISCRETIONARY CLAUSES *AND*
*LIGHT PROCEDURE***

Amendment 241

**Proposal for a regulation
Article 24 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Amendment

Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe trauma *or* old age, an applicant is dependent on the assistance of his or her child or parent legally resident in one of the Member States, or his or her child or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child or parent, provided that family ties existed before the applicant arrived on the territory of the Member States, that the child or parent or

Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe trauma, old age *or other relevant psychological or physical vulnerabilities* an applicant is dependent on the assistance of his or her child, *sibling* or parent legally resident in one of the Member States, or his or her child, *sibling*, or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, *sibling*, or parent, provided that family ties existed before the

the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

applicant arrived on the territory of the Member States, that the child, **sibling** or parent or the applicant is able to take care of the dependent person and that, **having been informed of this possibility**, the persons concerned expressed their desire in writing.

Amendment 242

Proposal for a regulation

Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where there are indications that a child or parent is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the child or parent can take care of the dependent person, before making a take charge request pursuant to Article 29.

Amendment

Where there are indications that a child, **sibling** or parent is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the child, **sibling** or parent can take care of the dependent person, before making a take charge request pursuant to Article 29.

Amendment 243

Proposal for a regulation

Article 24 – paragraph 2

Text proposed by the Commission

2. Where the child or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child or parent of the applicant to its territory.

Amendment

2. Where the child, **sibling** or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, **sibling** or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child or parent of the applicant to its territory.

Amendment 244

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in this **Regulation**.

Amendment

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in **Chapter II of this Part**.

Amendment 245

Proposal for a regulation Article 25 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

An applicant may request any Member State to apply this paragraph. Such a request shall be made in writing, shall be duly motivated and shall be addressed to the competent authorities of the determining Member State.

Amendment 246

Proposal for a regulation Article 25 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Where applicable, the determining Member State shall forward the request to the requested Member State, which shall reply to the request within the time limits set out in Article 30 of this Regulation.

Amendment 247

Proposal for a regulation

Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

The Member State in which an application for international protection is registered and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family, cultural considerations, *social ties, language skills, or any other meaningful links or to support a Member State under migratory pressure*, even where that other Member State is not responsible under the criteria laid down in Articles 15 to 18 and 24. The persons concerned shall express their consent in writing.

Amendment 248

Proposal for a regulation

Article 25 – paragraph 2 – subparagraph 3

Text proposed by the Commission

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

Amendment

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based. *Where a reply is not provided within the set time limit, this shall be tantamount to accepting the request.*

Amendment 249

Proposal for a regulation Article 25 – paragraph 2 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Where the requested Member State accepts the request, responsibility for examining the application for international protection shall be transferred to it.

Amendment 250

Proposal for a regulation Article 25 a (new)

Text proposed by the Commission

Amendment

Article 25a

Light procedure for the purpose of family reunification

1. The Member States shall apply a special procedure in order to ensure a swift family reunification and access to the asylum procedure for applicants where there are sufficient indicators showing that they are likely to have the right to family reunification in accordance with Articles 15, 16, 17 and 24.

A determining Member State that considers that the applicant has shown sufficient indicators for family links in another Member State shall notify that Member State and the applicant and the responsibility shall be transferred to that Member State.

2. In establishing whether there are sufficient indicators that the applicant has family members and /or relatives in the Member State he or she claims, the determining Member State shall ensure that the applicant understands:

(a) the applicable definition of family members and/or relatives and ensure that the applicant is certain that the alleged family members and/or relatives are not present in another Member State;

(b) that he or she will not be allowed to stay in the Member State where he or she claims to have family members and/or relatives unless such a claim can be verified by that Member State.

3. If the information provided by the applicant does not give manifest reasons to doubt the presence of family members and/or relatives in the Member State indicated by the applicant, it shall be concluded that there are sufficient indicators that the applicant has family members and/or relatives in that Member State in order to meet the requirements of paragraph 1.

The competent authorities of the Member State where the applicant claims to have family members and/or relatives present shall assist the competent authorities of the determining Member State with answering any questions aimed at clarifying whether the alleged family links are correct.

4. The determining Member State shall transfer all the information provided by the applicant to the responsible Member State using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

5. If it is determined that the conditions for family reunification are not met, the receiving Member State shall transfer the applicant back to the determining Member State, if no other Member State can be deemed responsible.

Amendment 251

Proposal for a regulation
Part III – Chapter IV – title

Text proposed by the Commission

OBLIGATIONS OF THE MEMBER
STATE RESPONSIBLE

Amendment

OBLIGATIONS OF THE MEMBER
STATES

Amendment 252

Proposal for a regulation
Article 26 – title

Text proposed by the Commission

Obligations of the Member **State**
responsible

Amendment

Obligations of the Member **States**

Amendment 253

Proposal for a regulation
Article 26 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall make all necessary practical and legal arrangements to comply with their obligations under this Article.

Amendment 254

Proposal for a regulation
Article 27 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Where a Member State issues a residence document to the applicant, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 shall be

Where a Member State issues a residence document to the applicant, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 shall be

transferred to that Member State. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of the applicant *or has received a take back notification*, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

transferred to that Member State. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of *or take back* the applicant, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

Amendment 255

Proposal for a regulation Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State.

Amendment

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State, *provided that the transfer of the person concerned is in accordance with Article 4 of the Charter of Fundamental Rights*.

Amendment 256

Proposal for a regulation Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The *obligation laid down* in Article 26(1), point (b), *of this Regulation to take back a third-country national or a stateless person* shall cease where *it can be established, on the basis of the update of the data set* referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, *in compliance with a return decision or removal order* issued *following the*

Amendment

The *obligations specified* in Article 26 shall cease where *the Member State responsible can establish, when requested to take charge or take back an applicant or another person as* referred to in Article 26 that the person concerned has left the territory of the Member States *for at least three months*, on either a compulsory or a voluntary basis, *unless the person concerned is in possession of a valid residence document or visa* issued by the *Member State responsible*.

withdrawal or rejection of the application.

Amendment 257

Proposal for a regulation Article 28 – paragraph 1

Text proposed by the Commission

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation] *or, where applicable, the Member State of relocation* shall start the process of determining the Member State responsible without delay.

Amendment

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation] shall start the process of determining the Member State responsible without delay.

Amendment 258

Proposal for a regulation Article 28 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the Member State where an application for international protection is first registered has justified reasons to believe that another Member State is responsible for the examination of an application for international protection, it shall immediately start the process of submitting a take charge or take back request pursuant to Articles 29 and 31.

Amendment 259

Proposal for a regulation Article 28 – paragraph 3 – introductory part

Text proposed by the Commission

3. The Member State which has conducted the process of determining the Member State responsible or which has

Amendment

3. The Member State which has conducted the process of determining the Member State responsible or which has

become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]:

become responsible pursuant to Article 8(4) **or Article 58(3)** of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]:

Amendment 260

Proposal for a regulation Article 28 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) its responsibility pursuant to Article 58(3).

Amendment 261

Proposal for a regulation Article 28 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State with which that application was first registered.

An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State with which that application was first registered ***with a view to completing the process of determining the Member State responsible.***

Amendment 262

Proposal for a regulation Article 28 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

That obligation shall cease where the Member State determining the Member

That obligation shall cease where the Member State determining the Member

State responsible can establish that the applicant has obtained a residence document from another Member State.

State responsible can establish that the applicant has obtained a residence document from another Member State, *or where a Member States decides to apply Article 25.*

Amendment 263

Proposal for a regulation Article 28 – paragraph 5

Text proposed by the Commission

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate the person concerned pursuant to Article 57(7), and before the *transfer* has been carried out to that Member State pursuant to Article 57(9), shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation.

Amendment

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate the person concerned pursuant to Article 57(7), and before the *relocation* has been carried out to that Member State pursuant to Article 57(9), shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation.

Amendment 264

Proposal for a regulation Article 29 – paragraph 1 – subparagraph 1

Text proposed by the Commission

If *a* Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Amendment

If *the* Member State *referred to in Article 28(1)* where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Amendment 265

Proposal for a regulation Article 29 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [Eurodac Regulation] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit.

deleted

Amendment 266

Proposal for a regulation Article 29 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

Where the request to take charge of an applicant is not made within the periods laid down in the first ***and second subparagraphs***, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the request to take charge of an applicant is not made within the periods laid down in the first ***subparagraph***, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Amendment 267

Proposal for a regulation Article 29 – paragraph 1 – subparagraph 4

Text proposed by the Commission

Amendment

Where the applicant is an unaccompanied minor, the determining Member State ***may***, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the

The period referred to in the first subparagraph shall start to run where the applicant is an unaccompanied minor, ***when a guardian has been appointed or when the best interest of the child assessment pursuant to Article 13(4) has been concluded.*** The determining Member

applicant despite the expiry of the time limits laid down in the first *and second subparagraphs*.

State *shall also*, where it considers that it is in the best interest of the minor *or the request is based on Article 16, 17 or 24*, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first *subparagraph*.

Amendment 268

Proposal for a regulation Article 29 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The request shall state the reasons warranting an urgent reply and the period within which a reply is requested. That period shall be *at least one week*.

Amendment

The request shall state the reasons warranting an urgent reply and the period within which a reply is requested. That period shall be *two weeks*.

Amendment 269

Proposal for a regulation Article 29 – paragraph 3 – subparagraph 1

Text proposed by the Commission

In the cases referred to in paragraphs 1 and 2, the take charge request *by another Member State* shall be made using a standard form and *including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or* relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible *on the basis of* the criteria laid down in this Regulation.

Amendment

The take charge request shall be made using a standard form and *include the* relevant elements from the applicant's statement *and the proof or circumstantial evidence, or any other documentation or information used to justify the request*, enabling the authorities of the requested Member State to check whether it is responsible *based* on the criteria laid down in this Regulation.

Amendment 270

Proposal for a regulation Article 30 – paragraph 1

Text proposed by the Commission

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within one month of receipt of the request.

Amendment

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant ***without delay and in any event*** within one month of receipt of the request.

Amendment 271

**Proposal for a regulation
Article 30 – paragraph 2**

Text proposed by the Commission

2. ***Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [Eurodac Regulation] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.***

Amendment

deleted

Amendment 272

**Proposal for a regulation
Article 30 – paragraph 3**

Text proposed by the Commission

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

Amendment

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence ***and any other any other documentation or information*** shall be used.

Amendment 273

**Proposal for a regulation
Article 30 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. *Where the requested Member State does not object to the request within the time limits set out in paragraph 1 and 2, this shall be tantamount to accepting the request and entail the obligation to take charge of the applicant, including the obligation to provide for proper arrangement for travel.*

The objection referred to in the first subparagraph shall include elements of proof and circumstantial evidence.

Amendment 274

Proposal for a regulation Article 30 – paragraph 4 – point a – point ii

Text proposed by the Commission

Amendment

(ii) the Member States shall provide the **Committee provided for in Article 67** with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(ii) the Member States shall provide the **Commission** with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

Amendment 275

Proposal for a regulation Article 30 – paragraph 6

Text proposed by the Commission

Amendment

6. The requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. The requested Member State shall acknowledge its responsibility if the **proof**, circumstantial evidence **or any other documentation or information** is coherent, verifiable and sufficiently detailed to establish responsibility.

Amendment 276

Proposal for a regulation
Article 30 – paragraph 7

Text proposed by the Commission

Amendment

7. *Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.* **deleted**

Amendment 277

Proposal for a regulation
Article 30 – paragraph 8

Text proposed by the Commission

Amendment

8. *Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 by a reply which gives full and detailed reasons, or where applicable within the two-week period set out in paragraphs 2 and 7, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.* **deleted**

Amendment 278

Proposal for a regulation
Part III – Chapter V – Section III – title

Text proposed by the Commission

Amendment

Procedures for take back *notifications*

Procedures for take back *requests*

Amendment 279

Proposal for a regulation
Article 31 – title

Text proposed by the Commission

Amendment

Submitting a take back **notification**

Submitting a take back **request**

Amendment 280

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back **notification** without delay and in any event within **two weeks** after receiving the Eurodac hit.

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back **request** without delay and in any event within **one month** after receiving the Eurodac hit.

Amendment 281

Proposal for a regulation Article 31 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the take back request is not made within the established time limits, the responsibility for examining the application for international protection shall lie with the Member State where the applicant is present.

Amendment 282

Proposal for a regulation Article 31 – paragraph 2

Text proposed by the Commission

Amendment

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

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

the statements of the person concerned.

the statements of the person concerned,
enabling the authorities of the requested Member State to check whether it is responsible.

Amendment 283

Proposal for a regulation Article 31 – paragraph 3

Text proposed by the Commission

3. The *notified* Member State shall *confirm receipt of the notification* to the Member State which made the *notification* within one *week*, unless the *notified* Member State can demonstrate within that time limit that *its responsibility has ceased* pursuant to Article 27.

Amendment

3. The *requested* Member State shall *accept the request* to the Member State which made the *request* within one *month*, unless the *requested* Member State can demonstrate within that time limit that *it is not responsible* pursuant to Article 27.

Amendment 284

Proposal for a regulation Article 31 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Failure to act within the *one month* period set out in paragraph 3 shall be tantamount to confirming the receipt of the *request*.

Amendment 285

Proposal for a regulation Article 31 – paragraph 5

Text proposed by the Commission

5. The Commission shall, by means of implementing acts, adopt uniform *conditions* for the preparation and submission of take back *notifications*. Those implementing acts shall be adopted in accordance with the examination

Amendment

5. The Commission shall, by means of implementing acts, adopt uniform *methods* for the preparation and submission of take back *requests*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in

procedure referred to in Article 67(2).

Article 67(2).

Amendment 286

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

1. The determining Member State whose take charge request ***as regards the applicant referred to in Article 26(1), point (a)*** was accepted ***or who made a take back notification as regards persons referred to in Article 26(1), point (b), (c) and (d)*** shall take a transfer decision at the latest within one week of the acceptance ***or notification***.

Amendment

1. The determining Member State whose take charge ***or take back*** request was accepted shall take a transfer decision at the latest within one week of the acceptance.

Amendment 287

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

2. Where the requested Member State accepts to take charge of an applicant ***or to take back a person referred to in Article 26(1), point (b), (c) or (d)***, the requesting ***or the notifying*** Member State shall notify the person concerned in writing ***without delay*** of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.

Amendment

2. Where the requested Member State accepts to take charge of, ***or take back***, an applicant the requesting Member State shall notify the person concerned in writing, ***in a plain language that he or she understands, within one week*** of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection, ***the consequences of the decision, including the time limits for carrying out the transfer and the obligation for the applicant set out in Article 9(5)***.

Amendment 288

Proposal for a regulation
Article 32 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The notification shall also include, where available, information on the place where and the date on which the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means.

Amendment 289

Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission

Amendment

3. If a legal advisor or other counsellor is representing the person concerned, Member States **may choose to** notify the decision to such legal advisor or counsellor instead of to the person concerned and, **where applicable**, communicate the decision to the person concerned.

3. If a legal advisor or other counsellor is representing the person concerned, Member States **shall** notify the decision to such legal advisor or counsellor instead of to the person concerned and communicate the decision to the person concerned.

Amendment 290

Proposal for a regulation
Article 32 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

The decision referred to in paragraph 1 shall **contain** information on the legal remedies available, including on the right to **apply for** suspensive effect, and on the time limits applicable for seeking such remedies **and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible**

The decision referred to in paragraph 1 shall **also include** information on the legal remedies available **pursuant to Article 33**, including on the right to suspensive effect, and on the time limits applicable for seeking such remedies.

by his or her own means.

Amendment 291

Proposal for a regulation Article 32 – paragraph 5

Text proposed by the Commission

5. Where the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands ***or is reasonably supposed to understand.***

Amendment

5. Where the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available, ***the right to suspensive effect,*** and the time limits applicable for seeking such remedies, in a language that the person concerned understands.

Amendment 292

Proposal for a regulation Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 293

Proposal for a regulation Article 33 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

The remedy ***against a transfer decision*** shall ***entail an ex nunc*** assessment of ***at least:***

Amendment 294

Proposal for a regulation

Article 33 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) whether the transfer would, ***for the person concerned***, result in a real risk of ***a violation of a right guaranteed in the Charter of Fundamental Rights***;

Amendment 295

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

2. Member States shall provide for a period of ***two weeks*** after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

Amendment

2. Member States shall provide for a period of ***one week*** after the notification of a transfer decision ***or decision to reject a take charge request*** within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1. ***No transfer shall take place before the decision on the appeal or review against a transfer decision is taken (suspensive effect).***

Amendment 296

Proposal for a regulation

Article 33 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall

Amendment

deleted

ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within one month of the date when that request reached the competent court or tribunal.

Amendment 297

Proposal for a regulation Article 33 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Where the person concerned has not exercised his or her right to request suspensive effect, the appeal against, or review of, the transfer decision shall not suspend the implementation of a transfer decision. **deleted**

Amendment 298

Proposal for a regulation Article 33 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based. **deleted**

Amendment 299

Proposal for a regulation Article 33 – paragraph 3 – subparagraph 4

Text proposed by the Commission

Amendment

If suspensive effect is granted, the court or tribunal shall endeavour to decide on the substance of the appeal or review within

The court or tribunal shall endeavour to decide on the substance of the appeal or review within one month of the ***appeal or***

one month of the *decision to grant suspensive effect*.

review.

Amendment 300

Proposal for a regulation Article 33 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

Amendment

4. Member States shall ensure that the person concerned has access to legal assistance *at all stages of the procedure* and, where necessary, to linguistic assistance.

Amendment 301

Proposal for a regulation Article 33 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that legal assistance is granted on request free of charge *where the person concerned cannot afford the costs involved*. Member States may provide that, as regards fees and other costs, the treatment of persons subject to this Regulation shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Amendment

Member States shall ensure that legal assistance is granted on request free of charge. Member States may provide that, as regards fees and other costs, the treatment of persons subject to this Regulation shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Amendment 302

Proposal for a regulation Article 33 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation is not to be granted where

Amendment

deleted

the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Amendment 303

Proposal for a regulation Article 33 – paragraph 5 – subparagraph 5

Text proposed by the Commission

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal ***and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.***

Amendment

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal.

Amendment 304

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

1. Member States ***shall not*** hold a person in detention ***for the sole reason that he or she is subject to the procedure established by this Regulation.***

Amendment

1. Member States ***may*** hold a person in detention ***to secure the transfer procedures pursuant to Article 8(3), point (g), of Directive xxx/xxx [Reception Conditions Directive].***

Amendment 305

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission

2. Where there is a risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention

Amendment

deleted

is proportional and other less coercive alternative measures cannot be applied effectively, based on an individual assessment of the person's circumstances.

Amendment 306

Proposal for a regulation Article 34 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. As regards the detention conditions and the guarantees applicable to applicants detained in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [Reception Conditions Directive] shall apply.

Amendment 307

Proposal for a regulation Article 34 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Where an applicant or another person referred to in Article 26(1), point (b), (c) or (d) is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the

person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within four weeks of:

- (a) the date on which the request was accepted or the take back notification was confirmed, or*
- (b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).*

Where the requesting or notifying Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of four weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

Amendment 308

**Proposal for a regulation
Article 34 – paragraph 4**

Text proposed by the Commission

Amendment

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial authorities. The detention order shall state the reasons in fact and in law on which it is based.

deleted

Amendment 309

Proposal for a regulation Article 34 – paragraph 5

Text proposed by the Commission

Amendment

5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [Reception Conditions Directive] shall apply.

deleted

Amendment 310

Proposal for a regulation Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34a

Time limits for detained applicants

1. By way of derogation from Articles 29 and 31, where a person is detained pursuant to Article 34, the period for submitting a take charge or take back request shall not exceed two weeks from the registration of the application for international protection.

Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back request shall not

exceed two weeks from the date on which the person was placed in detention.

2. By way of derogation from Article 30(1), the requested Member State shall reply as soon as possible, and in any event within two weeks of receipt of the request.

3. By way of derogation from Article 35, where a person is detained, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within eight weeks of:

(a) the date on which the request to take charge or take back was accepted, or

(b) the date on which the decision on appeal or review was taken.

4. Where the requesting Member State, for reasons beyond its control fails to comply with the time limits for submitting a take charge request or take back request or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of eight weeks referred to in paragraph 3 of this Article, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

Amendment 311

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d), from the requesting **or notifying** Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting **or notifying** Member State, after consultation between the Member

Amendment

The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d), from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States

States concerned, as soon as practically possible, and at the latest within **six** months of the acceptance of the take charge **request or of the confirmation of the take back notification** by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

concerned, as soon as practically possible, and at the latest within **three** months of the acceptance of the take charge **or take back request** 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). That time limit may be extended up to a maximum of one year, if the transfer cannot be carried out due to imprisonment of the person concerned **or his or her non-compliance with the transfer decision**.

Amendment 312

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(8).

Amendment 313

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 314

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 4

Text proposed by the Commission

If necessary, the applicant shall be supplied by the requesting **or notifying** Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Amendment

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

Amendment 315

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 316

Proposal for a regulation

Article 35 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the requesting **Member State, unless the Member State responsible is accountable for the failure of the transfer.**

Amendment 317

Proposal for a regulation Article 35 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Notwithstanding the first subparagraph, where the person concerned absconds and the requesting *or notifying* Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within *the remaining time at a later stage*, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.

Amendment

Notwithstanding the first subparagraph, where the person concerned absconds and the requesting Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within *one year from when the requesting Member State informed the Member State responsible*, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.

Amendment 318

Proposal for a regulation Article 35 – paragraph 4

Text proposed by the Commission

4. The Commission shall, by means of implementing acts, establish uniform *conditions* for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Amendment

4. The Commission shall, by means of implementing acts, establish uniform *methods* for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Amendment 319

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. In accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*], a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), (c) or (d), pursuant to Article 35.

Amendment

1. In accordance with Article 20 of Regulation (EU) 2021/1147, a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), (c) or (d), pursuant to Article 35.

Amendment 320

Proposal for a regulation Article 37 – paragraph 2 – introductory part

Text proposed by the Commission

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate *special* needs of the person to be transferred, and in particular:

Amendment

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate *specific* needs of the person to be transferred, and in particular:

Amendment 321

Proposal for a regulation Article 37 – paragraph 2 – point a

Text proposed by the Commission

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the *special* needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

Amendment

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the *specific* needs of the person to be transferred are adequately addressed, including any immediate health care that may be required ***and, where necessary, any arrangements needed to uphold the best interest of the child;***

Amendment 322

Proposal for a regulation Article 37 – paragraph 2 – point c

Text proposed by the Commission

(c) in the case of minors, information on their education;

Amendment

(c) in the case of minors, ***the best interest of the child assessment and information, as set out in Article 13, including*** on their education;

Amendment 323

Proposal for a regulation Article 37 – paragraph 2 – point d

Text proposed by the Commission

(d) an assessment of the age of an applicant;

Amendment

(d) an assessment of the age of an applicant, ***where relevant***;

Amendment 324

Proposal for a regulation Article 37 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) any other relevant information.

Amendment 325

Proposal for a regulation Article 37 – paragraph 4

Text proposed by the Commission

Amendment

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of ***implementing*** acts, draw up a standard form for the transfer of the data required

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of ***delegated*** acts, draw up a standard form for the transfer of the data required pursuant to

pursuant to this Article. Those **implementing** acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

Amendment 326

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), a **danger to national security or public order** in a Member State, that Member State shall also communicate such information to the Member State responsible.

Amendment 327

Proposal for a regulation Article 39 – paragraph 1 – subparagraph 1

Text proposed by the Commission

For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any **special** needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be

this Article. Those **delegated** acts shall be adopted in accordance with the examination procedure laid down in Article 68.

Amendment

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), a **threat to internal** security in a Member State, that Member State shall also communicate such information to the Member State responsible.

Amendment

For the sole purpose of the provision of medical care or treatment, in particular concerning **vulnerable persons, including** disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any **specific** needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be

transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

Amendment 328

Proposal for a regulation

Article 39 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

Amendment

The Commission shall, by means of implementing acts, draw up the common health **and vulnerabilities** certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

Amendment 329

Proposal for a regulation

Article 39 – paragraph 2

Text proposed by the Commission

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her **representative** or when such transmission is necessary to protect public health and public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

Amendment

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her **guardian** or when such transmission is necessary to protect public health and public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

Amendment 330

Proposal for a regulation Article 40 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) implementing a return decision.

Amendment 331

Proposal for a regulation Article 40 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) the place where the application was **lodged**;

(f) the place where the application was **made**;

Amendment 332

Proposal for a regulation Article 40 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) the date on which any previous application for international protection was **lodged**, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

(g) the date on which any previous application for international protection was **made**, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

Amendment 333

Proposal for a regulation Article 40 – paragraph 3

Text proposed by the Commission

Amendment

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the

applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm *its essential interests* or the protection of the liberties and fundamental rights of the person concerned or of others. ***In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.***

Amendment 334

Proposal for a regulation Article 40 – paragraph 9

Text proposed by the Commission

9. In each Member State concerned, a record shall be kept, in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged.

Amendment 335

Proposal for a regulation Article 41 – paragraph 1

Text proposed by the Commission

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities

applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm or the protection of the liberties and fundamental rights of the person concerned or of others. ***The applicant shall be informed about the specific information requested by the requesting Member State and the reason for the request in advance.***

Amendment

9. In each Member State concerned, a record shall be kept, in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged. ***The security and confidentiality of that record shall be ensured.***

Amendment

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities

have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge, take back notifications and, if applicable, complying with their obligations under Chapters I-III of Part IV.

have the necessary **human, material and financial** resources for carrying out their tasks and in particular for **applying the procedures for determining the Member State responsible for examining an application for international protection in a rapid and efficient manner, safeguarding procedural and fundamental rights**, replying within the prescribed time limits to requests for information, requests to take charge **or**, take back notifications and, if applicable, complying with their obligations under Chapters I-III of Part IV.

Amendment 336

Proposal for a regulation Article 42 – paragraph 3

Text proposed by the Commission

3. Before concluding or amending any arrangement as referred to in paragraph 1, point (b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

Amendment

3. Before concluding or amending any arrangement as referred to in paragraph 1, point (b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation **and relevant Union acquis, including the Charter of Fundamental Rights**.

Amendment 337

Proposal for a regulation Article 42 – paragraph 4

Text proposed by the Commission

4. If the Commission considers the arrangements referred to in paragraph 1, point (b), to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable

Amendment

4. If the Commission considers the arrangements referred to in paragraph 1, point (b), to be incompatible with this Regulation **and relevant Union acquis**, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a

time in such a way as to eliminate any incompatibilities observed.

reasonable time in such a way as to eliminate any incompatibilities observed.

Amendment 338

Proposal for a regulation Article 43 – paragraph 1

Text proposed by the Commission

The Asylum Agency shall set up and facilitate the activities of a network of the competent authorities referred to in Article 41(1), with a view to enhancing practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

Amendment

The Asylum Agency shall set up and facilitate the activities of a network **or networks** of the competent authorities referred to in Article 41(1), with a view to enhancing **the transfers**, practical cooperation and information sharing on all matters related to the **full** application of this Regulation, including the development of practical tools, **best practices** and guidance.

Amendment 339

Proposal for a regulation Article 43 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Border and Coast Guard Agency and other relevant Union bodies, offices and agencies shall be represented in a network or networks when necessary.

Amendment 340

Proposal for a regulation Article 44

Text proposed by the Commission

Amendment

Article 44

deleted

Conciliation

1. In order to facilitate the proper

functioning of the mechanisms set up under this Regulation and resolve difficulties in the application thereof, where two or more Member States encounter difficulties in their cooperation under this Regulation or in its application between them, the Member States concerned shall, upon request by one or more of them, hold consultations without delay with a view to finding appropriate solutions within a reasonable time, in accordance with the principle of sincere cooperation.

As appropriate, information about the difficulties encountered and the solution found may be shared with the Commission and with the other Member States within the Committee referred to in Article 67.

2. Where no solution is found under paragraph 1 or the difficulties persist, one or more of the Member States concerned may request the Commission to hold consultations with the Member States concerned with a view to finding appropriate solutions. The Commission shall hold such consultations without delay. The Member States concerned shall actively participate in the consultations and, as well as the Commission, take all appropriate measures to promptly resolve the matter. The Commission may adopt recommendations addressed to the Member States concerned indicating the measures to be taken and the appropriate deadlines.

As appropriate, information about the difficulties encountered, the recommendations made and the solution found may be shared with the other Member States within the Committee referred to in Article 67.

3. This Article shall be without prejudice to the powers of the Commission to oversee the application of Union law under Articles 258 and 260 of the Treaty. It shall be without prejudice to

the possibility for the Member States concerned to submit their dispute to the Court of Justice in accordance with Article 273 of the Treaty or to bring the matter to it in accordance with Article 259 of the Treaty.

Amendment 341

Proposal for a regulation Article 45 – title

Text proposed by the Commission

Solidarity contributions

Amendment

Solidarity contributions *to a Member State under migratory pressure*

Amendment 342

Proposal for a regulation Article 45 – paragraph 1 – introductory part

Text proposed by the Commission

1. Solidarity contributions for the benefit of a Member State under migratory pressure *or subject to* disembarkations following search and rescue operations shall consist of *the following types*:

Amendment

1. Solidarity contributions for the benefit of a Member State under migratory pressure, *including as a result of recurring arrivals by sea, in particular through* disembarkations following search and rescue operations *and activities or as a result of the arrival of persons in a vulnerable situation*, shall be provided by a contributing Member State and reflect the needs of the benefitting Member State and primarily consist of:

Amendment 343

Proposal for a regulation Article 45 – paragraph 1 – point a

Text proposed by the Commission

(a) relocation of applicants *who are not subject to the border procedure for the*

Amendment

(a) relocation of applicants for international protection;

examination of an application for international protection *established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];*

Amendment 344

Proposal for a regulation Article 45 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) return sponsorship of illegally staying third-country nationals; **deleted**

Amendment 345

Proposal for a regulation Article 45 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53 **and who have requested or consented to such relocation in writing.**

Amendment 346

Proposal for a regulation Article 45 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) capacity-building measures in the field of asylum, reception and return, operational support and measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries. **deleted**

Amendment 347

Proposal for a regulation Article 45 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A contributing Member State may, with the agreement of the benefitting Member State, also decide to examine an application for international protection pursuant to Article 25.

Amendment 348

Proposal for a regulation Article 45 – paragraph 2

Text proposed by the Commission

Amendment

2. Such contributions may, pursuant to Article 56, also consist of:

deleted

(a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

(b) relocation of illegally staying third-country nationals.

Amendment 349

Proposal for a regulation Article 45 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A contributing Member State may commit to capacity-building measures in the benefitting Member State pursuant to Article 55a(1).

Amendment 350

Proposal for a regulation
Article 45 a (new)

Text proposed by the Commission

Amendment

Article 45a

***Voluntary contributions to another
Member State***

***Voluntary contributions for the benefit of
another Member State may be provided by
a contributing Member State. Such
contributions may consist of:***

- (a) solidarity contributions referred to
in Article 45(1);***
- (b) capacity building measures
pursuant to Article 55a (2).***

Amendment 351

Proposal for a regulation
Article 45 b (new)

Text proposed by the Commission

Amendment

Article 45b

Annual solidarity pool

***1. The Commission, led by the EU
Relocation Coordinator shall each year
establish an annual solidarity pool on the
basis of the projected annual solidarity
needs pursuant to Article 4b. The pool
shall consist of:***

- (a) the total number of required
relocation pursuant to Article 45(1),
points (a) and (b);***
- (b) the total number of required
relocations allocated for applicants
arriving by sea, in particular through
disembarkations following search and
rescue operations or activities;***
- (c) the total need for capacity-building
measures pursuant to Article 45(2).***

Where the Commission adopts an

amending delegated act pursuant to Article 4c(5), the pledges in the solidarity pool shall be updated accordingly.

The Commission and the Member States shall at all times prioritise relocation pursuant to Article 45(1), as the primary measure of solidarity.

2. Within two weeks from the adoption of the delegated act pursuant to Article 4c, the EU Relocation Coordinator shall convene the Solidarity Forum.

Within the same two weeks, the Commission shall invite all contributing Member States, to provide pledges of their anticipated solidarity contributions to meet the identified needs. The pledges shall include the share of each type of contribution.

3. At least 80 % of pledges in the solidarity pool shall be made up of relocation pursuant to paragraph 1, points (a) and (b), of this Article or the application of the discretionary clause pursuant to Article 25.

The remaining pledges may, where applicable, consist of capacity-building measures pursuant to Article 45(1a).

4. Where the Commission considers that the Member States' pledges do not correspond to the needs identified pursuant to Article 4b, the Commission shall distribute the remaining needs on the basis of the reference key referred to in Article 54.

5. The Commission shall adopt an implementing act to establish the solidarity pool consisting of the Member States' pledges and, where applicable, the distribution of the remaining needs, no later than two weeks after the Solidarity Forum is convened.

6. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(1a).

Amendment 352

Proposal for a regulation Article 46 – paragraph 1

Text proposed by the Commission

A Solidarity Forum shall comprise all Member States. The Commission **shall** convene and preside the Solidarity Forum in order to ensure the smooth functioning of **this Part**.

Amendment

1. A Solidarity Forum shall comprise all Member States, **represented at the level of responsibility and decision-making power that is appropriate in order to provide solidarity contributions for the creation of the solidarity pool pursuant to Article 45 a or solidarity response in situations of migratory pressure pursuant to Article 52.**

The EU Relocation Coordinator shall, on behalf of the Commission, convene and preside the Solidarity Forum in order to ensure the smooth functioning of the solidarity mechanism and enhance the practical contributions between the Member States pursuant to 45b and Article 52.

Amendment 353

Proposal for a regulation Article 46 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. **The Solidarity Forum shall meet at least twice a year in order for the Member States to provide their pledges to the creation of the Solidarity Pool pursuant to 45b and as frequently as necessary according to needs as identified in accordance with Article 52.**

Amendment 354

Proposal for a regulation Article 46 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The Asylum Agency shall participate in the Solidarity Forum.

The European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights shall, where appropriate and where invited by the EU Relocation Coordinator, participate in the Solidarity Forum.

Amendment 355

**Proposal for a regulation
Article 47**

Text proposed by the Commission

Amendment

[...]

deleted

Amendment 356

**Proposal for a regulation
Article 48**

Text proposed by the Commission

Amendment

[...]

deleted

Amendment 357

**Proposal for a regulation
Article 49**

Text proposed by the Commission

Amendment

[...]

deleted

Amendment 358

**Proposal for a regulation
Article 49 a (new)**

Text proposed by the Commission

Amendment

Article 49a

Notification of migratory pressure

- 1. A Member State that has been identified in the delegated act referred to in Article 4c as a Member State that could face a situation of migratory pressure shall, when it considers itself to be under the migratory pressure as provided for in the delegated act, notify the Commission.***
- 2. Following that notification, a solidarity response shall be provided in accordance with Article 52. Where necessary and where applicable, the Commission shall have recourse to Article 53.***

Amendment 359

**Proposal for a regulation
Article 50 – paragraph -1 (new)**

Text proposed by the Commission

Amendment

- 1. A Member State that has not been identified in the delegated act referred to in Article 4c shall, when it considers itself to be under migratory pressure, immediately request the Commission to assess whether it is under migratory pressure.***

A Member State that has been identified in the delegated act referred to in Article 4c may also request such an assessment when faced with a situation of migratory pressure not provided for in that delegated act.

Amendment 360

**Proposal for a regulation
Article 50 – paragraph 1 – introductory part**

Text proposed by the Commission

Amendment

1. The Commission shall ***assess the migratory situation in a*** Member State ***where:***

1. The Commission shall, ***within one week of the request, initiate an assessment of whether the*** Member State ***that made the request is under migratory pressure.***

Amendment 361

Proposal for a regulation

Article 50 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall also assess the migratory situation in a Member State where:

Amendment 362

Proposal for a regulation

Article 50 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) that Member State has informed the Commission that it considers itself to be under migratory pressure;

deleted

Amendment 363

Proposal for a regulation

Article 50 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) on the basis of available information, it considers that a Member State ***may*** be under migratory pressure.

(b) it considers, based on available information, that a Member State ***could*** be under migratory pressure;

Amendment 364

Proposal for a regulation
Article 50 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the European Parliament or the Council request the Commission to carry out such an assessment.

Amendment 365

Proposal for a regulation
Article 50 – paragraph 2

Text proposed by the Commission

Amendment

2. The Asylum Agency **and** the European Border and Coast Guard Agency shall assist the Commission in drawing up the assessment of migratory pressure. The Commission shall inform the European Parliament, the Council and the Member States, **without delay**, that it is undertaking an assessment.

2. The Asylum Agency, the European Border and Coast Guard Agency **and the European Union Agency for Fundamental Rights**, shall assist the Commission in drawing up the assessment of migratory pressure, **in cooperation with the Member State concerned**. The Commission shall **immediately** inform the European Parliament, the Council and the Member States, that it is undertaking an assessment.

Amendment 366

Proposal for a regulation
Article 50 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. The assessment of migratory pressure shall **cover** the situation in the Member State concerned during the preceding **six** months, compared to the overall situation in the Union, and shall be based **in particular** on the **following** information:

3. The assessment of migratory pressure shall **be based on** the situation in the Member State concerned during the preceding **twelve** months, compared to the overall situation in the Union, and shall be based **on the information referred to in Article 4b(1), second subparagraph, including the information gathered through the monitoring conducted by the Asylum Agency**.

Amendment 367

Proposal for a regulation Article 50 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the number of applications for international protection by third-country nationals and the nationality of the applicants; *deleted*

Amendment 368

Proposal for a regulation Article 50 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the number of third-country nationals who have been detected by Member State authorities while not fulfilling, or no longer fulfilling, the conditions for entry, stay or residence in the Member State including overstayers within the meaning of Article 3(1)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council⁵⁸ ; *deleted*

⁵⁸ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

Amendment 369

Proposal for a regulation Article 50 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) the number of return decisions that respect Directive 2008/115/EC; **deleted**

Amendment 370

Proposal for a regulation Article 50 – paragraph 3 – point d

Text proposed by the Commission

Amendment

(d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC; **deleted**

Amendment 371

Proposal for a regulation Article 50 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes; **deleted**

Amendment 372

Proposal for a regulation Article 50 – paragraph 3 – point f

Text proposed by the Commission

Amendment

(f) the number of incoming and outgoing take charge requests and take back notifications in accordance with **deleted**

Articles 34 and 36;

Amendment 373

Proposal for a regulation

Article 50 – paragraph 3 – point g

Text proposed by the Commission

Amendment

(g) the number of transfers carried out in accordance with Article 31; **deleted**

Amendment 374

Proposal for a regulation

Article 50 – paragraph 3 – point h

Text proposed by the Commission

Amendment

(h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border; **deleted**

Amendment 375

Proposal for a regulation

Article 50 – paragraph 3 – point i

Text proposed by the Commission

Amendment

(i) the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399; **deleted**

Amendment 376

Proposal for a regulation

Article 50 – paragraph 3 – point j

Text proposed by the Commission

Amendment

(j) the number and nationality of third-country nationals disembarked **deleted**

following search and rescue operations, including the number of applications for international protection;

Amendment 377

**Proposal for a regulation
Article 50 – paragraph 3 – point k**

Text proposed by the Commission

Amendment

(k) the number of unaccompanied minors. *deleted*

Amendment 378

**Proposal for a regulation
Article 50 – paragraph 4 – point a**

Text proposed by the Commission

Amendment

(a) the information presented by the Member State, where the assessment is carried out pursuant to paragraph 1, point (a); *deleted*

Amendment 379

**Proposal for a regulation
Article 50 – paragraph 4 – point b**

Text proposed by the Commission

Amendment

(b) the level of cooperation on migration with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [Asylum Procedure Regulation]; *deleted*

Amendment 380

**Proposal for a regulation
Article 50 – paragraph 4 – point c**

Text proposed by the Commission

Amendment

(c) the geopolitical situation in relevant third countries that may affect migratory movements;

deleted

Amendment 381

Proposal for a regulation

Article 50 – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) the relevant Recommendations provided for in Article 15 of **Council Regulation (EU) No 1053/2013⁵⁹**, Article 13, 14 and 22 of Regulation (EU) **XXX/XXX [European Union Asylum Agency]** and Article 32(7) of Regulation (EU) 2019/1896;

(d) the relevant Recommendations provided for in Article 15 of Regulation (EU) **2022/922**, Article 13, 14 and 22 of Regulation (EU) **2021/2303** and Article 32(7) of Regulation (EU) 2019/1896;

⁵⁹ **Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.**

Amendment 382

Proposal for a regulation

Article 50 – paragraph 4 – point f

Text proposed by the Commission

Amendment

(f) the Migration Management Report referred to in Article 6(4);

deleted

Amendment 383

Proposal for a regulation
Article 50 – paragraph 4 – point g

Text proposed by the Commission

Amendment

(g) *the Integrated Situational Awareness and Analysis (ISAA) reports under Council Implementing Decision (EU) 2018/1993 on the EU Integrated Political Crisis Response Arrangements, provided that the Integrated Political Crisis Response is activated or the Migration Situational Awareness and Analysis (MISAA) report issued under the first stage of the Migration Preparedness and Crisis Blueprint, when the Integrated Political Crisis Response is not activated;* *deleted*

Amendment 384

Proposal for a regulation
Article 50 – paragraph 4 – point h

Text proposed by the Commission

Amendment

(h) *information from the visa liberalisation reporting process and dialogues with third countries;* *deleted*

Amendment 385

Proposal for a regulation
Article 50 – paragraph 4 – point i

Text proposed by the Commission

Amendment

(i) *quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights.* *deleted*

Amendment 386

Proposal for a regulation
Article 50 – paragraph 4 – point j

Text proposed by the Commission

Amendment

(j) the support provided by Union Agencies to the benefitting Member State.

deleted

Amendment 387

**Proposal for a regulation
Article 50 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Where during the assessment of migratory pressure in accordance with this Article, the Commission considers that the situation may be a situation of crisis pursuant to Article X of Regulation (EU) xxx/xxx [Crisis Regulation], and the Member State concerned agrees, the Commission shall also assess whether the Member State concerned is in a situation of crisis instead of under migratory pressure.

Amendment 388

**Proposal for a regulation
Article 51 – title**

Text proposed by the Commission

Amendment

Report on migratory pressure

Delegated act to determine migratory pressure

Amendment 389

**Proposal for a regulation
Article 51 – paragraph 1 – subparagraph 2**

Text proposed by the Commission

Amendment

The Commission shall submit the report on migratory pressure to the European Parliament and to the Council within one

deleted

month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

Amendment 390

Proposal for a regulation Article 51 – paragraph 2

Text proposed by the Commission

Amendment

2. In the report, the Commission shall state whether the Member State concerned is under migratory pressure.

deleted

Amendment 391

Proposal for a regulation Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall, within two weeks after it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment, adopt a delegated act determining whether the Member State concerned is under migratory pressure.

Amendment 392

Proposal for a regulation Article 51 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Where the Commission concludes that the Member State concerned is under migratory pressure, the *report* shall identify:

3. Where the Commission concludes that the Member State concerned is under migratory pressure, the *delegated act* shall identify:

Amendment 393

Proposal for a regulation Article 51 – paragraph 3 – point a

Text proposed by the Commission

(a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum and return as well as its overall needs in managing its asylum and return caseload;

Amendment

(a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum, **reception** and return as well as its overall needs in managing its asylum and return caseload;

Amendment 394

Proposal for a regulation Article 51 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) measures that the Member State has taken to enhance its asylum, reception and migration system;

Amendment 395

Proposal for a regulation Article 51 – paragraph 3 – point b – point i

Text proposed by the Commission

(i) measures that the Member State under migratory pressure **should** take in the field of migration management, and in particular **in the field of** asylum **and return**;

Amendment

(i) measures that the Member State under migratory pressure **shall** take in the field of migration management, and in particular **to enhance its** asylum, **reception and migration system**;

Amendment 396

Proposal for a regulation Article 51 – paragraph 3 – point b – point ii

Text proposed by the Commission

(ii) measures referred to in Article 45(1), **points (a), (b) and (c)** to be taken by other Member States;

Amendment

(ii) measures referred to in Article 45(1) to be taken by other Member States;

Amendment 397

Proposal for a regulation

Article 51 – paragraph 3 – point b – point iii

Text proposed by the Commission

(iii) measures referred to in Article 45(1), **point (d) to be taken by other Member States.**

Amendment

(iii) measures referred to in Article 45(2).

Amendment 398

Proposal for a regulation

Article 51 – paragraph 4

Text proposed by the Commission

4. Where the Commission considers that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.

Amendment

deleted

Amendment 399

Proposal for a regulation

Article 51 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The delegated act shall identify the capacity of the solidarity pool and the distribution of solidarity contributions

among the contributing Member States in accordance with the implementing act referred to in Article 46.

Amendment 400

Proposal for a regulation Article 51 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. The delegated act shall set out the time frame for the implementation of solidarity contributions pursuant to Article 45(1), taking into account the need for urgent actions for the Member State concerned.

Amendment 401

Proposal for a regulation Article 51 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. Where, in a case of migratory pressure, imperative grounds of urgency so require, the procedure provided for in Article 68a shall apply to delegated acts adopted pursuant to this Article.

Amendment 402

Proposal for a regulation Article 52 – title

Text proposed by the Commission

Amendment

Solidarity Response **Plans** in situations of migratory pressure

Solidarity Response in situations of migratory pressure

Amendment 403

Proposal for a regulation
Article 52 – paragraph 1

Text proposed by the Commission

Amendment

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, the other Member States which are not themselves benefitting Member States shall contribute by means of the solidarity contributions referred to in Article 45(1), points (a), (b) and (c). Member States shall prioritise the relocation of unaccompanied minors.

deleted

Amendment 404

Proposal for a regulation
Article 52 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The EU Relocation Coordinator shall, without delay, and no later than within two weeks following a notification pursuant to Article 49a or the adoption of a delegated act pursuant to Article 51 coordinate the relocation.

Amendment 405

Proposal for a regulation
Article 52 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the report referred to in Article 51 identifies measures referred to in paragraph 3, point (b)(iii) of that Article, other Member States may contribute by means of those measures instead of measures referred to in Article 51(3)(b)(ii). Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report

deleted

on migratory pressure under Article 51(3)(b)(ii).

Amendment 406

**Proposal for a regulation
Article 52 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. Where the Commission has adopted a delegated act pursuant to Article 51, the EU Relocation Coordinator shall convene the Solidarity Forum, where the capacity of the solidarity pool referred to in 45b falls short of the identified needs. The Solidarity Forum shall take place no later than one week after the adoption of the delegated act.

Where the Commission has received a notification pursuant to Article 49a and the capacity of the solidarity pool referred to in 45b is no longer able to meet the identified needs, the EU Relocation Coordinator shall convene the Solidarity Forum no later than one week after receipt of that notification.

The Commission shall consider measures at its disposal to encourage increased pledges by the contributing Member States.

Amendment 407

**Proposal for a regulation
Article 52 – paragraph 3 – subparagraph 1**

Text proposed by the Commission

Amendment

Within two weeks from the adoption of the report referred to in Article 51, Member States shall submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of

deleted

contributions from among those set out in Article 51(3)(b)(ii) or, where relevant, the measures set out in Article 51(3)(b)(iii) that Member States propose to take. Where Member States propose more than one type of contribution set out in Article 51(3)(b)(ii), they shall indicate the share of each.

Amendment 408

Proposal for a regulation Article 52 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals present on the territory of the Member State concerned that they intend to sponsor. **deleted**

Amendment 409

Proposal for a regulation Article 52 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Where Member States indicate measures set out in Article 51(3)(b)(iii) in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time-frame for their implementation. **deleted**

Amendment 410

Proposal for a regulation Article 52 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Member States which are not

themselves benefitting Member States shall at the Solidarity Forum provide additional pledges by completing the Solidarity Response Plan form in Annex II setting out the solidarity contributions referred to in Article 45. Member States shall prioritise the relocation of vulnerable persons, and in particular of unaccompanied minors.

Where Member States propose more than one type of contribution set out in Article 45 they shall indicate the share of each, including the detailed arrangements for its implementation, within the timeframe set out in Article 51(5).

Amendment 411

Proposal for a regulation Article 52 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. A benefitting Member State may request the contributing Member States to take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible pursuant to Articles 19-23. Where contributing Member States agree, pursuant to Article 25 of this Regulation, to take responsibility for applications of international protection for which the benefitting Member State has been determined as responsible, they shall indicate their responsibility pursuant to Article x of Regulation (EU) xxx/xxx [Eurodac Regulation].

The first subparagraph shall not apply where the applicant is an unaccompanied minor and Article 15 applies.

Amendment 412

Proposal for a regulation
Article 52 – paragraph 4

Text proposed by the Commission

4. Where the **Commission considers that the** solidarity contributions indicated in the Solidarity Response Plans **do not** correspond to the needs identified in the **report on migratory pressure** provided for in Article 51, **it shall convene the Solidarity Forum. In such cases, the Commission shall invite Member States to adjust the type of contributions in their Solidarity Response Plans in the course of the Solidarity Forum by submitting revised Solidarity Response Plans.**

Amendment

4. Where the solidarity contributions indicated in the Solidarity Response Plans correspond to the needs identified in the **delegated act** provided for in Article 51, **or the needs identified in the notification received pursuant to Article 49a, the Commission shall, no later than within one week from the adoption of that delegated act or receipt of that notification, adopt an implementing act setting out the solidarity contributions from the Contributing Member States.**

Amendment 413

Proposal for a regulation
Article 52 – paragraph 5

Text proposed by the Commission

5. **A Member State proposing solidarity contributions set out in Article 51(3)(b)(ii), may request a deduction of 10% of its share calculated according to the distribution key set out in Article 54 where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications for international protection.**

Amendment

deleted

Amendment 414

Proposal for a regulation
Article 52 a (new)

Text proposed by the Commission

Amendment

Article 52a

Postponement of transfer procedures

1. A benefitting Member State may, at any time when under migratory pressure, notify to the Commission and the other Member States of the temporary postponement of the transfer of applicants for a maximum period of nine months where it is responsible for the examination of their applications pursuant to Article 23. Transferring Member States shall not carry out transfers to the benefitting Member State during that established period, which shall in any case not be longer than the remaining part of the year. The time limits laid down in Article 35(1) shall start on the dates the postponement period ends.

2. This temporary postponement is without prejudice to the possibility for the transferring Member States to assume responsibility, pursuant to Article 25 at any time for the applications in respect of which the transfer was pending.

3. Applicants whose transfer is postponed in accordance with paragraph 1 shall benefit from the reception conditions, in accordance with Article 17a of Directive (EU) XXX/XXX [Reception Conditions Directive] and 9(4), point (a), of this Regulation.

Amendment 415

Proposal for a regulation Article 53 – paragraph 1

Text proposed by the Commission

1. Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum, the Commission shall adopt an implementing act laying down the solidarity contributions for the benefit of

Amendment

deleted

the Member State under migratory pressure to be taken by the other Member States and the timeframe for their implementation.

Amendment 416

Proposal for a regulation Article 53 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where the Commission considers that the solidarity contributions as referred to in Article 52(2) do not correspond to the needs identified in the delegated act to determine migratory pressure provided for in Article 51, or in the notification made pursuant to Article 49a, it shall set out the solidarity contributions of the contributing Member States as submitted by them and the distribution of solidarity contributions in accordance with the reference key for the remaining needs in an implementing act.

Amendment 417

Proposal for a regulation Article 53 – paragraph 2

Text proposed by the Commission

Amendment

2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure.

deleted

Where the type of contribution indicated by Member States in their solidarity response plans is that referred to in

Article 45(1), point (d), the Commission shall assess whether the measures proposed are in proportion to the contributions that the Member States would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c) as a result of the application of the distribution key set out in Article 54.

Where the measures proposed are not in proportion to the contributions that the contributing Member State would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c), the Commission shall set out in the implementing act the measures proposed while adjusting their level.

Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 51(3)(b)(ii). The Commission shall adjust measures referred to in Article 51(3)(b)(iii) indicated by those Member States accordingly.

Amendment 418

Proposal for a regulation Article 53 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(1a) no later than within two weeks from the submission of the notification pursuant to Article 49 or the delegated act referred to

in Article 51 to the Member State concerned, the European Parliament and the Council.

Amendment 419

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) the total number of persons to be relocated from the requesting Member State pursuant to Article 45(1), *points (a) or (c), taking into account the capacity and needs of the requesting Member States in the area of asylum identified in the report referred to in Article 51(3)(b)(ii)*;

Amendment

(a) the total number of persons to be relocated from the requesting Member State pursuant to Article 45(1) *and the share of each contributing Member State*;

Amendment 420

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) *capacity building measures in accordance with Article 55a(1) and the timeframe for its implementation.*

Amendment 421

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) *the total number of persons to be subject to return sponsorship from the requesting Member State pursuant to Article 45(1), point (b), taking into account the capacity and needs of the requesting Member States on return identified in the report referred to in*

deleted

Article 51(3)(b)(ii);

Amendment 422

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States including the benefitting Member State, on the basis of the distribution key set out in Article 54; **deleted**

Amendment 423

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) the measures indicated by Member States pursuant to second, third and fourth subparagraph of paragraph 2. **deleted**

Amendment 424

Proposal for a regulation

Article 53 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The distribution referred to in paragraph 3 point (c) shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has been responsible for twice the Union average per capita of applications for international protection. In such cases the Member State shall receive a deduction of 10/% of its share calculated according to the distribution **deleted**

key set out in Article 54. This deduction shall be distributed proportionately among the Member States making contributions referred to in Article 45(1) points (a), (b) and (c);

Amendment 425

Proposal for a regulation Article 53 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The distribution referred to in the first subparagraph, point (a), of this paragraph shall be adjusted accordingly if a Member State has the right to a deduction of its share pursuant to Article 54(2).

Amendment 426

Proposal for a regulation Article 53 – paragraph 4

Text proposed by the Commission

Amendment

4. *Where contributions have been made in response to a request by a Member State for solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure pursuant to Article 56(1) within the preceding year, and where they correspond to the type of measures set out in the implementing act, the Commission shall deduct these contributions from the corresponding contributions set out in the implementing act.*

deleted

Amendment 427

Proposal for a regulation Article 53 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Those acts shall **remain in force** for a period not exceeding 1 year.

Amendment

Those acts shall **apply** for a period not exceeding 1 year.

Amendment 428

Proposal for a regulation Article 53 – paragraph 6

Text proposed by the Commission

6. The Commission shall report on the **implementation** of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

Amendment

6. The Commission shall report on the **application** of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

Amendment 429

Proposal for a regulation Article 54 – title

Text proposed by the Commission

Distribution key

Amendment

Reference key

Amendment 430

Proposal for a regulation Article 54 – paragraph 1 – introductory part

Text proposed by the Commission

The share of solidarity contributions referred to in Article 45(1), **points (a), (b) and (c) to be provided by each Member State in accordance with Articles 48 and 53 shall be calculated in accordance with the formula set out in Annex III** and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

Amendment

1. The share of solidarity contributions referred to in Article 45(1) shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

Amendment 431

Proposal for a regulation Article 54 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A Member State proposing solidarity contributions set out in Article 45(1), may request a deduction of 10 % of its share calculated according to the reference key where it indicates in the Solidarity Response Plans that over the preceding ten years it has examined twice the Union average per capita of applications for international protection.

Amendment 432

Proposal for a regulation Article 55

Text proposed by the Commission

Amendment

[...]

deleted

Amendment 433

Proposal for a regulation Article 55 a (new)

Text proposed by the Commission

Amendment

Article 55a

Capacity-building measures

1. A Member State may commit to support another Member State by providing capacity-building measures in the field of asylum, reception and pre-departure reintegration and operational support pursuant to Article 45(2).

Such measures shall be identified in the delegated act adopted on migratory pressure pursuant to Article 4c and 51 and address the specific needs of the

benefitting Member State.

2. A Member State may commit to support another Member State at risk of migratory pressure by providing capacity-building measures in the field of asylum, reception, return and reintegration and operational support, including through cooperation with third countries.

Such measures shall be identified by the Commission and the benefitting Member State in their national strategies pursuant to Article 5.

3. Capacity-building measures in third countries shall be limited to measures which:

(a) enhance the capacity of asylum and reception in third countries, by strengthening, human and institutional expertise and capacity;

(b) promoting legal migration and well-managed mobility;

(c) reducing the vulnerabilities caused by human trafficking and smuggling and address the drivers of irregular migration and forced displacement;

(d) strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships;

(e) supporting effective and human rights based migration policies;

(f) supporting sustainable reintegration of returning migrants and their families;

4. Measures pursuant to this Article shall be in full compliance with fundamental rights and the Charter of Fundamental Rights.

5. The Commission and the Member State concerned with the support of the Asylum Agency and other relevant Union bodies, offices and agencies shall monitor the implementation of the capacity-

building measures at regular intervals.

The Commission and the Member State concerned shall also take into account information from other relevant organisations.

6. The Commission shall keep the European Parliament and the Council regularly informed on its monitoring of capacity-building measures.

A contributing Member State shall immediately end capacity-building measures that do not comply with fundamental rights.

The European Parliament shall immediately be informed when the second subparagraph of this paragraph is applied. The Commission shall take into account any recommendations provided by the European Parliament for the purpose of the second subparagraph of this paragraph.

Amendment 434

Proposal for a regulation Article 56

Text proposed by the Commission

Amendment

Article 56

deleted

Other solidarity contributions

1. Where a Member State requests solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure, it shall notify the Commission of that request.

2. Any Member State may, at any time, in response to a request for solidarity support by a Member State, or on its own initiative, including in agreement with another Member State, make contributions by means of the measures referred to in Article 45 for the

benefit of the Member State concerned and with its agreement. Contributions referred to in article 45, point (d) shall be in accordance with the objectives of Regulation (EU) XXX/XXX [Asylum Migration Fund].

3. Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on its own initiative, shall notify the Commission, thereof by completing the Solidarity Support Plan form set out in Annex IV. The Solidarity Response Plan shall include, where relevant, verifiable information, including on the scope and nature of the measures and their implementation.

Amendment 435

Proposal for a regulation Article 56 a (new)

Text proposed by the Commission

Amendment

Article 56a

Support from Union bodies, offices and agencies

1. The Union bodies, offices and agencies acting in the field of asylum, border and migration management shall, within their respective mandates, provide support to the Member States and the Commission with a view to ensuring the proper implementation and functioning of this Regulation.

For the purpose of the first subparagraph, the relevant Union bodies, offices and agencies may provide competent authorities in the Member States with analyses, expertise and operational support.

2. Where requested by a Member State, a Union body, office or agency shall

provide it with support. The Commission or a Union body, office or agency may, on its own initiative, propose to provide a specific Member State with support.

Where the Commission or a Union body, office or agency proposes support to a Member State, that Member State shall take due account of the proposal. The Member State concerned may accept, amend or reject the proposal.

Amendment 436

Proposal for a regulation

Article 57 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The procedure set out in this Article shall apply *for the relocation of persons referred to in Article 45(1) and in Article 45a, point (a)*.

Amendment 437

Proposal for a regulation

Article 57 – paragraph 1 – point a

Text proposed by the Commission

(a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);

Amendment

deleted

Amendment 438

Proposal for a regulation

Article 57 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

deleted

45(2), point (b).

Amendment 439

Proposal for a regulation

Article 57 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The identification of persons who could be relocated shall be made by the benefitting Member State, in close cooperation the EU Relocation Coordinator, the contributing Member State and the Asylum Agency.

Amendment 440

Proposal for a regulation

Article 57 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 441

Proposal for a regulation

Article 57 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For the purpose of paragraph 1,

the benefitting and contributing Member States shall make use of the pre-screening criteria adopted by the Asylum Agency. The applicant shall be fully informed and consulted in the procedure of determination of the meaningful links and shall have the right to present relevant information and documentation to determine links to a specific Member State.

Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person has consented to the relocation in writing.

Applicants who do not have links to any other country shall be fairly shared among the remaining participating Member States. Where applicable, the wish of the applicant to be relocated to a specific country shall be considered.

Amendment 442

Proposal for a regulation Article 57 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Where relocation is to be applied pursuant to Article 49, the benefitting

Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

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

Amendment 443

Proposal for a regulation Article 57 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The EU Relocation Coordinator should support the relocation activities from the benefitting Member State to the contributing Member State.

Amendment 444

Proposal for a regulation Article 57 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Amendment 445

Proposal for a regulation Article 57 – paragraph 5

Text proposed by the Commission

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

Amendment

5. The benefitting Member State shall ***notify and*** transmit to the ***contributing*** Member State as quickly as possible the relevant information and documents on the person referred to in *paragraph 1*.

Amendment 446

Proposal for a regulation
Article 57 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The ***contributing*** Member State shall ***confirm within 72 hours that it will relocate*** the person concerned.

Amendment 447

Proposal for a regulation
Article 57 – paragraph 6 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

A contributing Member State may verify that there are no reasonable grounds to consider the person concerned an individual and specific threat to its internal security where:

(a) a security check in accordance with Article X of Regulation (EU) xxx/xxx has provided a hit related to internal security;

(b) a security check has not previously been carried out in accordance with Regulation (EU) xxx/xxx [Screening Regulation].

Where the checks confirm that there are

reasonable grounds to consider the person concerned an individual and specific threat to internal security, the contributing Member State shall inform within 72 hours the benefitting Member State that relocation of that person shall not take place.

Failure to act within the 72 hours shall be considered as confirming the notification and entail the obligation to relocate the person.

Amendment 448

Proposal for a regulation Article 57 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

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

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

postpone a reply to the benefitting Member State within the original one-week time limit.

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

Amendment 449

Proposal for a regulation Article 57 – paragraph 8

Text proposed by the Commission

8. The benefitting Member State shall take a **transfer** decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State.

Amendment

8. The benefitting Member State shall take a **relocation** decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State, **and at the latest 48 hours before the relocation in case of applicants and 1 week before the relocation in case of beneficiaries.**

Amendment 450

Proposal for a regulation Article 57 – paragraph 8 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the person to be relocated is an applicant, he or she shall comply with the relocation decision.

Amendment 451

Proposal for a regulation
Article 57 – paragraph 9

Text proposed by the Commission

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

Amendment 452

Proposal for a regulation
Article 57 – paragraph 11

Text proposed by the Commission

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

Amendment 453

Proposal for a regulation
Article 58 – paragraph 1

Amendment

9. The **relocation** of the person concerned from the benefitting Member State to the **contributing** Member State shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the **contributing** 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).

Amendment

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

Text proposed by the Commission

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

Amendment

1. The **contributing** Member State shall inform the benefitting Member State, **Asylum Agency and the EU Relocation Coordinator** of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

Amendment 454

Proposal for a regulation

Article 58 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

The contributing Member State shall not apply the procedures set out in Part III after relocating an applicant or beneficiary for international protection.

Amendment 455

Proposal for a regulation

Article 58 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 456

Proposal for a regulation

Article 58 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment 457

**Proposal for a regulation
Article 58 – paragraph 4**

Text proposed by the Commission

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

Amendment 458

**Proposal for a regulation
Article 58 – paragraph 5**

Text proposed by the Commission

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

Amendment 459

Amendment

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

Amendment

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

deleted

Amendment

Proposal for a regulation
Article 58 a (new)

Text proposed by the Commission

Amendment

Article 58a

EU Relocation Coordinator

1. With a view to supporting the implementation of the relocation mechanism established under this Regulation, the Commission shall appoint an EU Relocation Coordinator, who will coordinate the relocation activities from the benefitting Member State to the contributing Member State, in accordance with the implementing acts set out in 45b , Article 52 or Article 53.

2. The EU Relocation Coordinator shall:

(a) coordinate and support the communication between the Member States involved;

(b) keep an overview of the persons eligible for relocation and follow up on the ongoing relocation, and on the contributions of the Member States involved;

(c) organise, at regular intervals, meetings between the authorities of the Member States to establish the needs, including at an operational level, in order to facilitate the best interaction and cooperation among Member States, in the interest of the persons eligible for relocation and the efficiency of the relocation mechanism;

(d) promote best practices in the field of relocation;

(e) encourage Member States to take into consideration the capacities and willingness of regional and local authorities to take part in relocation efforts;

(f) convene and chair the Solidarity

Forum referred to in Article 47.

3. For the purpose of paragraph 2, the EU Relocation Coordinator shall be assisted by an Office and provided with the necessary financial and human resources to effectively carry out its tasks.

The EU Relocation Coordinator shall work closely with the Asylum Agency to coordinate the practical details of relocation under this Regulation.

4. The EU Relocation Coordinator shall provide an annual report, with a quarterly bulletin on the state of the implementation and functioning of the relocation mechanism. The report and bulletin shall be transmitted to the European Parliament and to the Council.

5. Member States shall provide the EU Relocation Coordinator with necessary data and information for the EU Relocation Coordinator to effectively carry out its task.

6. In the event of a crisis as defined in Article X of Regulation EU xx/xx [Crisis Regulation], the EU Relocation Coordinator shall also carry out the tasks in accordance with Article X of that Regulation.

Amendment 460

Proposal for a regulation Article 59 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall keep the Commission, ***Asylum Agency and the EU Relocation Coordinator*** informed on the implementation of solidarity measures taken on a bilateral level including measures of cooperation with a third country.

Amendment 461

Proposal for a regulation Article 60 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 462

Proposal for a regulation Article 61 – paragraph 1

Text proposed by the Commission

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

Amendment

In accordance with the principle of solidarity and fair sharing of responsibility, Member States shall receive appropriate and proportionate funding support from the Union budget to apply this Regulation.

Funding support following relocation pursuant to Chapters I and II of Part IV shall be implemented in accordance with Article 20 of Regulation (EU) 2021/1147.

Amendment 463

Proposal for a regulation Article 62 – paragraph 1

Text proposed by the Commission

1. Member States shall implement appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or

Amendment

1. ***Without prejudice to Section 2 of Chapter IV of Regulation (EU) 2016/679,*** Member States shall implement appropriate technical and organisational measures to ensure the security of personal

unauthorised access or disclosure, alteration or loss of personal data processed.

data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

Amendment 464

Proposal for a regulation Article 62 – paragraph 2

Text proposed by the Commission

2. The competent supervisory authority or authorities of each Member State shall monitor the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.

Amendment

2. ***Without prejudice to Section 2 of Chapter IV of Regulation (EU) 2016/679,*** the competent supervisory authority or authorities of each Member State shall monitor ***and enforce*** the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.

Amendment 465

Proposal for a regulation Article 62 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The common and secure electronic transmission and communication system referred to in Article 40 shall fully comply with this Article.

Amendment 466

Proposal for a regulation Article 62 – paragraph 3

Text proposed by the Commission

3. The processing of personal data by the Asylum Agency shall be subject to Regulation (EU) XXX/XXX [***European Union Asylum Agency***], in particular as

Amendment

3. The processing of personal data by the Asylum Agency shall be subject to Regulation (EU) ***2018/1725 of the European Parliament and of the***

regards the **monitoring** of the European Data Protection Supervisor.

Council^{1a}, in particular as regards the **supervision** by the European Data Protection Supervisor.

1a Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 29).

Amendment 467

Proposal for a regulation Article 63 – paragraph 1

Text proposed by the Commission

Member States shall ensure that the authorities referred to in Article 41 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Amendment

Without prejudice to Section 2 of Chapter IV of Regulation (EU) 2016/679, Member States shall ensure that the authorities referred to in Article 41 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Amendment 468

Proposal for a regulation Article 67 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Amendment 469

Proposal for a regulation
Article 68 a (new)

Text proposed by the Commission

Amendment

Article 68a

Urgency procedure

- 1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2.***
- 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.***
- 2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 68(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.***

Amendment 470

Proposal for a regulation
Article 69 – paragraph 1

Text proposed by the Commission

By [18 months after entry into force] and from then on ***annually***, the Commission shall review the functioning of the measures set out in Chapters I-III of Part IV of this Regulation.

Amendment

By [18 months after entry into force] and from then on ***every two years***, the Commission shall review the functioning of the measures set out in Chapters I-III of Part IV of this Regulation ***and report on the implementation of the measures set out in this Regulation. The report shall be communicated to the European Parliament and the Council.***

Amendment 471

Proposal for a regulation
Article 69 – paragraph 2

Text proposed by the Commission

Amendment

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

deleted

Amendment 472

Proposal for a regulation

Article 69 – paragraph 3

Text proposed by the Commission

Amendment

No sooner than [***five***] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, at the latest six months before the [***five***] years time limit expires.

No sooner than [***three***] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, at the latest six months before the ***above mentioned*** time limit expires.

18.5.2022

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Juan Fernando López Aguilar
Chair
Committee on Civil Liberties, Justice and Home Affairs
ASP 14G305
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Regulation of the European Parliament and the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

(COM(2020)0610 – C9-0309/2020 – 2020/0279(COD))

Dear Mr Chair,

By letter dated 16 March 2022¹ you requested the Committee on Legal Affairs (JURI), pursuant to Rule 40(2) of the Rules of Procedure, to provide an opinion on the addition of Article 80 TFEU as a legal basis to the proposal for a Regulation of the European Parliament and the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (COM(2020)0610)².

JURI considered the above question at its meeting of 17 May 2022.

I - Background

On 23 September 2020, the Commission adopted a proposal for a regulation on asylum and migration management, which is part of the New Pact on Migration and Asylum. The Commission proposal is based on Article 78(2)(e) and Article 79(2)(a), (b) and (c) TFEU.

LIBE is currently discussing the proposal in view of the adoption of a draft report. In its request, LIBE explains that following an amendment tabled which adds Article 80 TFEU as a legal basis to the legislative act (Amendment 171), “the Rapporteur and his negotiating team, while still in the process of preparing the position of the European Parliament and without prejudice to the final conclusion, have decided to move forward with a request for an opinion from the Legal

¹ D(2022) 8317.

² COM(2020)0610 of 23.09.2020.

Affairs Committee.” LIBE request also indicates that a number of amendments tabled in LIBE introduce a specific objective to ensure solidarity and fair sharing of responsibility between Member States (see for example Amendments 174, 184, 260 and 295).

In view of the above, LIBE therefore requests JURI to provide an opinion on the addition of Article 80 TFEU as a legal basis for the proposal.

It has to be noted that the question of whether Article 80 TFEU may serve as a legal basis has been raised in the past, in the context of the adoption of a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund in 2014. The Council rejected the idea, considering that Article 80 TFEU does not constitute a legal basis within the meaning of EU law. The Commission supported the final text of the Regulation without the inclusion of Article 80 TFEU as a legal basis, but noted however that it was “without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.”³

On another occasion, Parliament took the view that Article 80 TFEU provided a legal basis ‘jointly’ with Articles 77 to 79 TFEU to implement the principle of solidarity in the areas covered by these Articles (Part Three, Title V, Chapter 2 TFEU).⁴

II - The relevant Treaty Articles

Title V of the Treaty on the Functioning of the European Union entitled “Area of freedom, security and justice” includes the relevant provisions pertaining to Chapter 2 “Policies on border checks, asylum and immigration” that read as follows (our emphasis):

Article 78
(ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

³ 8256/14 ADD 1.

⁴ See European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)), point 1.

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned.

It shall act after consulting the European Parliament.

Article 79

(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member

States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

III – CJEU case law on the choice of legal basis

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferred powers (Article 5 TEU) and determining the nature and scope of the Union's competence.⁵

According to settled case law of the Court of Justice, “*the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure*”.⁶ The choice of an incorrect legal basis may therefore justify the annulment of the act in question. In this context, an institution's wish for more active participation in the adoption of a given measure, the circumstances in which a measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the correct legal basis.⁷

If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.⁸ Exceptionally, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases⁹. This would however only be possible if the procedures laid down for the respective legal bases are not incompatible with

⁵ *Opinion 2/00*, ECLI:EU:C:2001:664, para 5.

⁶ Judgment in *Commission v Parliament and Council*, C-411/06, EU:C:2009:518, paragraph 45 and the case-law cited therein. See also *Parliament v Council*, C-130/10, EU:C:2012:472, paragraph 42 and the case law cited therein.

⁷ Judgment in *Commission v Council*, C-269/97, ECLI:EU:C:2000:183, para 44.

⁸ Judgment in *Commission v Council*, C-137/12, EU:C:2013:675, paragraph 53; *Commission v Parliament and Council*, C-411/06, EU:C:2009:518, paragraph 46 and the case-law cited therein; *Parliament v Council*, C-490/10, EU:C:2012:525, paragraph 45; *Parliament v Council*, C-155/07, EU:C:2008:605, paragraph 34.

⁹ Case C-211/01, *Commission v Council*, ECLI:EU:C:2003:452, para. 40; Case C-178/03 *Commission v European Parliament and Council*, ECLI:EU:C:2006:4, paras. 43-56.

each others and do not undermine the right of the European Parliament¹⁰. Further, the measure chosen has to comply with the prescribed type of the legislative act when specified in the Treaty.

IV – Aim and content of the proposed measure

In its explanatory memorandum, the Commission points out the different aims of the proposal which include:

“[to] establish a common framework that contributes to the comprehensive approach to asylum and migration management based on the principles of integrated policy-making and of solidarity and fair sharing of responsibility” and

“[to] ensure sharing of responsibility through a new solidarity mechanism by putting in place a system to deliver solidarity on a continued basis in normal times and assist Member States with effective measures (...) to manage migration in practice where they are faced with migratory pressure”. This approach also includes a specific process for solidarity to be applied to arrivals following search and rescue operations.

As stated in recital 2, the proposal for a regulation sets out a common framework for the actions of the Union and of the Member States in the field of asylum and migration management policies, by elaborating on the principle of solidarity and fair sharing of responsibility in accordance with Article 80 of the TFEU. The proposal further establishes a solidarity mechanism that includes measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return (see recitals 16 and 27).

In recital 35 the proposal explains that it should be based on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council while developing the principle of solidarity and fair sharing of responsibility as part of the common framework. To that end, a new solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory pressure and to facilitate regular solidarity support among Member States.

Recital 78 specifies that the aim of the proposal is *“the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing a situation of migratory pressure”*.

With regard to content, as provided for in its Article 1, *“[i]n accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust”*, the proposal sets out a common framework for the management of asylum and migration in the Union (Part II), lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Part III) and establishes a mechanism for solidarity (Part IV).

¹⁰ Case C-300/89 Commission v Council ("Titanium dioxide"), ECLI:EU:C:1991:244, paras. 17-25; Case C-268/94 Portugal v Council, ECLI:EU:C:1996:461.

Part II lists the components of the framework in general terms, such as international cooperation, visa policy, border management, the asylum acquis and return management. It also lays down the principle of integrated policy-making and the principle of solidarity and fair sharing of responsibility. Part II also provides for the establishment of migration management strategies by the Union and the Member States and sets up a mechanism aimed at improving the cooperation of third countries as regards readmission. It includes a specific Article on the principle of solidarity and fair sharing of responsibility (Article 5) which provides that “[i]n implementing their obligations, the Member States shall observe the principle of solidarity and fair sharing of responsibility and shall take into account the shared interest in the effective functioning of the Union’s asylum and migration management policies” and lists a number of measures that Member States have to take.

Part III of the proposal contains the provisions that replace the current Dublin acquis, i.e. provisions setting out criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Part IV creates mechanisms under which solidarity contributions are made for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations.

Furthermore, Parts I and V set out the scope and definitions of the proposal and lay down a series of general provisions on, inter alia, data protection, the adoption of implementing and delegated acts and the evaluation of the proposal.

Part VI amends (1) the Long Term Residence Directive to enable beneficiaries of international protection to obtain long-term resident status after three years of legal and continuous residence and (2) the Regulation establishing the Asylum, Migration and Integration Fund in order to provide for financial incentives for relocation.

Part VII of the proposal sets out transitional and final provisions.

V – Analysis

The analysis provided in the present note is made only in reference to the Commission proposal as presented. In view of LIBE’s request to receive JURI’s opinion on the addition of Article 80 TFEU as a legal basis for the proposal, the present note should first consider the nature of Article 80 TFEU assess whether in itself it confers competence to adopt legislative acts.

The first sentence of Article 80 TFEU is drafted in a way implying that the policies set up in Part Three, Title V, Chapter 2 TFEU and their implementation should follow the principle of solidarity:

“The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.”

The first sentence of Article 80 TFEU does not give a specific competence to the Union to adopt legislative measures but rather seems to specify *how* the competences already conferred on the

Union in Chapter 2 (i.e. Articles 77 to 79 TFEU) should be exercised.

It sets out a "principle" (namely the "principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States"), according to which existing competences are to be "governed". According to the Legal Service, such principle, like those that govern the "use" of Union competences (such as the principles of subsidiarity and proportionality) should not be referred to in the citations of a legislative act as part of the "legal basis" but it should be instead addressed in the recitals of a legislative act.

The second sentence of Article 80 TFEU states that :

“Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”

Article 80 TFEU, in its second sentence, makes it mandatory for the Union legislator (through the word “shall”) to include in legislation adopted on the basis of Articles 77, 78 and/or 79 (Part Three, Title V, Chapter 2 TFEU) appropriate measures to give effect to the principle of solidarity and fair sharing of responsibility, whenever that is necessary.

The second sentence of Article 80 TFEU does not give competence to adopt a legislative act on its sole basis but rather creates an obligation to include in that legislative act (adopted on the basis of Articles 77, 78 and/or 79 TFEU) appropriate measures that give effect to the principle if that is necessary; that by itself does not seem to require a reference to Article 80 TFEU in the citations in order for this obligation to be activated.

The Court of Justice has not expressly ruled on the use of Article 80 TFEU as a legal basis, but it can be concluded from a number of cases that an act adopted in the field of border checks, asylum and immigration should in any case be in accordance with Article 80 TFEU, even though that article is not cited as a legal basis.¹¹

The proposal may therefore be amended to insert (additional) appropriate measures giving effect to the principle of solidarity and fair sharing of responsibility, without the need for Article 80 TFEU to be added to the legal basis. It would, however, be appropriate to explain those measures in a recital.

VI - Conclusion and recommendation

Acts adopted under Articles 77 to 79 TFEU shall in any case be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States and shall, whenever necessary, contain appropriate measures to give effect to this principle, as required by Article 80 TFEU.

At its meeting of 17 May 2022, the Committee on Legal Affairs accordingly decided by 19 votes in favour, 1 against and 1 abstention¹², to recommend to the Committee on Civil Liberties,

¹¹ Judgment of 26 July 2017, Jafari, C-646/16, EU:C:2017:586, paragraph 100; Judgment of 2 April 2020, Commission v. Poland, C-715/17, C-718/17 and C-719/17, par. 181).

¹² The following Members were present for the final vote: Adrián Vázquez Lázara (Chair), Sergey Lagodinsky (Vice-Chair), Marion Walsmann (Vice-Chair), Lara Wolters (Vice-Chair), Raffaele Stancanelli (Vice-Chair),

Justice and Home Affairs the addition of Article 80 TFEU as a legal basis for the Commission proposal for a Regulation of the European Parliament and the Council on asylum and migration management is not required, however it is not precluded.

Yours sincerely,

Adrián Vázquez Lázara

Pascal Arimont, Manon Aubry, Gunnar Beck, Daniel Buda, Geoffroy Didier, Ibán García Del Blanco, Jean Paul Garraud, Esteban González Pons, Sergey Lagodinsky, Gilles Lebreton, Maria Manuel Leitão Marques, Karen Melchior, Sabrina Pignedoli, Jiří Pospíšil, Franco Roberti, Raffaele Stancanelli, Yana Toom (for Pascal Durand), Axel Voss, Tiemo Wölken, Javier Zarzalejos.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]			
References	COM(2020)0610 – C9-0309/2020 – 2020/0279(COD)			
Date submitted to Parliament	25.9.2020			
Committee responsible Date announced in plenary	LIBE 11.11.2020			
Committees asked for opinions Date announced in plenary	AFET 11.11.2020	BUDG 11.11.2020	EMPL 11.11.2020	JURI 11.11.2020
Not delivering opinions Date of decision	AFET 26.10.2020	BUDG 10.11.2020	EMPL 28.10.2020	JURI 12.10.2020
Rapporteurs Date appointed	Tomas Tobé 30.11.2020			
Legal basis disputed Date of JURI opinion	JURI 17.5.2022			
Discussed in committee	26.10.2021			
Date adopted	28.3.2023			
Result of final vote	+ : 47 - : 17 0 : 1			
Members present for the final vote	Abir Al-Sahlani, Konstantinos Arvanitis, Malik Azmani, Pietro Bartolo, Vladimír Bilčík, Malin Björk, Vasile Blaga, Ioan-Rareș Bogdan, Karolin Braunsberger-Reinhold, Saskia Bricmont, Annika Bruna, Jorge Buxadé Villalba, Damien Carême, Patricia Chagnon, Lena Düpont, Cornelia Ernst, Laura Ferrara, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Erik Marquardt, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Emil Radev, Karlo Ressler, Diana Riba i Giner, Birgit Sippel, Vincenzo Sofo, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Yana Toom, Tom Vandendriessche, Elissavet Vozemberg-Vrionidi, Jadwiga Wiśniewska, Elena Yoncheva			
Substitutes present for the final vote	Damian Boeselager, Beata Kempa, Alessandra Mussolini, Jan-Christoph Oetjen, Carina Ohlsson, Sira Rego, Thijs Reuten, Tomáš Zdechovský			
Substitutes under Rule 209(7) present for the final vote	Isabel Benjumea Benjumea, Othmar Karas, Joachim Kuhs, Aušra Maldeikienė, Daniela Rondinelli, Günther Sidl, Susana Solís Pérez			
Date tabled	14.4.2023			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
NI	Laura Ferrara
PPE	Isabel Benjumea Benjumea, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Karolin Braunsberger-Reinhold, Lena Düpont, Othmar Karas, Jeroen Lenaers, Aušra Maldeikienė, Nuno Melo, Alessandra Mussolini, Emil Radev, Karlo Ressler, Tomas Tobé, Elissavet Vozemberg-Vrionidi, Tomáš Zdechovský
Renew	Abir Al-Sahlani, Malik Azmani, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Jan-Christoph Oetjen, Maite Pagazaurtundúa, Susana Solís Pérez, Ramona Strugariu, Yana Toom
S&D	Pietro Bartolo, Maria Grapini, Sylvie Guillaume, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Carina Ohlsson, Thijs Reuten, Daniela Rondinelli, Günther Sidl, Birgit Sippel, Elena Yoncheva
Verts/ALE	Damian Boeselager, Saskia Bricmont, Damien Carême, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Tineke Strik

17	-
ECR	Jorge Buxadé Villalba, Patryk Jaki, Assita Kanko, Beata Kempa, Vincenzo Sofo, Jadwiga Wiśniewska
ID	Annika Bruna, Patricia Chagnon, Jean-Paul Garraud, Joachim Kuhs, Annalisa Tardino, Tom Vandendriessche
PPE	Lukas Mandl, Nadine Morano
The Left	Malin Björk, Cornelia Ernst, Sira Rego

1	0
The Left	Konstantinos Arvanitis

Key to symbols:

+ : in favour

- : against

0 : abstention