

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on asylum and migration management and amending Regulation (EU) 2021/1147, Regulation (EU) 2021/1148 and Regulation (EU) 2021/1060**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[...]

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

HAVE ADOPTED THIS REGULATION:

## **PART I**

### **SCOPE AND DEFINITIONS**

#### *Article 1*

##### **Aim and subject matter**

In accordance with the principle of solidarity and fair sharing of responsibility, *as enshrined in Article 80 Treaty of the Functioning of the European Union (TFEU)*, and with the objective of reinforcing mutual trust, this Regulation:

- (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;
- (b) establishes a mechanism for solidarity;
- (c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation:

- (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 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 Council<sup>3</sup>;

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<sup>3</sup> 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.

- (aa) 'stateless person' means a person who is not considered as a national by any State under the operation of its law;
- (b) 'application for international protection' or 'application' means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status;
- (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 yet been taken;
- (d) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Regulation (EU) XXX/XXX [Qualification Regulation], excluding procedures for determining the Member State responsible in accordance with this Regulation;
- (e) 'withdrawal of an application for international protection' means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation];
- (f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [Qualification Regulation];
- (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:
  - (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,
  - (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,

- (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,
- (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,
- (h) ‘relative’ means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;
- (i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;
- (j) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of Member States;
- (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;
- (l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;
- (m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:

- (i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,
  - (ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,
  - (iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;
- (n) ‘diploma or qualification’ means a diploma or qualification which is obtained and attested in a Member State after at least a period of one academic year of study on the territory of a 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 pursuant to legislative, regulatory or administrative provisions of that Member State and excluding online training or other forms of distance learning;
- (o) ‘education establishment’ means a public or private education or vocational training establishment established in and recognised by a Member State in accordance with national law or administrative practice on the basis of transparent criteria;
- (p) ‘absconding’ means the action by which a person concerned 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 or failure to notify absence from a particular accommodation centre, or assigned area of residence, where so required by a Member State, or failure to present himself or herself to the competent authorities where so required by these authorities;
- (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 a person concerned who is subject to procedures set out in this Regulation may abscond;
- (r) ‘benefitting Member State’ means the Member State benefitting from the solidarity contributions as set out in Part IV of this Regulation;

- (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 Part IV of this Regulation;
- (ta) ‘transfer’ means the implementation of the decision pursuant to Article 32;
- (u) ‘relocation’ means the transfer 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;
- (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;
- (w) ‘migratory pressure’ means a situation which is generated by arrivals by land, sea or air and applications of third country nationals or stateless persons that are of such a scale that they create disproportionate obligations on Member States, taking into account the overall situation in the Union, even on well-prepared asylum, reception and migration systems and require immediate action, in particular solidarity contributions pursuant to Part IV of this Regulation. Taking into account the specificities of the geographical location of a Member State, it covers situations 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 recurring disembarkations following search and rescue operations, or from unauthorised movements of third country nationals or stateless persons between the Member States;
- (wa) ‘significant migratory situation’ means a situation different from migratory pressure where the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception and migration system to reach the limits of its capacity;
- (wb) ‘*reception conditions*’ means the reception conditions, as defined in Article 2(6) of Directive (EU) XXX/XXX [*Reception Conditions Directive*];
- (x) ‘resettled or admitted person’ means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [Union Resettlement

Framework Regulation] or under a national resettlement scheme outside the framework of that Regulation;

- (xa) ‘EU Solidarity Coordinator’ means the person appointed by the Commission and with the mandate as defined in Article 7f of this Regulation;
- (y) ‘Asylum Agency’ means the European Union Agency for Asylum as established by Regulation (EU) 2021/2303<sup>4</sup> [...];

## **PART II**

# **COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT**

### **Chapter I**

## **THE COMPREHENSIVE APPROACH**

#### *Article 3*

#### **Comprehensive approach to asylum and migration management**

1. The common actions taken by the Union and the Member States in the field of asylum and migration management, within their respective competences, shall be based on the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU on the basis of a comprehensive approach, and be guided by the principle of integrated policy-making, in compliance with international and Union law, including fundamental rights, ensuring coherence between asylum and migration management policies in managing migration flows to the Union, addressing the relevant migratory routes, and unauthorised movements between the Member States, with the overall aim of effectively managing asylum and migration within the framework of the applicable Union law.

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<sup>4</sup> 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.

2. 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 institutions and agencies responsible for external policies.

*Article 3a*

**Internal components of the Comprehensive Approach**

With a view to achieving the objectives set out in Article 3, the internal components of the comprehensive approach shall consist of the following elements:

- (a) close cooperation and mutual partnership among Union institutions and bodies, Member States and international organisations;
- (b) 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<sup>5</sup>;
- (c) full respect of the obligations laid down in international and European law concerning persons rescued at sea;
- (d) swift and effective access to fair and efficient procedure for international protection on the Union territory, including at the external border of Member States, in the territorial sea or in the transit zones of the Member States and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection, in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Regulation (EU) XXX/XXX [Qualification Regulation];
- (e) determination of the Member State responsible for the examination of an application for international protection;
- (f) effective measures to reduce incentives for and to prevent unauthorised movements of third country nationals and stateless persons between Member States;

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<sup>5</sup> 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).



- (g) access for applicants to adequate reception conditions, in accordance with Directive XXX/XXX/EU [Reception Conditions Directive];
- (h) effective management of the return of illegally staying third-country nationals in accordance with the Return Directive;
- (i) effective measures to provide incentives for and support to the integration of beneficiaries of international protection in the Member States;
- (j) measures aimed at fighting exploitation and reducing illegal employment in line with Directive 2009/52/EC of the European Parliament and the Council;
- (k) where applicable, deployment and use of the operational tools set up at Union level, including by the European Border and Coast Guard Agency and the Asylum Agency, and the EU Information systems operated by EU-LISA.

*Article 3b*

**External components of the Comprehensive Approach.**

With a view to achieving the objectives set out in Article 3, the Union and the Member States shall, within their respective competences, promote and build tailor-made and mutually beneficial partnerships, in full compliance with international and Union law and based on the full respect for human rights, and foster close cooperation with relevant third countries at bilateral, regional, multilateral and international levels, including to:

- (a) promote legal migration and legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States;
- (b) support partners hosting large numbers of migrants and refugees in need of protection and build their operational capacities in migration, asylum and border management in full respect of human rights;
- (c) effectively prevent irregular migration and combat migrant smuggling and trafficking in human beings, including reducing the vulnerabilities caused by them, while ensuring the right to apply for international protection;
- (d) address the root causes and drivers of irregular migration and forced displacement;

- (e) enhance effective return, readmission and reintegration;
- (f) ensure full implementation of the common visa policy.

#### *Article 5*

#### **Principle of solidarity and fair sharing of responsibility**

1. In implementing their obligations, the Union and 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.
2. In fulfilling their obligations, Member States shall cooperate closely and shall:
  - (a) establish and maintain national asylum and migration management systems that provide effective access to international protection procedures, grant such protection to those who are in need, and the effective and dignified return of those who are illegally staying, in accordance with the Return Directive, and provide and invest in adequate reception of applicants for international protection, in accordance with the Reception Conditions Directive;
  - (aa) ensure that necessary resources and sufficient competent personnel are allocated for the implementation of this Regulation and, where they consider it necessary or where applicable, request support from Union bodies, offices and agencies for that purpose;
  - (b) take all measures necessary and proportionate, in full compliance with fundamental rights, to prevent and reduce irregular migration to the territories of the Member States, including preventing and combating migrant smuggling and trafficking in human beings and protecting the rights of smuggled and trafficked people;
  - (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;
  - (d) provide effective support to other Member States in the form of solidarity contributions on the basis of needs set out in Part II/Part IV;

- (e) take effective measures to reduce incentives for and to prevent unauthorised movements of third country nationals and stateless persons between the Member States.
3. To support Member States in fulfilling their obligations the permanent EU Migration Support Toolbox comprises at least the following:
- (a) operational and technical assistance by the relevant Union agencies in accordance with their mandates, in particular the Asylum Agency in accordance with Regulation (EU)2021/2303, the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896 and the European Union Agency for Law Enforcement Cooperation in accordance with Regulation (EU) 2016/794.
  - (b) support provided by the Union funds for the implementation of the common framework set out in this Part in accordance with Regulation (EU) 2021/11471<sup>6</sup>, Regulation (EU) 2021/11482<sup>7</sup>;
  - (c) derogations foreseen in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges as referred to in Regulation XXX/XXX [Crisis and Force Majeure Regulation], and Regulation XXX/XXX [Asylum Procedure Regulation];
  - (d) activation of the Union Civil Protection Mechanism in accordance with Regulation 2021/836;
  - (e) measures to facilitate return and reintegration activities, including through cooperation with third countries, and in full compliance with fundamental rights;
  - (f) strengthened actions and cross-sectoral activities in the external dimension of migration;
  - (g) enhanced diplomatic and political outreach;
  - (h) coordinated communication strategies;

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<sup>6</sup> 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.

<sup>7</sup> 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.

- (i) supporting effective and human rights based migration policies in third countries;
- (k) promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships.

*Article 5a*

**Strategic approach to managing asylum and migration at national level**

1. 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, in particular their geographical location.

When establishing their national strategies, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as regional and local authorities, as appropriate and in accordance with national law. 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, Regulation (EU) 2019/1896<sup>8</sup> 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) information on how the results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in

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<sup>8</sup> 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).

accordance with Regulation (EU) 2022/922<sup>9</sup> as well as of the monitoring carried out in accordance with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] have been taken into account.

2. 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<sup>10</sup> 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.
4. 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 5b.
5. Financial and operational support 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<sup>11</sup>.
6. The Commission shall monitor and provide information on the migratory situation through regular situational reports based on data and information provided by the External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency and notably the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and its Network and information provided by Member States where necessary.
7. The Commission shall, by means of implementing acts, establish a template to be used by Member States to ensure that their national strategies are comparable on specific core elements, such as the contingency planning. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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<sup>9</sup> Council Regulation (EU) 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.

<sup>10</sup> 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).

<sup>11</sup> 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).

## **Article 5b**

### **A long-term European Asylum and Migration Management Strategy**

1. The Commission, after consultation of the Member States, taking into account relevant reports and analysis from Union agencies and building upon national strategies referred to in Article 5a, shall draw up a five-year European Asylum and Migration Management Strategy (the ‘Strategy’) setting out the strategic approach, with a view to ensuring consistent implementation of national strategies. The Commission shall transmit the Strategy to the European Parliament and the Council. The Strategy shall not be legally binding.
2. The first Strategy shall be adopted by 18 months after the entry into force of this Regulation and every five years thereafter.
3. The Strategy shall include the components listed in Article 3a and Article 3b, give a prominent role to the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights and also take into account:
  - (a) the implementation of the national asylum and migration management strategies of the Member States, referred to in Article 5a, and their compliance with Union and international law;
  - (b) relevant information gathered by the Commission under the Commission Recommendation No 2020/1366 of September 2020 on an EU Mechanism for Preparedness and Management of crisis related to migration (Migration Preparedness and Crisis Blueprint);
  - (c) information collected by the Commission and the Asylum Agency on the 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.

## **Chapter II**

# **THE ANNUAL MIGRATION MANAGEMENT CYCLE**

### *Article 7a*

#### **The European Annual Asylum and Migration Report**

1. The Commission shall adopt a European Asylum and Migration Report on an annual basis assessing the asylum, reception and migratory situation over the previous 12 month period and any possible developments providing a strategic situational picture of the area of migration and asylum that also serves as an early warning and awareness tool for the Union.
2. The Report shall be based on relevant quantitative and 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 may also take into account information provided by other relevant bodies, offices, agencies or organisations.
3. The Report shall contain the following elements:
  - (a) an assessment of the overall situation covering all migratory routes to the Union and in all the Member States, in particular;
    - the number of applications for international protection and the nationalities of the applicants;
    - the number of identified unaccompanied minors and where available, persons with special reception or procedural needs;
    - the number of third-country nationals or stateless persons who have been granted international protection, in accordance with Regulation XXX/XXX [Qualification Regulation];
    - the number of first instance and final asylum decisions;

- the reception capacity of the Member States;
- the number of third-country nationals who have been detected by Member States 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), point (19), of Regulation (EU) 2017/2226 of the European Parliament and of the Council;
- 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 that respect Directive 2008/115/EC;
- the number of third-country nationals admitted by the Member States through Union and national resettlement or humanitarian admission schemes;
- the number of third-country nationals subject to the border procedure provided for in Regulation (EU XXX/XXX [Asylum Procedure Regulation] and their nationalities;
- the number of incoming and outgoing take charge requests or take back notifications in accordance with Articles 29 and 31, the number of transfer decisions and the numbers of transfers carried out in accordance with this Regulation;
- 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;
- the Member States which experienced recurring arrivals by sea, in particular through disembarkations following search and rescue operations and activities;
- the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399;
- the number of third country nationals or stateless persons enjoying temporary protection in accordance with Directive 2001/55/EC;



- the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border and, provided that the data is available and verifiable, the number of attempted irregular border crossings;
  - the support provided by Union bodies, offices and agencies to the Member States.
- (b) A forward-looking projection for the coming year, including the number of projected arrivals by sea, based on the overall migratory situation in the previous year and considering the current situation, while also reflecting the previous pressure;
  - (c) information about the level of preparedness in the Union and in the Member States and the possible impact of the projected situations;
  - (d) information on the capacity levels of the Member States, in particular on the reception capacity;
  - (e) the result of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, and the evaluation carried out in accordance with Regulation (EU) 2022/922<sup>12</sup> as well as the monitoring carried out in accordance with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] as referred to in [Article 5a (1)(c)];
  - (f) an assessment of whether solidarity measures and measures under the permanent EU Toolbox are needed to support the Member State or Member States concerned.
4. The Commission shall adopt the Report by 15 October of each year and transmit them to the Council and the European Parliament.
  5. The Report shall provide the basis for decisions at the Union level on the measures needed for the management of migratory situations.
  6. The first Report shall be issued by 15 October of the year after the year of the entry into force of this Regulation.

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<sup>12</sup> 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.

7. For the purpose of the Report, the Member States and the Asylum Agency, the European Border and Coast Guard Agency, Europol and Fundamental Rights Agency shall provide the information referred to in Article 7b by 1 June of each year.
8. The Commission shall convene a meeting of the EU Mechanism for Preparedness and Management of Crisis Related to Migration during the first half of July of each year to present the initial assessment of the situation and exchange information with members of the Mechanism. The composition and mode of operation of the EU Mechanism for Preparedness and Management of Crisis Related to Migration shall be governed by Recommendation (EU) 2020/1366 in its original version.
9. The Member States and the relevant Union agencies shall provide the Commission with updated information by 1 September of each year.
10. The Commission shall convene a meeting of the EU Mechanism for Preparedness and Management of Crisis Related to Migration by 30 September of each year to present the consolidated assessment of the situation. The composition and mode of operation of the EU Mechanism for Preparedness and Management of Crisis Related to Migration shall be governed by Commission Recommendation (EU) 2020/1366 in its original version.

#### *Article 7b*

#### **Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure or significant migratory situation**

1. When the Commission assesses the overall migratory situation, or whether a Member State is under migratory pressure, risk of migratory pressure or confronted with a significant migratory situation, it shall use the European Annual Asylum and Migration Report referred to in Article 7a and take into account any further information pursuant to Article 7a(3)(a).
2. The Commission shall also take into account the following:
  - (a) the information presented by the Member State, including the estimation of needs, capacity and preparedness measures and any additional relevant information provided in the national strategy referred to in Article 6(3);

- (b) the level of cooperation on migration as well as in the area of return and readmission, including by taking into account the annual report in accordance with Article 25a of the Visa code, 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*];
- (c) the geopolitical situation in relevant third countries as well as root causes of migration and possible situations of instrumentalisation of migrants and possible developments in the area of irregular arrivals through Union external borders that may affect migratory movements;
- (d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013<sup>13</sup>, Article 13, 14 and 22 of Regulation (EU) 2021/2303<sup>14</sup> and Article 32(7) of Regulation (EU) 2019/1896<sup>15</sup>;
- (e) information gathered pursuant to Commission Recommendation of 2020/1366 on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint)
- (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;
- (h) information from the visa liberalisation reporting process and dialogues with third countries;

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<sup>13</sup> [1] 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.

<sup>14</sup> [2] 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

<sup>15</sup> [3] 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

- (i) quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights;
  - (j) relevant parts of the vulnerability assessment report as referred to in Article 32 of the Regulation 2019/1896 European Border and Coast Guard Agency;
  - (k) relevant parts of the vulnerability assessment report as referred to in Article 32 of the Regulation 2019/1896 European Border and Coast Guard Agency;
  - (l) scale and trends of unauthorised movements of third country nationals or stateless persons between Member States building on the available information from the relevant Union agencies and data analysis from relevant information systems.
3. In addition, for assessing whether a Member State is facing a significant migratory situation, the Commission shall also take into account the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons.

*Article 7ba*

**Commission implementing decision on determining Member States under migratory pressure, at risk of migratory pressure or facing a significant migratory situation**

1. Together with the Report referred to in Article 7a, the Commission shall adopt an implementing decision determining whether a particular Member State is under migratory pressure, at risk of migratory pressure during the upcoming year, or is facing a significant migratory situation.  
  
For this purpose, the Commission shall consult the Member States concerned. The Commission may set a time limit for such consultations.
2. For the purpose of paragraph one, the Commission shall use the information gathered pursuant to Article 7b, taking fully into account all elements of the report referred to in Article 7a, all migratory routes, including the specificities of the structural phenomenon of disembarkations after search and rescue operations and unauthorised movements of third country nationals and stateless persons between the Member States, as well as the previous pressure and considering the current situation.

3. Where a Member State has faced large number of arrivals due to recurring disembarkations following search and rescue operations during the past 12 months, the Commission shall consider that Member State to be under migratory pressure provided these are of such a scale that they create disproportionate obligations on even the well-prepared asylum, reception and migration systems of the Member State concerned.
4. The Commission shall adopt its implementing decision by 15 October of each year and transmit it to the Council and the European Parliament.

*Article 7c*

**Commission proposal for a Council implementing act establishing the Solidarity Pool**

1. Each year, based on and together with the Report referred to in Article 7a, the Commission shall submit a proposal for a Council implementing act establishing the Solidarity Pool necessary to address the migratory situation in the upcoming year in a balanced and effective manner, that reflects the annual projected solidarity needs of the Member States under migratory pressure.
2. The Commission proposal for a Council implementing act shall identify the total annual numbers of required relocations and financial contributions for the Solidarity Pool at Union level, which shall at least be:
  - (a) 30 000 for relocations;
  - (b) EUR 600 million for financial contributions.

The Commission proposal for a Council implementing act shall also set out the annual indicative contributions for each Member State resulting from applying the reference key set out in Article 44k with a view to facilitating the pledging exercise pursuant to Article 7d.

3. When identifying the level of the Union-wide responsibility that should be shared by all Member States and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates. The Commission shall also take into account that the Member States which will become

benefitting Member States as referred to in Article 44c(1) are not obliged to implement their pledged solidarity contributions.

The Commission may identify a higher number for relocations and financial contributions than those provided for in paragraph 2 and may identify other forms of solidarity as set out in Article 44a(2)(c) depending on the needs for such measures arising from the specific challenges in the area of migration in the Member State concerned. In order to preserve the equal value of the different types of solidarity measures, the ratio between the numbers set out in paragraph 2(a) and paragraph 2(b) shall be maintained.

4. Notwithstanding paragraph 2 of this Article, in exceptional situations, where the information provided by the Member States and the Union agencies pursuant to Article 7a(2), or the consultation carried out by the Commission pursuant to Article 7ba(1) do not indicate a need for solidarity measures for the upcoming year, the Commission proposal for a Council implementing act shall duly take this into account.
5. Where the Commission has identified in its implementing decision referred to in Article 7b that one or more Member State is under migratory pressure as a result of large numbers of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the specificities of the Member States concerned, the Commission shall set out the indicative percentage of the Solidarity Pool to be made available to such Member States.
6. The Commission shall adopt its proposal for a Council implementing act by 15 October of each year and transmit it to the Council. The Commission shall simultaneously transmit the proposal to the European Parliament. Until the adoption by the Council implementing act pursuant to Article 44b, the Commission proposal for a Council implementing act shall not be made public. It shall be classified “RESTREINT UE/EU RESTRICTED<sup>16</sup> and shall be handled as such in accordance with Council Decision 2013/488 on the security rules for protecting classified information.

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<sup>16</sup> Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU).

## *Article 7d*

### **The High-Level EU Solidarity Forum**

1. In order to ensure the effective implementation of Part IV of this Regulation, a High-Level EU Migration Forum is hereby established, consisting of the representatives of the Member States and chaired by the Member State holding the Presidency of the Council. Member States shall be represented at the level of responsibility and decision-making power that is appropriate in order to carry out the tasks conferred on the Forum.

Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or lodged in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the High-Level Solidarity Forum as appropriate.

2. The Council shall convene the High-Level Solidarity Forum within 15 days following the adoption of the Report referred to in Article 7a, the implementing decision referred to in Article 7ba and the Commission proposal for a Council implementing act referred to in Article 7c.
3. In this meeting, the High-Level EU Solidarity Forum shall consider the Report referred to in Article 7a, the implementing decision referred to in Article 7ba and the Commission proposal for a Council implementing act referred to in Article 7c and take stock of the overall situation. It shall also come to a conclusion on the solidarity measures and their levels needed pursuant to the procedure set out in Article 44b and, where deemed necessary, on other migratory response measures in the areas of responsibility, preparedness and contingency, as well as on the external dimension of migration. During this High-Level EU Solidarity Forum meeting, Member States shall pledge their solidarity contributions for the creation of the solidarity pool pursuant to Article 44b.
4. Where the Council, at the initiative of a Member State or upon invitation from the Commission, considers that the solidarity contributions to the Solidarity Pool are insufficient in relation to the needs identified, including where significant deductions have been granted according to Articles 44f and 44fa, or one or more Member States under migratory pressure have higher needs than anticipated, or the overall situation requires additional solidarity support, it shall by simple majority reconvene the High-Level EU

Solidarity Forum to request Member States to provide additional solidarity contributions. Any pledging exercise shall follow the procedure set out in Article 44b.

*Article 7e*

**The Technical-Level EU Solidarity Forum**

1. In order to ensure the smooth functioning of Part IV of this Regulation, a Technical-Level EU Solidarity Forum shall be established and the EU Solidarity Coordinator shall, on behalf of the Commission, convene and chair this Forum.
2. A Technical-Level EU Solidarity Forum shall comprise representatives of the relevant authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum.
3. Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or lodged in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the Technical-Level EU Solidarity Forum as appropriate.
4. The Asylum Agency shall participate in the Technical-Level EU Solidarity Forum. The European Border and Coast Guards Agency and the European Union Agency for Fundamental Rights shall, where appropriate and invited by the EU Solidarity Coordinator, participate in the Technical-Level EU Solidarity Forum. UN agencies, depending on their involvement in the solidarity mechanism, may also be invited to participate.
5. Following the adoption of the Council implementing act referred to in Article 44b, the EU Solidarity Coordinator shall convene a first meeting of the Technical-Level EU Solidarity Forum. Following that first meeting, the Technical Level EU Solidarity Forum shall meet on a regular basis and as frequently as necessary, in particular pursuant to Articles 44c(3) and 44d(6), to operationalize the solidarity mechanism between the Member States and address the solidarity needs with the contributions identified.



## Article 7f

### **The EU Solidarity Coordinator**

1. The Commission shall appoint an EU Solidarity Coordinator, who will coordinate at technical level the implementation of the solidarity mechanism in accordance with Part IV of this Regulation.
2. The EU Solidarity Coordinator shall:
  - (a) *support the relocation activities from the benefitting Member State to the contributing Member State;*
  - (aa) coordinate and support the communication between the Member States and agencies and entities that are involved in the implementation of the solidarity mechanism;
  - (b) keep an overview of the needs of the benefitting Member States, the contributions of the contributing Member States and follow up on the ongoing implementation of solidarity measures;
  - (c) organise, at regular intervals, meetings between the authorities of the Member States to ensure an effective and efficient operationalisation of the Solidarity Pool, in order to facilitate the best interaction and cooperation among Member States;
  - (d) promote best practices in the implementation of the solidarity mechanism;
  - (e) convene and chair the Technical-Level EU Solidarity Forum as referred to in Article 7e;
3. For the purpose of paragraph 2, the EU Solidarity Coordinator shall be assisted by an Office and provided with the necessary financial and human resources to effectively carry out its tasks. The EU Solidarity Coordinator shall coordinate closely with the Asylum Agency, including in relation to the practical details of relocation under this Regulation.
4. The report referred to in Article 7a shall present the state of implementation and functioning of the solidarity mechanism.
5. Member States shall provide the EU Solidarity Coordinator with the necessary data and information for the EU Solidarity Coordinator to effectively carry out its tasks.

6. The EU Solidarity Coordinator shall also carry out the tasks in accordance with Article 7 of Regulation (EU) xx/xx [Crisis Regulation].

## **PART III**

# **CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE**

## **CHAPTER I**

### **GENERAL PRINCIPLES AND SAFEGUARDS**

#### *Article 8*

#### **Access to the procedure for examining an application for international protection**

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 or the clauses set out in Chapter III of Part III indicate is responsible.
2. Without prejudice to the rules set out in part IV of this Regulation, where no Member State can be designated as responsible for examining 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.
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 the applicant, because of the transfer to that Member State, would face a real risk of violation of applicant's fundamental rights that amounts to 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 or the clauses set out in Chapter III 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 or the clauses set out in Chapter III of Part III or to the first Member State with which the application was registered, and cannot establish whether another Member State can be designated as responsible, that Member State shall become the Member State responsible for examining the application for international protection.

4. If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] has not been carried out pursuant to that Regulation, 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 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.

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, 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.

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, the Member State carrying out the security check shall be the Member State responsible, and Article 29 shall not apply.

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].

## Article 9

### **Obligations of the applicant and cooperation with the competent authorities**

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.
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 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.

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 have expired, were annulled, withdrawn or revoked, the application shall be made and registered in the Member State where he or she is present.

3. The applicant shall fully cooperate with the competent authorities of the Member States in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation] and in matters covered by this Regulation, in particular by submitting and disclosing, 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 that are relevant for determining the Member State responsible, including by submitting his or her identity documents if the applicant is in possession of such documents. Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, or to complete the template referred to in Article 12(1), the competent authority shall set a reasonable time limit, taking into account the individual circumstances of the case, within the period referred to in Article 29(1) for submitting such evidence.
4. The applicant shall be required to be present in:
  - (a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;
  - (b) the Member State responsible;

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

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

#### *Article 10*

#### **Consequences of non-compliance**

1. Provided that the applicant has been informed of the consequence pursuant to Article 5(1) of Directive XXX/XXX/EU [Reception Conditions Directive] or Article 8(2), point (b) of Regulation (EU) XXX/XXX [Screening Regulation], 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] in accordance with 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. 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 shall be taken into account only if they provide evidence which is decisive for the correct application of the regulation, in particular regarding unaccompanied minors and family reunification.
- 2a. Paragraph 1a shall not apply where the applicant is not in the Member State where he or she is required to be present and the competent authorities of the Member State in which the applicant is present have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3 of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims.
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.

## *Article 11*

### **Right to information**

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, his or her rights set out in this Regulation, and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10. That information shall include in particular :
  - (aa) the objectives of this Regulation;
  - (ab) the cooperation expected by the applicant with the competent authorities as set out in Article 9;
  - (ac) 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;
  - (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 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);
  - (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;
  - (ca) the provisions relating to family reunification and, in that regard, the applicable definition of family members and relatives, the right to request and receive the template referred to in Article 12 (1), including information on persons and entities that may provide assistance in completing the template, as well as information on national, international or other relevant organisations that may facilitate the identification and tracing of family members;
  - (d) the right and the aim of the personal interview in accordance with Article 12, the procedure and the obligation to submit orally or through the provision of documents or other information, including where applicable the template as referred to in Article 12 (1), 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;

- (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;
- (ea) of the opportunity to present duly motivated reasons for the competent authorities to consider applying Article 25(1);
- (eb) *of the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with the Regulation (EU) XXX/XXX [Eurodac Regulation]*
- (f) of the existence of the right to an effective remedy before a court or tribunal 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);
- (fa) *of the right to be granted legal counselling free of charge on matters relating to the application of the criteria set out in set out in Chapter II or the clauses set out in Chapter III of Part III at all stages of the procedure for determining the Member State responsible as regulated under this Regulation;*
- (g) in case of an appeal or review, of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;
- (ga) of the fact that absconding will lead to an extension of the time limit in accordance with Article 35;
- (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 of implementing their obligations arising under this Regulation and in full compliance with the protection of natural persons with regard to the processing of personal data in accordance with Union or national law;
- (i) of the categories of personal data concerned;

- (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;
  - (k) in the case of an unaccompanied minor, of the guarantees and rights applicable to the applicant, the role and responsibilities of the representative and 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;
  - (ka) of the fact that where the circumstantial evidence is not coherent, verifiable and sufficiently detailed to establish responsibility, the Member State may request a DNA or blood test to prove the existence of family links, or an assessment of the age of the applicant;
  - (l) where applicable, of the relocation procedure set out in Articles 57 and 58.
- 1a. The applicant shall have the possibility to request information regarding the progress of the procedure and the authorities shall inform the applicant about this possibility. Where the applicant is a minor, both the minor, the parent or the representative shall have the possibility to request information.

#### *Article 11a*

#### **Accessibility of information**

1. The information referred to in Article 11 shall be provided *in writing in a concise, transparent, intelligible and easily accessible form, using clear and plain language and 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 2 for that purpose. The common information material shall also be available online, on an open and easily accessible platform for applicants for international protection.

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. For that purpose, the applicant shall have the opportunity to ask questions to clarify the information provided. Member States may use the support of multimedia equipment.

2. The Asylum Agency shall, in close cooperation with the responsible national authorities, draw up common information material, as well as specific information for unaccompanied minors and vulnerable applicants, where necessary for applicants with specific reception or procedural needs, 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 shall be drawn up in such a manner as to enable Member States to complete 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 by appropriately trained staff and in the presence of the applicant's representative.

#### *Article 11c*

#### **Right to legal counselling**

1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to the application of the criteria set out in set out in Chapter II or the clauses set out in Chapter III of Part III at all stages of the procedure for determining the Member State responsible as regulated under this Regulation.
2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request free legal counselling in the procedure for determining the Member State responsible.
3. Member States may in addition provide for free legal assistance and representation in the procedure for determining the Member State responsible in accordance with national law.
4. Member States may organise the provision of legal counselling, legal assistance, and representation in accordance with their national systems.

5. For the purposes of the procedure for determining the Member State responsible, the free legal counselling shall include the provision of:
  - (a) guidance and explanations of the criteria and procedures for determining the Member State responsible including information on rights and obligations during all the stages of the procedure;
  - (b) guidance and assistance in providing information that could help establish the Member State responsible in accordance with the criteria set out in chapter II of Part III of this Regulation;
  - (c) guidance and assistance on the template referred to in Article 12(1).
6. Without prejudice to paragraph 1, the provision of free legal counselling in the procedure for determining the Member State responsible may be excluded where the applicant is already assisted and represented by a legal adviser.
7. For the purpose of implementing this Article, Member States may request the assistance of the European Union Agency for Asylum. In addition, financial support may be provided through Union funds to the Member States, in accordance with the legislation governing such funding.

## *Article 12*

### **Personal interview**

1. In order to facilitate the process of determining the Member State responsible, the competent authorities of the determining Member State referred to in Article 28(1) shall conduct a personal interview with the applicant for the purpose of application of Article 29. The interview shall also allow the proper understanding of the information the applicant received in accordance with Article 11.

The competent authorities shall collect information on the specific individual situation of the applicant by proactively asking questions that would allow the determination of the Member State responsible for the purpose of application of Article 29.

Where there are indications that the applicant may have family members or relatives in a Member State, the applicant shall receive a template, to be developed by the Asylum

Agency. The applicant shall fill in the information available to him or her in order to facilitate the application of Article 29. Where possible, the applicant shall complete the template before the personal interview set out in this Article.

The Asylum Agency shall develop the template at the latest by 10 months after entry into force of the Regulation. The Asylum Agency shall also develop Guidelines for identification and tracing of family members to support the application of Articles 15-18 and Article 24 by the requesting and the requested Member State in accordance with Articles 29 and 30.

The applicant shall have the opportunity to present duly motivated reasons for the competent authorities to consider applying Article 25(1).

2. The personal interview may be omitted where:
  - (a) the applicant has absconded;
  - (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;
  - (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), including duly motivated reasons for the authority to consider the need for a personal interview.
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.
4. The personal interview shall be conducted in the language preferred by the applicant unless there is another language which he or she understands and which he or she is able to communicate clearly. Interviews of unaccompanied, and where applicable, accompanied minors shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors, in a child-sensitive and context-appropriate manner, taking into consideration the age and maturity of the minor, in the presence of the representative and, where applicable, the minor's legal advisor. Where necessary, an interpreter, who is able to

ensure appropriate communication between the applicant and the person conducting the personal interview, shall be provided. The presence of a cultural mediator may be provided during the personal interview. *Where requested by the applicant and where possible, the person conducting the interview and interpreters shall be of the sex that the applicant prefers.*

- 4a. By way of derogation, the Member State may conduct the personal interview by video conference where duly justified by the circumstances. In such case, the Member State shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation taking into account guidance from the EUAA.
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. Staff interviewing applicants shall also have acquired general knowledge of factors which could adversely affect the applicant's ability to be interviewed, such as *indications that the person may have been tortured in the past* or a victim of trafficking.
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 applicant shall be informed in advance of the fact that such a recording is being made and the purpose thereof.* In case of doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail. 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. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings or other factual mistakes appearing in the written summary at the end of the personal interview or within a specified time limit.

## *Article 13*

### **Guarantees for minors**

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.
2. 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 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 representative 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 keep the unaccompanied minor informed about the progress of the procedures under this Regulation.

The representative 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].

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.

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].

3. In the process of establishing the Member State responsible under this Regulation, the Member States shall involve the representative of an unaccompanied minor throughout the entire procedure. 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, with due regard to confidentiality obligations to the minor.

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:
  - (a) family reunification possibilities;
  - (b) the minor's well-being and social development in the short, medium and long term, including situations of additional 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 the social and educational care;
  - (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;
  - (d) the views of the minor, in accordance with his or her age and maturity;
  - (e) where the applicant is an unaccompanied minor, the information provided by the representative in the Member State where the unaccompanied minor is present.
  - (ea) any other reasons relevant to the assessment of the best interest of the child.
5. Before transferring an unaccompanied minor, the transferring Member State shall notify the Member State responsible or the Member State of relocation, which shall confirm that all appropriate measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [Reception Conditions and Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation will be taken without delay, including appointment of a representative in the Member State of transfer. Any decision to transfer an unaccompanied minor shall be preceded by an individual assessment of his/her best interests. The assessment shall be based on the relevant 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 without delay by appropriately trained staff with the necessary qualifications and expertise to ensure that the best interests of the minor are taken into consideration.
6. For the purpose of applying Article 15, the Member State where the unaccompanied minor's application for international protection was first 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.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall receive appropriate training concerning the specific needs of minors relevant for the application of this Regulation.

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).

## **CHAPTER II**

### **CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE**

#### *Article 14*

##### **Hierarchy of criteria**

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.
2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the application for international protection was first registered with a Member State.

#### *Article 15*

##### **Unaccompanied minors**

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply, in the order in which they are set out in paragraphs 2 to 5.

2. The Member State responsible shall be that where a family member or a sibling 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, unless it is demonstrated that it is not in the best interests of the minor.
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 it is not in the best interests of the minor.
4. Where family members, siblings or relatives as referred to in paragraphs 2 and 3 are staying in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.
5. In the absence of a family member, sibling 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, if it is in the best interests of the minor.
6. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
  - (a) the identification of family members, sibling 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).

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).

#### *Article 16*

##### **Family members who legally reside in a Member State**

*Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State or has a family member that resides in a Member State on the basis of a long term residence in accordance with Directive 2003/109/EC or long-term residence granted in accordance with national law, if Directive 2003/109/EC does not apply in the Member State concerned, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.*

2. Where the family member had previously been allowed to reside as a beneficiary of international protection, but has later become a citizen of a Member State, that Member State shall be responsible for examining the application, provided that the persons concerned expressed their desire in writing.
3. The rules set out in paragraphs 1 and 2 shall also apply to children born after the family member arrived on the territory of the Member State.

#### *Article 17*

##### **Family members who are applicants for international protection**

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

#### *Article 18*

##### **Family procedure**

Where applications for international protection by several family members or minor unmarried siblings were registered 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:

- (a) responsibility for examining the applications for international protection of all the family members or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

### *Article 19*

#### **Issue of residence documents or visas**

1. Where the applicant holds a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.
2. Where the applicant holds a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.
3. Where the applicant holds more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:
  - (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
  - (b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;

- (c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.
4. Where the applicant holds one or more residence documents which have expired, were annulled, revoked or withdrawn less than three years, or one or more visas whose validity has expired, which were annulled, revoked or withdrawn less than 18 months, before the application was registered, paragraphs 1, 2 and 3 shall apply.
5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

#### *Article 20*

#### **Diplomas or other qualifications**

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State, the Member State in which that education establishment is established shall be responsible for examining the application for international protection, provided that the application is registered less than six years after the diploma or qualification was issued.
2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

## *Article 20a*

### **Visa waived entry**

1. 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.
2. The principle set out in paragraph 1 shall not apply if the application for international protection of the third-country national or the stateless person is registered in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

## *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.

## *Article 21*

### **Entry**

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 20 months after the date on which that border crossing took place.
2. Notwithstanding the first paragraph, 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 been disembarked on the territory of a Member State following a search and rescue operation, that Member State shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 12 months after the date on which that disembarkation took place.

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.

## **CHAPTER III**

### **DEPENDENT PERSONS AND DISCRETIONARY CLAUSES**

#### *Article 24*

##### **Dependent persons**

1. Where, on account of pregnancy, having a new-born child, serious mental or physical illness, severe disability, severe psychological trauma or old age, 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 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.

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.

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, sibling or parent of the applicant to its territory.
3. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
  - (a) the elements to be taken into account in order to assess the dependency link;
  - (b) the criteria for establishing the existence of proven family links;
  - (c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;
  - (d) the elements to be taken into account in order to assess the inability to travel for a significant period of time.
4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

#### *Article 25*

#### **Discretionary clauses**

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.
2. The Member State in which an application for international protection is registered and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance

is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on meaningful links regarding family, social or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 15 to 18 and 24. The persons concerned shall express their consent in writing.

The take charge request shall contain all the material in the possession of the requesting Member State necessary to allow the requested Member State to assess the situation.

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

## **CHAPTER IV**

### **OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE**

#### *Article 26*

##### **Obligations of the Member State responsible**

1. The Member State responsible under this Regulation shall be obliged to:
  - (a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;
  - (b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation];
  - (d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [Union

Resettlement Framework Regulation] or which granted international protection or humanitarian status under a national resettlement scheme.

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

Notwithstanding the requirement for written consent in Article 16, where a new procedure for taking charge of a child is initiated towards a Member State which is indicated as the Member State responsible pursuant to Article 16, no written consent shall be required by the persons concerned, unless it is demonstrated that it is not in the best interests of the minor.

3. In the situations referred to in paragraph 1, points (a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

#### *Article 27*

#### **Cessation of responsibilities**

1. Where a Member State issues a residence document to the applicant, decides to apply Article 25, considers that it is not in the best interests of the child to transfer an unaccompanied minor to the Member State responsible, 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.



The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

- 1a. Following an examination of the application in a border procedure pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the obligations laid down in Article 26(1) of this Regulation shall cease 15 months after a decision rejecting an application as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, a decision rejecting or an act declaring an application as implicitly withdrawn or an act or a decision declaring an application as explicitly withdrawn has become final.

An application registered after the period referred to in the first subparagraph shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

- 1b. Notwithstanding the first subparagraph, where the person applies for international protection in another Member State within the 15 months period referred to in that subparagraph and a take back procedure is pending at the date of the expiration of that 15 months period, responsibility shall not cease until that take back procedure is completed or the time limits for the transferring Member State to carry out the transfer in accordance with Article 35 have expired.
- 1a. The obligations laid down in Article 26(1) of this Regulation shall cease where the Member State responsible can establish, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/2226<sup>17</sup> or other evidence, that the person concerned has left the territory of the Member States for at least nine months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

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<sup>17</sup> 1. 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.

An application registered after the period of absence referred to in the first subparagraph shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

2. 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 withdrawal or rejection of the application.

An application registered after an effective removal or voluntary return has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

## **CHAPTER V**

### **PROCEDURES**

#### **SECTION I**

##### **START OF THE PROCEDURE**

###### *Article 28*

###### **Start of the procedure**

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.
2. The Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant absconds.
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]:

- (a) its responsibility pursuant to Article 8(2);
- (aa) its responsibility pursuant to Article 8(3);
- (b) its responsibility pursuant to Article 8(4);
- (c) its responsibility due to its failure to comply with the time limits laid down in Article 29;
- (d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.
- (da) its responsibility pursuant to Article 58(3).

Until this indication has been added, the procedures in paragraph 4 shall apply.

4. 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 determining Member State.

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.

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. That obligation shall cease where the Member State of relocation can establish that the applicant has obtained a residence document from another Member State.

## **SECTION II**

### **PROCEDURES FOR TAKE CHARGE REQUESTS**

#### *Article 29*

#### **Submitting a take charge request**

1. If the Member State referred to in Article 28(1) considers that another Member State is responsible for examining the application, it shall, immediately 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. Member States shall prioritise requests made on the basis of Articles 15 to 18 and Article 24.

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.

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 applicant is an unaccompanied minor, the determining Member State shall, at any time before a first decision regarding the substance is taken, 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 applicant, in particular if the request is based on Article 16, 17 or 24, despite the expiry of the time limits laid down in the first and second subparagraphs.

2. The requesting Member State may request an urgent reply in cases where the application for international protection was registered after a decision to refuse entry or a return decision was issued.

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.

3. The take charge request shall include full and detailed reasons, based on all the circumstances of the case including the relevant elements from the applicant's statement, relating to the relevant criteria of the hierarchy set out in Chapter II and, where applicable, the template referred to in Article 12 (1). It shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or any other documentation or information relevant for justifying the request, 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.

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

### *Article 30*

#### **Replying to a take charge request**

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. Member States shall prioritise requests made on the basis of Articles 15 to 18 and Article 24. To that end, the requested Member State may call for assistance of national, international or other relevant organisations to verify the relevant elements of proof and circumstantial evidence submitted by the requesting Member State, in particular for identification and tracing of family members.
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.
3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.
4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those

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

(a) Proof:

- (i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;
- (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;

(b) Circumstantial evidence:

- (i) this refers to indicative elements which while being refutable may be sufficient according to the evidentiary value attributed to them;
- (ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof and circumstantial evidence shall not exceed what is necessary for the proper application of this Regulation.

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

Where the request is made on the basis of Articles 15 to 18 and Article 24, and the requested Member State does not consider that the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility, it shall justify the reasons in the reply referred to in paragraph 8.

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.

8. Where the requested Member State does not object to the request within the one-month period set out in paragraph 1, or where applicable within the two-week period set out in paragraphs 2 and 7, by a reply which gives substantiated reasons, based on all the

circumstances of the case relating to the relevant criteria set out in Chapter II, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. The substantiated reasons shall be supported by proof and circumstantial evidence where available. The Commission shall, by means of implementing acts, draw up a standard form for the reasoning of the replies required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

### **SECTION III**

#### **PROCEDURES FOR TAKE BACK NOTIFICATIONS**

##### *Article 31*

##### **Submitting a take back notification**

1. In a situation referred to in Article 26(1), point (b) or (d) the Member State where the person is present shall make a take back notification immediately and in any event within two weeks after receiving the Eurodac hit. Failure to make the take back notification within the time limit shall be without prejudice to the obligation of the Member State responsible to take back the person concerned.
2. A take back notification shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned.
3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within two weeks, unless the notified Member State can demonstrate within that time limit that it is not responsible pursuant to Article 27 or that the take back notification is based on an incorrect indication of the Member State responsible pursuant to Regulation (EU) XXX/XXX [Eurodac Regulation].
4. Failure to act within the two-week period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.
5. The Commission shall, by means of implementing acts, adopt uniform methods for the preparation and submission of take back notification Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

## **SECTION IV**

### **PROCEDURAL SAFEGUARDS**

#### *Article 32*

#### **Notification of a transfer decision**

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) and (d) shall take a transfer decision at the latest within two weeks of the acceptance or confirmation.
2. Where the requested or notified Member State accepts to take charge of an applicant or confirms to take back a person referred to in Article 26(1), point (b) or (d), the transferring Member State shall notify the person concerned in writing, in a plain language, 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, the time limits for carrying out the transfer and the obligation to comply with the decision pursuant to Article 9(5).
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, where applicable, and communicate the decision to the person concerned.
4. 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 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 by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not already been communicated.



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.

### *Article 33*

#### **Remedies**

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

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

- (a) whether the transfer would, for the person concerned, result in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights;
  - (aa) whether there are circumstances subsequent to the transfer decision that are decisive for the correct application of the Regulation;
  - (b) whether Articles 15 to 18 and Article 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).
2. Member States shall provide for a period of at least one week but no more than three 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.
  3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision but in any event no longer than the period provided for by Member States pursuant to paragraph 2, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States may provide in national law that the request to suspend the implementation of the transfer decision must be lodged together with the appeal pursuant to paragraph 1. Member States shall 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.

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.

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

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

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.
5. 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.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation is not to be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to the second subparagraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision. Where the decision is challenged, that remedy shall be an integral part of the remedy referred to in paragraph 1.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that effective access to justice for the person concerned is not hindered.

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.

Procedures for access to legal assistance shall be laid down in national law.

## **SECTION V**

### **DETENTION FOR THE PURPOSES OF TRANSFER**

#### *Article 34*

#### **Detention**

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. Where there is a risk of absconding or when protection of national security or public order so requires, 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 of the person's circumstances, and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.
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.
- 3a. 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.
4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by administrative or judicial authorities. The detention order shall state the reasons in fact and in law on which it is based. Where detention is ordered by an administrative authority, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex-officio or at the request of the applicant, or both.

## *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 request or a take back notification shall not exceed two weeks from the registration of the application for international protection or two weeks after receiving the Eurodac hit when no new application has been registered in the notifying Member State.

Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week 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 one week of receipt of the 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.
3. By way of derogation from Article 35, where a person is detained, the transfer of that person from the transferring Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within five weeks of:
  - (a) the date on which the request to take charge 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).
4. Where the transferring 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 five 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.

## **SECTION VI**

### **TRANSFERS**

#### *Article 35*

##### **Detailed rules and time limits**

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

Member States shall prioritise transfers of applicants following acceptance of requests made on the basis of Articles 15 to 18 and Article 24

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

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

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

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take

charge of or to take back the person concerned and responsibility shall be transferred to the transferring Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of three years from when the requesting Member State informed the Member State responsible if the person concerned, or a family member that were to be transferred together with the person concerned, absconds, is physically resisting the transfer, is intentionally making himself or herself unfit for the transfer, or is not complying with medical requirements for the transfer.

If the person concerned becomes available to the authorities again and the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.
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).

### *Article 36*

#### **Costs of transfer**

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) or (d), pursuant to Article 35.
2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

*Article 37*

**Exchange of relevant information before a transfer is carried out**

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 26(1), point (b) or (d), shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in under national law have sufficient time to take the necessary measures.
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:
  - (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 and, where necessary, any arrangements needed to uphold the best interest of the child;
  - (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
  - (c) in the case of minors, information on the best interest of the child assessment and on their education;
  - (d) where applicable, an assessment of the age of an applicant;

- (e) where applicable, the screening form pursuant to Article 13 of Regulation (EU) XXX/XXX [*Screening Regulation*], including any evidence referred to on the form;
  - (ea) any other relevant information.
3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 41 of this Regulation using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.
  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 pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).
  5. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

#### *Article 38*

##### **Exchange of security-relevant information before a transfer is carried out**

For the purpose of application of Article 31, where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider that the applicant or another person as referred to in Article 26(1), point (b) or (d), poses a threat to internal security, the competent authorities of that Member State shall indicate the existence of such information to the Member State responsible. The information shall be shared between the law enforcement authorities or other competent authorities of the Member States through the appropriate channels for such information exchange.

#### *Article 39*

##### **Exchange of health data before a transfer is carried out**

1. 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 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 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.

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).

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.
3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.
4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.
5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

6. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

## **CHAPTER VI**

### **ADMINISTRATIVE COOPERATION**

#### *Article 40*

#### **Information sharing**

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the person covered by the scope of this Regulation as is adequate, relevant and limited to what is necessary for:
  - (a) determining the Member State responsible;
  - (b) examining the application for international protection;
  - (c) implementing any obligation arising under this Regulation.
  - (ca) implementing a return decision.
2. The information referred to in paragraph 1 shall only cover:
  - (a) personal details of the person concerned, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
  - (b) identity and travel documents (references, validity, date of issue, issuing authority, place of issue, etc.);
  - (c) other information necessary for establishing the identity of the person concerned, including biometric data taken of the applicant by the Member State, in particular for the purposes of Article 57(6) of this Regulation, in accordance with Regulation (EU) XXX/XXX [Eurodac Regulation];
  - (d) places of residence and routes travelled;

- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was registered;
- (g) the date on which any previous application for international protection was registered, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

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. Where the Member State responsible applies Article 42 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], that Member State may also request information enabling the competent authorities to establish whether new elements have arisen or have been presented by 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. The applicant shall be informed about the specific information requested by the requesting Member State and the reason for the request in advance.
4. Any request for information shall only be sent in the context of an individual application for international protection or transfer for the purpose of relocation. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. Such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.
5. The requested Member State shall be obliged to reply within three weeks. Any delays in the reply shall be duly justified. Non-compliance with the three week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the

expiry of the time limits provided for in Article 29 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 29 for submitting a request to take charge shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 41(1).
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
  - (a) determining the Member State responsible;
  - (b) examining the application for international protection;
  - (c) implementing any obligation arising under this Regulation.
8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
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.

#### *Article 41*

#### **Competent authorities and resources**

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 human, material and financial resources for carrying out their tasks relating to the application of the procedures for determining the Member State responsible for

examining an application for international protection in a rapid and efficient manner, and in particular for safeguarding procedural and fundamental rights, ensuring a swift procedure for reuniting family members and relatives present in different Member States, 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.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the Official Journal of the European Union. Where there are changes to that list, the Commission shall publish an updated consolidated list once a year.
3. Member States shall ensure that the authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.
4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 and between those authorities and the Asylum Agency for transmitting information, biometric data taken in accordance with Regulation (EU) XXX/XXX [Eurodac Regulation], requests, notifications, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

#### *Article 42*

#### **Administrative arrangements**

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details for the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
  - (a) exchanges of liaison officers;
  - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants;
  - (c) solidarity contributions made pursuant to Chapters I-III of Part IV.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003 and Regulation (EU) No 604/2013. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities.
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.
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 time in such a way as to eliminate any incompatibilities observed.
5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

### *Article 43*

#### **Network of responsible units**

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 practical cooperation, including transfers, and information sharing on all matters related to the full application of this Regulation, including the development of practical tools, best practices and guidance.

The European Border and Coast Guard Agency and other relevant Union bodies, offices and agencies may be represented in a network or networks when necessary.

# **CHAPTER VII**

## **CONCILIATION**

### *Article 44*

#### **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.

The procedure set out in this Article shall not affect the time limits set out in this Regulation in individual cases.

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.

**PART IV**

**SOLIDARITY**

**CHAPTER I**

**SOLIDARITY MECHANISM**

*Article 44a*

**Solidarity Pool**

1. The Solidarity Pool, which includes the contributions contained in the Council implementing act referred to in Article 44b as pledged by the Member States during the meeting of the High Level EU Solidarity Forum, shall serve as the main solidarity response tool for Member States under migratory pressure on the basis of the needs identified in the Commission proposal for a Council implementing act referred to in Article 7c.
2. The Annual Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value:
  - (a) relocation, in accordance with Articles 57 and 58:
    - (i) of applicants for international protection;
    - (ii) where bilaterally agreed by the contributing and benefitting Member State concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act establishing the Solidarity Pool;
  - (b) financial contributions provided by Member States primarily aiming at actions in Member States related to the area of migration, , reception, asylum, pre-departure reintegration border management and operational support. Financial contributions



provided by Member States may also provide support for actions in or in relation to third countries that may have a direct impact on the flows at the Member States' external borders or may improve the asylum, reception and migration systems of the third country concerned, including assisted voluntary return and reintegration programmes, in accordance with Article 44i. Such actions in or in relation to third countries shall be implemented by benefitting Member States in accordance with the scope and objectives of this Regulation and of the AMIF Regulation.

- (c) alternative solidarity measures in the field of migration, reception, asylum, return and reintegration and border management, focusing on operational support, capacity building, services, staff support, facilities and technical equipment in accordance with Article 44j.

3. Financial contributions referred to in paragraph 2 point (b) for projects in third countries shall, in particular, focus on:

- (a) enhancing the capacity of asylum and reception in third countries, including by strengthening, human and institutional expertise and capacity;
- (b) promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships;
- (c) supporting assisted voluntary return and sustainable reintegration programmes of returning migrants and their families;
- (d) reducing the vulnerabilities caused by human trafficking and smuggling as well as anti-trafficking and anti-smuggling programmes;
- (e) supporting effective and human rights based migration policies.

#### *Article 44b*

### **Council implementing act establishing the Solidarity Pool**

1. On the basis of the Commission Proposal referred to in Article 7c and in accordance with the pledging exercise carried out at the High-Level EU Solidarity Forum referred to in 7d, the Council shall adopt, on an annual basis, before the end of each calendar year, an

implementing act to establish the Solidarity Pool, including, the reference number of required relocations and financial contributions for the Annual Solidarity Pool at Union level and the specific pledges that each Member State has made for each type of solidarity contributions referred to in Article 44a(2) during the High Level Solidarity Forum. The Council shall adopt the implementing act referred to in this paragraphs, acting by qualified majority. The Council may amend the Commission proposal, acting by qualified majority.

2. The Council implementing act shall, where necessary also set out the indicative percentage of the Annual Solidarity Pool that may be made available to Member States under migratory pressure as a result of large number of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the geographical specificities of the Member States concerned. It may also identify other forms of solidarity as set out in Article 44a(2)(c), depending on the needs for such measures arising from the specific challenges in the area of migration in the Member States concerned.
3. During the High-Level Solidarity Forum meeting referred to in Article 7d, Member States shall come to a conclusion regarding an overall reference number for each solidarity measure in the Solidarity Pool, based on the Commission proposal referred to in Article 7c. During that meeting, the Member States shall also pledge their contributions to this Pool, in accordance with paragraph 4 of this Article and the mandatory fair share calculated according to the reference key set out in Article 44k.
4. In implementing paragraph 2, Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(2), or a combination of them. Member States pledging alternative solidarity measures shall indicate their financial value, based on objective criteria. In case the alternative solidarity measures are not identified in the Commission proposal for a Council implementing act referred to in Article 7c, Member States may still pledge these measures. In case those measures are not requested by the benefitting Member States in a given year, they shall be converted into financial contributions.

#### *Article 44c*

### **Information regarding the intention to use the Solidarity Pool by a Member State identified in the Commission Decision as being under migratory pressure**

1. A Member State that has been identified in the Decision referred to in Article 7a as being under migratory pressure shall, after the adoption of the Council implementing act referred to in Article 44b, inform the Commission where it intends to make use of the Solidarity Pool. The Member State shall also inform the Council and the Commission shall inform the European Parliament.
2. The Member State concerned shall include information on the type and level of solidarity measures as referred to in Article 44a(2) needed to address the situation, including where relevant any use made of the components of the Toolbox. Concerning an intention to use financial measures, the Member State concerned shall also identify the EU spending programme(s) concerned.
3. Following the receipt of this information, the Member State concerned shall have access to the Solidarity Pool in accordance with Article 44e. The EU Solidarity Coordinator shall without delay and in any case within 10 days of receiving the information convene the Technical Level Solidarity Forum to operationalise the solidarity measures.

#### *Article 44d*

### **Notification of the need to use the Solidarity Pool by a Member State that consider itself under migratory pressure**

1. A Member State that has not been identified in the Decision referred to in Article 7a as being under migratory pressure, shall notify the Commission where it considers itself to be under migratory pressure and of its need to make use of the Solidarity Pool. The Member State shall also inform the Council and the Commission shall inform the European Parliament.
2. The notification shall include:
  - (a) a duly substantiated reasoning on the existence and extent of the migratory pressure in the notifying Member State, including updated data on the indicators referred to in Article 7a(3)(a);

- (b) information on the type and level of solidarity measures as referred to in Article 44a needed to address the situation, including where relevant any use made of the components of the Toolbox;
  - (c) a description of how the proposed Solidarity Pool could stabilise the situation;
  - (d) how that Member State intends to address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.
3. The Asylum Agency, the European Border and Coast Guard Agency and the Agency for Fundamental Rights as well as the concerned Member State, shall, where requested by the Commission, assist the Commission in drawing up the assessment of migratory pressure.
4. The Commission shall expeditiously assess the notification, taking into account the information set out in Articles 7a and 7b, whether the notifying Member State was identified as being at risk of migratory pressure in the Commission Decision referred to in Article 7ba, the overall situation in the Union, the situation in the notifying Member State during the preceding 12 months, and the needs expressed by the notifying Member State and adopt a Decision on the notification to consider the Member State as being under migratory pressure. Where the Commission decides that that Member State is under migratory pressure, it shall become a benefitting Member State, unless it is denied access to the Solidarity Pool in accordance with paragraph 6.
5. The Commission shall transmit its decision to the Member State concerned, the Council and the European Parliament without delay.
6. Where the Commission Decision establishes that the notifying Member State is under migratory pressure, the EU Solidarity Coordinator shall convene the Technical-Level EU Solidarity Forum without delay and no later than within two weeks of the transmission of its decision to the Member State concerned, the Council and the European Parliament to operationalise the solidarity measures. The EU Solidarity Coordinator shall convene the Technical EU Level Solidarity Forum unless the Commission considers, or the Council by way of an Implementing Act decides within 15 days of the transmission of the Commission's decision to the Member State concerned, the Council and the European Parliament that there is insufficient capacity in the Solidarity Pool for the Member State

concerned to get access to the Solidarity Pool or other objective reasons for not allowing that Member State to get access to the Pool.

7. Where the Council decides that there is insufficient capacity in the Solidarity Pool, Article 7d(4) shall apply and the High level EU Solidarity Forum shall be convened no later than one week after the Commission decision.

In case of a Commission Decision rejecting a request by a Member State to be considered as being under migratory pressure, the notifying Member State may submit a new notification to the Commission and the Council with additional relevant information.

#### *Article 44e*

### **Operationalisation and coordination of solidarity contributions**

1. In the Technical-Level EU Solidarity Forum chaired by the EU Solidarity Coordinator, Member States shall cooperate among themselves and with the Commission to ensure an effective and efficient operationalisation of the Solidarity Pool for the year concerned, in a balanced and timely manner, in light of the needs identified and assessed and the solidarity contributions available.
2. The EU Solidarity Coordinator, taking into account developments in the migratory situation, shall coordinate the operationalisation of the solidarity contributions to ensure a balanced distribution of the solidarity contributions available among the benefitting Member States.
3. With the exception of the implementation of financial contribution, in operationalising the solidarity measures identified, Member States shall implement their pledged solidarity contributions referred to in Article 44a for the given year before the end of that year, without prejudice to , Article 44j(3) and Article 57(9a).

Contributing Member States shall implement their pledges in proportion to their overall pledge to the Solidarity Pool for that year before the end of the year.

Member States which have been granted a full deduction in accordance with Article 44f or 44fa or are themselves benefitting Member States as referred to in Article 44c(1) and 44d(4) are not obliged to implement their pledged solidarity contributions referred to in Article 44a(2) for the given year.

Contributing Member States shall not be required to implement their pledges made pursuant to Article 44a(2) and to apply responsibility offsets pursuant to Article 44h towards a benefitting Member State, where the Commission has identified, in the Decision referred to in Article 7ba or Article 44d(4), systemic shortcomings in that benefitting Member State with regard to the rules set out in Part III of this Regulation that could result in serious consequences for the functioning of this Regulation.

4. In the course of the first meeting of the Technical-Level EU Solidarity Forum in the annual cycle, contributing and benefitting Member States may express reasonable preferences, in light of the needs identified, for the profiles of available relocation candidates and a potential planning for the implementation of their solidarity contributions, taking into account the need for urgent actions for the benefitting Member States. The EU Solidarity Coordinator shall facilitate interaction and cooperation between the Member States on these aspects. When implementing relocations, Member States shall give primary consideration to the relocation of vulnerable persons.
5. The Union bodies, offices and agencies acting in the field of asylum, border and migration management shall, when requested and within their respective mandates, provide support to the Member States and the Commission, with a view to ensuring the proper implementation and functioning of Part IV this Regulation. Such support may take the form of analysis, expertise and operational support. The EU Solidarity Coordinator shall coordinate 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, in relation to the operationalisation of the solidarity contributions.
6. As of the first year after the entry into application of this Regulation, in January of each year, Member States shall confirm to the EU Solidarity Coordinator the levels of each solidarity measure implemented during the preceding year.

#### *Article 44f*

##### **Deduction of solidarity contributions in situations of migratory pressure**

1. A Member State that is identified in the Decision referred to in Article 7ba as being under migratory pressure or that considers itself as so being and which has not made use of the Solidarity Pool in accordance with Article 44c or notified the need to use the Solidarity Pool in accordance with Article 44d, may, at any time, request a partial or full deduction of

its pledged contributions set out in the Council implementing act referred to in Article 44b(1).

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.

2. Where the requesting Member State referred to in paragraph 1 is a Member State that is not identified in the Decision referred to in Article 7a as being under migratory pressure, but considers itself as so being, that Member State shall include in its request:
  - (a) a description of how the full or partial deduction could help stabilising the situation;
  - (b) whether the pledged contribution could be replaced with a different type of solidarity contribution;
  - (c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;
  - (d) a duly substantiated reasoning on the existence and extent of the migratory pressure in the requesting Member State.

When assessing such a request, the Commission shall also take into account the information set out in Article 7a and 7b.

4. The Commission shall inform the Council of its assessment of the request within four weeks. For information purposes, the Commission shall also inform the European Parliament.
5. Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing act establishing the Solidarity Pool.

#### *Article 44fa*

#### **Deduction of solidarity contributions in significant migratory situations**

1. A Member State that is identified in the Decision referred to in Article 7ba as facing a significant migratory situation or considers itself as so being, may at any time request a

partial or full reduction of its pledged contributions set out in the Council implementing act referred to in Article 44b(1).

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.

2. Where the requesting Member State is identified in the Decision referred to in Article 7ba as facing a significant migratory situation, the request shall include:
  - (a) a description of how the full or partial deduction could help stabilising the situation;
  - (b) whether the pledged contribution could be replaced with a different type of solidarity contribution;
  - (c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;
  - (d) a duly substantiated reasoning pertaining to the area of the asylum, reception and migration system in which the capacity has been reached, and how reaching the limits of its capacity in the specific area affects its capacity to fulfil its pledge.
3. Where the requesting Member State is not identified in the Decision referred to in Article 7ba as being confronted with a significant migratory situation, but considers itself as so being, the request shall in addition to the information referred to in paragraph 2 include also a duly substantiated reasoning on the significance of the migratory situation in the requesting Member State. When assessing such a request, the Commission shall also take into account the information set out in Article 7a and 7b and whether the Member State was identified as being at risk of migratory pressure in the Commission Decision referred to in Article 7ba.
4. The Commission shall inform the Council of its assessment of the request within four weeks. For information purposes, the Commission shall also inform the European Parliament.
5. Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing act establishing the Solidarity Pool.



## *Article 44h*

### **Responsibility offsets**

1. Where the relocation pledges to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b are equal to or above 50 % of the number indicated in the Commission proposal for a Council implementing act referred to in Article 7c, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.
2. A contributing Member State may indicate to benefitting Member States its willingness to take responsibility for examining applications for international protection for which a benefitting Member State has been determined as responsible instead of relocations:
  - (a) where the threshold set out in paragraph 1 has been reached; or
  - (b) where the contributing Member State has pledged 50 % or more of its mandatory fair share to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b as relocations.

Where a contributing Member State has indicated such willingness and the benefitting Member State agrees, the benefitting Member State shall apply the procedure set out in Article 58a.

3. Where, following the meeting of the High Level Solidarity Forum convened in accordance with Article 7d(4), the relocation pledges to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b are:
  - (a) below the number referred to in Article 7c(2)(a), or
  - (b) below 60% of the reference number used to calculate each Member State's mandatory fair share for relocation for the purpose of establishing the Solidarity Pool in accordance with Article 44b,

the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the higher of the two numbers referred to in points (a) or (b).

4. The previous subparagraph also applies where the pledges to be implemented during the given year fall below the higher of the two numbers referred to in points (a) or (b) as a result of full or partial reductions granted in accordance with Articles 44f or 44fa or because benefitting Member States as referred to in Articles 44c(1) and 44d(4) are not obliged to implement their pledged solidarity contributions for a given year.
4. A contributing Member State which has not implemented its pledges or accepted relocations pursuant to Article 57(7) equal to its pledged relocations as referred to in Article 44b(3) by the end of the given year shall, at the request of the benefitting Member State, take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number of relocations pledged in accordance with Article 44b(3) as soon as possible after the end of the given year.
5. The contributing Member State shall identify the individual applications for which it takes responsibility pursuant to paragraphs 2 and 3, and shall inform the benefitting Member State, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The contributing Member State shall become the Member State responsible for the identified applications and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

7. Member States shall not be obliged to take responsibility pursuant to the first subparagraph above their fair share calculated according to the reference key set out in Article 44k.
6. This Article shall only apply where:
  - (a) the applicant is not an unaccompanied minor;
  - (b) the benefitting Member State was determined as responsible for examining the application for international protection on the basis of the criteria set out in Articles 19-21;
  - (c) the transfer time limit set out in Article 29(1) has not yet expired;
  - (d) the applicant has not absconded from the contributing Member State;
  - (e) the person is not a beneficiary of international protection;

(f) the person is not a resettled or admitted person.

7. The contributing Member State may apply this Article to third-country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Articles 42 and 43 in Regulation XXX/XXX [Asylum Procedure Regulation] shall apply.

#### *Article 44i*

### **Financial contributions**

1. Financial contributions shall consist of financial transfers of amounts from the contributing Member States to the Union budget and shall constitute external assigned revenues in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/10461<sup>18</sup>. Financial contributions shall be used for the purpose of implementing the actions of the Solidarity Pool referred to in Article 44a(2)(b).
2. Benefitting Member States shall identify actions which may be funded by such financial contributions and submit these to the Technical Level Solidarity Forum. The Commission shall liaise closely with benefitting Member States with the objective of ensuring that those actions correspond to the objectives as set out in Article 44a(2)(b) and (3). The EU Solidarity Coordinator shall maintain an inventory of the actions and make it available through the Technical Level Solidarity Forum.
5. The Commission shall adopt an implementing act concerning rules on the operation of the financial contributions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(2).
6. Where the amount referred to in Article 44b(1) is not fully allocated, the remaining amount may be added to the amount referred to in point (b) of Article 10(2) of Regulation (EU) 2021/1147.

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<sup>18</sup> 1. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

7. Member States shall report to the Commission and to the Technical-Level Solidarity Forum on the progress in the implementation of actions financed by financial contributions pursuant to this Article.
8. The Commission shall include in its Annual Report referred to in Article 7a information on the implementation of actions financed by financial contributions pursuant to this Article, including on issues that may affect the implementation and any measure taken to address them.

#### *Article 44j*

#### **Alternative solidarity measures**

1. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such contributions shall be counted as financial solidarity, and their concrete value shall be established, jointly, in a realistic manner, by the contributing and the benefitting Member States concerned and communicated to the EU Solidarity Coordinator before these contributions are implemented.
2. Member States shall only provide alternative solidarity measures in addition to, and that do not duplicate, those provided by operations of Union agencies or by Union funding in the field of asylum and migration management in the benefitting Member States. Member States shall only provide alternative solidarity measures in addition to what they are required to contribute through Union agencies.
3. The benefitting and the contributing Member States shall finalise the implementation of agreed alternative solidarity measures even if the relevant implementing acts have expired.

#### *Article 44k*

#### **Reference key**

The share of solidarity contributions to be provided by each Member State referred to in Article 44b(2) shall be calculated in accordance with the formula set out in Annex and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

- (a) the size of the population (50% weighting);

- (b) the total GDP (50% weighting).

## **CHAPTER II**

### **PROCEDURAL REQUIREMENTS**

#### *Article 57*

##### **Procedure before relocation**

1. The procedure set out in this Article shall apply to the relocation of persons referred to in Article Article 44a(2) point (a).
2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider that the person concerned poses a threat to internal security. If there are reasonable grounds to consider that the person poses a threat to internal security before or during the procedure set out in this Article, including where a threat to internal security has been determined in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation], the benefitting Member State shall not apply or immediately terminate the procedure set out in this Article. The benefitting Member State shall exclude the person concerned from any future relocation or transfer to any Member State. Where the person concerned is an applicant for international protection, the benefitting Member State shall be the Member State responsible in accordance with 8(4).
  - 2a. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated. Upon request of the benefitting Member State, the Asylum Agency shall support the benefitting Member State in the identification of persons to be relocated and in their matching with Member States of relocation in accordance with Article 2(1)(k) of the 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.

The Member State shall take into account, where applicable, the existence of meaningful links such as those based on family or cultural considerations, between the person

concerned and the Member State of relocation. For this purpose, the benefitting Member State shall give the person to be relocated the opportunity to inform about the existence of meaningful links with specific Member States and to present relevant information and documentation to determine those links. This does not imply a right to choose a specific Member State of relocation pursuant to this Article.

- 2b. For the purpose of identifying persons to be relocated and matching them with contributing Member States, benefitting Member States may use tools developed by the EU Solidarity Coordinator.

Applicants who do not have links to any other Member State shall be fairly shared among the remaining contributing Member States.

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.

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

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 18 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

4. Member States shall ensure that family members are relocated to the territory of the same Member State.
5. In the cases referred to in paragraphs 2 and 3, the benefitting Member State shall transmit to the contributing Member State as quickly as possible all relevant information and documents on the person referred to by using a standard form, including to enable the authorities of the Member State of relocation to check whether there are grounds to consider that the person concerned poses a threat to internal security.

6. The contributing Member State 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 poses a threat to internal security. The Member State of relocation may choose to verify this information during a personal interview with the person concerned. The person concerned shall be duly informed about the nature and the purpose of this interview. The personal interview shall take place within the time limits provided for in paragraph 7.
7. Where there are no reasonable grounds to consider the person concerned poses a threat to internal security, the contributing Member State shall confirm within one week of receipt of the relevant information from the benefitting Member State that it will relocate the person concerned.

Where the checks confirm that there are reasonable grounds to consider the person concerned poses a threat to internal security, the contributing Member State shall inform the benefitting Member State, within one week of receipt of the relevant information from that Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

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 contributing Member State 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 contributing Member State shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

Failure to act within the one-week period mentioned in the first and second subparagraphs and the two-week period mentioned in the third subparagraph of this paragraph shall be tantamount to confirming the receipt of the information, and entail the obligation to relocate the person, including the obligation to provide for proper arrangements for arrival.

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State at the latest two days before the transfer in case of applicants and one week before the transfer in case of beneficiaries.

Where the person to be relocated is an applicant, he or she shall comply with the relocation decision.

9. The transfer 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).
- 9a. The benefitting and the contributing Member States shall continue the process of relocation even after the timeframe for the implementation or the validity of implementing acts has expired.
10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the relocation procedure.

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

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

#### *Article 58*

#### **Procedure after relocation**

1. The contributing Member State shall inform the benefitting Member State, Asylum Agency and the EU Solidarity 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.
2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the



procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), Article 19, Article 20 and Article 21(1) and (2).

Where no Member State responsible can be designated under the first subparagraph, the Member State of relocation shall be responsible for examining the application for international protection.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation].

3. Where an applicant has been relocated, for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in Article 57(3) second subparagraph, the responsibility for examining the application for international protection shall be transferred to the contributing Member State.

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

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

4. Where a beneficiary for international protection has been relocated, the contributing Member State shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

#### *Article 58a*

##### **Procedure for Responsibility Offsets under Article 44h(1) and (2)**

1. Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1) and (2), it shall transmit its request to the contributing Member State and include the number of applications for international protection to be taken responsibility for instead of relocations.
2. The contributing Member State shall give a decision on the request within 30 days of receipt of the request.

The contributing Member State may decide to accept to take responsibility for examining a lower number of applications for international protection than requested by the benefitting Member State.

3. The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applications for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

#### *Article 59*

#### **Other obligations**

Member States shall keep the Commission, in particular the EU Solidarity Coordinator informed on the implementation of solidarity measures including measures of cooperation with a third country.

### **CHAPTER III**

## **FINANCIAL SUPPORT PROVIDED BY THE UNION**

#### *Article 61*

#### **Financial support**

In accordance with the principle of solidarity and fair sharing of responsibility, 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.

# **PART V**

## **GENERAL PROVISIONS**

### *Article 62*

#### **Data security and data protection**

- 1. This Regulation is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Regulation (EU) 2018/1725<sup>19</sup> [and Directive (EU) 2016/680].
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 unauthorised access or disclosure, alteration or loss of personal data processed.
2. The competent supervisory authority or authorities of each Member State shall monitor independently the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question, in accordance with its respective national law.

### *Article 63*

#### **Confidentiality**

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.

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<sup>19</sup> 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).

## *Article 64*

### **Penalties**

Member States shall lay down the rules on penalties, including administrative or criminal penalties in accordance with national law, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

## *Article 65*

### **Calculation of time limits**

Any period of time provided for in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

## *Article 66*

### **Territorial scope**

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

## *Article 67*

### **Committee**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

## *Article 68*

### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 15(6) and 24(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 15(6) and 24(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 15(6) and 24(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 69*

#### **Monitoring and evaluation**

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the measures set out in Part IV of this Regulation 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.

Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.

On a regular basis and as a minimum every three years, the Commission shall review the relevance of the numbers set out in Article 7c(2), points (a) and (b) and the overall functioning of Part III of this Regulation, including whether the definition of family members should be modified and the length of the time limits set out in that Part, against the overall migratory situation.

No later 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, with particular regard to the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU. 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 abovementioned time limit expires.

*Article 70*

**Statistics**

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>20</sup>, Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

**PART VI**  
**AMENDMENTS TO OTHER UNION ACTS'**

*Article 72*

**Amendments to Regulation (EU) XXX/XXX [Asylum and Migration Fund]**

Regulation (EU) No 2021/1147 is amended as follows:

-1. Article 2 is amended as follows:

“(1) ‘applicant for international protection’ means an applicant as defined in Article, 2 point (c), of [AMMR]

(2) ‘beneficiary of international protection’ means a beneficiary of international protection as defined in Article 2, point (f), of [AMMR]

(4) ‘family member’ means a family member as defined in Article 2, point (g), of [AMMR]

(11) ‘third country national’ means a third country national as defined in Article 2, point (a), of [AMMR]

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<sup>20</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, OJ L 199, 31.7.2007, p. 23.

(12) ‘unaccompanied minor’ means an unaccompanied minor as defined in Article 2, point (j), of [AMMR]

(15) ‘solidarity action’ means an action funded through financial contributions provided by Member States, as referred to in of Article 44i(1) of [AMMR]. The scope of those actions is set out in Article 44a(2), point (b), of [AMMR].”

-1a. In Article 15, new paragraph (6a) is added:

“6a. The contribution from the Union budget may be increased to 100% of the total eligible expenditure for solidarity actions.”

2. Article 20 is replaced by the following:

“1. A Member State shall receive, in addition to its allocations under Article 13(1), point (a), of this Regulation, an amount of:

- (a) EUR 10 000 per applicant for international protection for whom that Member State becomes responsible as a result of relocation in accordance with Articles 57 and 58 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];
- (b) EUR 10 000 per beneficiary of international protection relocated in accordance with Articles 57 and 58 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];

The amounts referred to in points (a) and (b) of the first subparagraph shall be increased to EUR 12 000 for each applicant for international protection or beneficiary of international protection, respectively, who is an unaccompanied minor relocated in accordance with Articles 57 and 58 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation].

2. The Member State covering the cost of transfers referred to in paragraph 1 shall receive a contribution of EUR 500 for each applicant for international protection or beneficiary of international protection transferred to another Member State.

3. The Member State covering the costs of transfers referred to in Article 26(1), points (a), (b) or (d), of Regulation (EU) XXX/XXX [Asylum and Migration



Management Regulation], and carried out in accordance with Article 35 of that Regulation shall receive a contribution of EUR 500 for each applicant for international protection transferred to another Member State.

4. The amounts referred to in paragraphs 1 to 3 of this Article shall be allocated to the Member State's programme, provided that the person in respect of whom the amount is allocated was effectively transferred to a Member State or was registered as an applicant in the Member State responsible in accordance with Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], as applicable. Those amounts shall not be used for other actions in the Member State's programme except in duly justified circumstances, as approved by the Commission through the amendment of that programme.
  5. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article 125 of the Financial Regulation.
  6. For the purposes of control and audit, Member States shall retain the information necessary to allow the proper identification of the persons transferred and of the date of their transfer.
  7. To take account of current inflation rates, relevant developments in the field of relocation and other factors which might optimise the use of the financial incentive brought by the amounts referred to in paragraphs 1, 2 and 3 of this Article, the Commission is empowered to adopt delegated acts in accordance with Article 37 to adjust, if deemed appropriate, and within the limits of available resources, those amounts.”
3. In Article 35(2), new point (ha) is added:

“(ha) the implementation of solidarity actions, including a breakdown of the financial contributions by action and a description of the main results achieved as a result of the funding;”
  4. In Annex II, point 4, new point (c) is added:

“(c) supporting solidarity actions, in line with the scope of support set out in Annex III.”
  5. In Annex VI, Table 1, point IV., new code 007 is added:

[007 Solidarity Actions]

6. In Annex VI, Table 3, new codes 006 to 009 are added:

“006 Resettlement and humanitarian admissions

007 International protection (transfers in)

008 International protection (transfers out)

009 Solidarity Actions”

*Article 72a*

**Amendments to Regulation (EU) No 2021/1148 [= BMVI Regulation]**

1. In Article 2, new point (11) is added:

“(11) ‘solidarity action’ means an action funded through financial contributions provided by Member States, referred to in Article 44i(1) of [AMMR]. The scope of those actions is set out in Article 44a (2), point (b), of [AMMR].”

2. In Article 10, new paragraph 3 is added:

“3. Support under this Regulation may be financed, for the purpose of solidarity actions as defined in Article 2(11) [of this Regulation], by contributions made by Member States and by other public or private donors as external assigned revenue in accordance with Article 21(5) of the Financial Regulation.”

3. In Article 12, new paragraph 7a is added:

“7a. the contribution from the Union budget may be increased to 100% of the total eligible expenditure for solidarity actions.”

4. In Article 29(2), new point (aa) is added:

“(aa) the implementation of solidarity actions, including a breakdown of the financial contributions by actions and a description of the main results achieved as a result of the funding;”

5. In Annex II, point 1, new point (h) is added:

“(h) supporting solidarity actions, in line with the scope of support set out in paragraph 1 of Annex III.”

6. In Annex VI, Table 1, point I, new code 030 is added:

“[030 Solidarity actions]“

7. In Annex VI, Table 3 is amended as follows:

“005 Special Transit Scheme referred to in Article 17 006 Actions covered by Article 85(2)) of Regulation (EU) 2018/1240 007 Actions covered by Article 85(3)) of Regulation (EU) 2018/1240 008 Emergency assistance 009 Solidarity actions”

#### *Article 72b*

#### ***Amendments to Regulation (EU)2021/1060 [= CPR Regulation]***

1. In Article 36, new paragraph 3a is added:

“3a. By way of derogation from paragraph 3 of this Article, no Union contribution for technical assistance shall be made to the support of solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation.”

2. In Article 63(6), new subparagraph is added:

“The first subparagraph of this paragraph shall not apply to support to solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation.”

3. In Article 63(7), a fourth subparagraph is added:

“Where a programme is amended to introduce financial support to solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation, the programme may provide that the eligibility of expenditure relating to such amendment starts from ... [the date of entry into force of this amending Regulation].”

# **PART VII**

## **TRANSITIONAL PROVISIONS AND FINAL PROVISIONS**

### *Article 73*

#### **Repeal**

Regulation (EU) No 604/2013 is repealed with effect from [the date referred to in the second paragraph of Article 75].

References to the repealed Regulation shall be construed as references to this Regulation.

Regulation 1560/2003 shall remain in force unless and until amended by implementing acts adopted pursuant to this Regulation.

### *Article 74*

#### **Transitional measures**

1. Where an application has been registered after the date referred to in the second paragraph of Article 75, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.
2. The Member State responsible for the examination of an application for international protection registered before the date specified in paragraph 1 shall be determined in accordance with the criteria set out in Regulation 604/2013.
3. Three months after the entry into force of this Regulation, the Commission, in close cooperation with the relevant Union agencies and Member States, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement this Regulation by the date of its application, assessing gaps and operational steps required, and inform the European Parliament thereof.

Based on this common implementation plan, each Member State shall, with the support of the Commission and relevant Union agencies, establish a national implementation plan setting the actions and the timeline for their implementation, six months after the entry into

force of this Regulation. Each Member State shall complete the implementation of its plan by the date of application of this Regulation.

For the purpose of implementing this Article, Member States may use the support of the relevant Union agencies and Union Funds may provide financial support to the Member States, in accordance with the legislation governing those agencies and funds.

The Commission shall closely monitor the implementation of the national plans.

The Commission shall, within the first two European Annual Asylum and Migration Reports referred to in Article 7a, provide a state of play of the implementation of the common implementation plan and national implementation plans.

Pending the reports mentioned in the preceding paragraph, the Commission shall inform the European Parliament and the Council of the state of play of implementation of the common implementation plan and national implementation plans every six months.

#### *Article 75*

#### **Entry into force and applicability**

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

It shall apply to applications for international protection registered as from [the first day of the twentyfifth month following its entry into force].

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

**Formula for the distribution key pursuant to Article 44k of the Regulation:**

$$\text{Population effect}_{\text{PS}} = \frac{\text{Population}_{\text{PS}}}{\sum_{i=1}^n \text{Population}_{\text{PS}_i}}$$

$$\text{GDP effect}_{\text{PS}} = \frac{\text{GDP}_{\text{PS}}}{\sum_{i=1}^n \text{GDP}_{\text{PS}_i}}$$

$$\text{Share}_{\text{PS}} = 50\% \text{ Population effect}_{\text{PS}} + 50\% \text{ GDP effect}_{\text{PS}}$$

Explanation: <sup>1</sup>

- PS: Member States that are participating in and bound by this Regulation either directly or through international law as well as States that apply this Regulation on the basis of an agreement concluded with the Union.
- n: The overall number of PS.

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<sup>1</sup> Without prejudice to the final decision on variable geometry.