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THE EUROPEAN PARLIAMENT

THE COUNCIL

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REGULATION (EU) 2024/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

addressing situations of crisis and *force majeure*
in the field of migration and asylum and amending Regulation (EU) 2021/1147

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 21.

³ Position of the European Parliament of 10 April 2024 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons, frame a common policy on asylum and migration, external border control and returns, and prevent unauthorised movements between Member States, based on solidarity and fair sharing of responsibility between Member States, which is also fair towards third-country nationals and stateless persons and in full respect of fundamental rights.
- (2) A comprehensive approach is required, with the objective of reinforcing mutual trust between Member States, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and implemented in an integrated manner.

- (3) The Union and its Member States could be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations. The comprehensive approach as outlined in Regulation (EU) 2024/... of the European Parliament and of the Council⁴⁺, including through partnerships with relevant third countries, should ensure that the Union has at its disposal specific rules to manage migration effectively, in particular with regard to the triggering of a mandatory solidarity mechanism, and that all the necessary measures are put in place to prevent crises from happening. This Regulation sets out rules that are complementary to that approach as well as to the rules set out in Council Directive 2001/55/EC⁵, which can be used at the same time.

⁴ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

- (4) Notwithstanding the putting in place of the necessary preventive measures, it cannot be excluded that a situation of crisis or *force majeure* in the field of migration and asylum arises due to circumstances beyond the control of the Union and its Member States. Such exceptional situations can include the mass arrivals of third-country nationals and stateless persons in the territory of one or more Member States, or a situation of instrumentalisation of migrants by a third country or a hostile non-state actor with the aim of destabilising the Member State or the Union, or a situation of *force majeure* in the Member State. In those circumstances, it is possible that the measures and flexibility provided under Regulation (EU) 2024/...⁺ and Regulation (EU) 2024/... of the European Parliament and of the Council⁶⁺⁺ are not sufficient to address such exceptional situations. Those exceptional situations are different from those in which a Member State faces a significant migratory situation due to the cumulative effect of arrivals on its well-prepared asylum, reception and migration system or where a Member State is under migratory pressure because of the scale of arrivals which, while not reaching the levels of mass arrivals, nevertheless creates disproportionate obligations on its well-prepared systems, and for which situations Regulation (EU) 2024/...⁺ provides for relevant measures. Furthermore, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁶ Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

- (5) This Regulation intends to enhance the preparedness and resilience of the Union to manage situations of crisis and to facilitate operational coordination, capacity support and the availability of funding in situations of crisis.
- (6) This Regulation ensures the effective application of the principle of solidarity and fair sharing of responsibility between Member States and the adaptation of the relevant rules on asylum procedure, including the application of the expedited procedure so that the Member States and the Union have the necessary legal tools at their disposal to react swiftly to situations of crisis and *force majeure*, including the adaptation of the timelines to carry out all procedures.
- (7) This Regulation ensures that Member States receive full support in situations of crisis and *force majeure*, including through the solidarity mechanism that ensures a fair sharing of responsibility and a balance of efforts between Member States in situations of crisis.

- (8) This Regulation respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in particular the respect and protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition, as well as the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’). This Regulation should be implemented in compliance with the Charter and general principles of Union law as well as with international law. In order to reflect the primary consideration that must be given to the best interests of the child, in line with the 1989 United Nations Convention on the Rights of the Child, and the need to respect family life, as well as to ensure the protection of the health of the persons concerned, safeguards should be applied in respect of minors and their family members, and of applicants for international protection (‘applicants’) whose state of health requires specific and adequate support. The rules and guarantees set out in Regulation (EU) 2024/...⁺ should continue to apply in respect of persons subject to the derogations provided for in this Regulation, except where this Regulation provides otherwise. The rules set out in Directive (EU) 2024/... of the European Parliament and of the Council⁷⁺⁺, including those concerning the detention of applicants, should continue to apply from the moment an application for international protection is made.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁷ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title, OJ reference and ELI of that Directive in the footnote.

- (9) This Regulation does not provide for derogations from the rules and guarantees, including those related to material reception conditions, under Directive (EU) 2024/...⁺.
A Member State in a situation of crisis should provide for additional and sufficient human and material resources to be able to meet its obligations under that Directive.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (10) The rules and guarantees set out in Regulations (EU) 2024/...⁸⁺, (EU) 2024/...⁹⁺⁺ and (EU) 2024/...¹⁰⁺⁺⁺ of the European Parliament and of the Council and in Directive (EU) 2024/... of the European Parliament and of the Council¹¹⁺⁺⁺⁺ should continue to apply irrespective of derogations applied under this Regulation. Member States should apply the measures provided for in this Regulation only in accordance with the conditions to which those measures are subject, as provided for in the relevant Council implementing decision adopted pursuant to this Regulation and where strictly necessary and proportionate.

⁸ Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁹ Regulation (EU) 2024/... of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/... and (EU) 2024/... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals or stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132 (COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

¹⁰ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Council Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

¹¹ Directive (EU) 2024/... of the European Parliament and of the Council of amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (OJ L, ..., ELI: ...).

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 14/24 (2022/0426 (COD)) and insert the number, date, title, OJ reference and ELI of that Directive in the footnote.

- (11) The adoption of measures under this Regulation in respect of a particular Member State should be without prejudice to the possibility to apply Article 78(3) of the Treaty on the Functioning of the European Union (TFEU).
- (12) Mass arrivals of third-country nationals or stateless persons could lead to a situation where a Member State is not in a position to process the applications for international protection of third-country nationals and stateless persons in accordance with the rules set out in Regulation (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺, and that has consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole. Therefore, it is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.
- (13) Member States should have sufficient human and financial resources and infrastructure to implement asylum and migration management policies effectively. Member States should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States to ensure that their asylum, reception, including child protection services, or return system is well prepared, including preparedness and contingency planning and that each component has sufficient capacity.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (14) A situation of instrumentalisation could arise where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders of the Union or to a Member State, where such actions are indicative of an intention of a third country or a hostile non-state actor to destabilise the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.
- (15) Situations in which non-state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.
- (16) Humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.
- (17) Without prejudice to measures applicable under other policy fields and legal instruments, to ensure an immediate and appropriate response to hybrid threats in accordance with Union law and international obligations, this Regulation focuses on the specific measures applicable in the area of migration aimed at addressing the situations of instrumentalisation.

- (18) In a situation of instrumentalisation, third-country nationals and stateless persons could apply for international protection at the external border or in a transit zone of a Member State, often being persons apprehended in connection with unauthorised crossings of the external border by land, sea or air or who are disembarked following search and rescue operations. This can lead, in particular, to an unexpected significant increase in the caseload of applications for international protection at the external borders. In that regard, effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter and the Geneva Convention.
- (19) As regards Cyprus, Council Regulation (EC) No 866/2004¹² provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which it does not exercise effective control. Although that line does not constitute an external border, a situation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to cross that line should be considered as instrumentalisation, if all the other elements of instrumentalisation are present.
- (20) A Member State can also be faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of *force majeure* could prevent the Member State from complying with its obligations under Union law and could have consequences not only in that Member State, but in the Union as a whole. Examples of a situation of *force majeure* include, among others, pandemics and natural disasters.

¹² Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession (OJ L 161, 30.4.2004, p. 128).

- (21) Where a Member State considers itself to be in a situation of crisis or *force majeure*, that Member State should be able to request authorisation to apply the derogations and solidarity measures provided for in this Regulation. That request should include a description of the situation and should specify which measures it requests in order to address the specific situation. It should also provide the reasons why the situation requires it to resort to those measures and, where relevant, indicate which measures have already been taken to address the situation.
- (22) The use of measures included in the Permanent EU Migration Support Toolbox as established by Article 6(3) of Regulation (EU) 2024/...⁺ (the ‘Toolbox’) should not be a precondition to benefit from solidarity measures under this Regulation.
- (23) In a situation of crisis, the Member State facing such a situation should have the possibility to request from other Member States solidarity and support measures that are the most suited to its needs in order to manage the situation, and that call for enhanced solidarity compared to that provided for in Regulation (EU) 2024/...⁺ in alleviating the Member State’s responsibility for handling a situation of crisis. The enhanced solidarity and support measures could take the form of relocations, financial contributions, alternative solidarity measures or a combination of the above.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (24) In a situation of crisis or *force majeure*, the Member State facing such a situation should have the possibility to request authorisation to apply derogations from relevant rules on the asylum procedure, including the asylum border procedure. Where relevant, such requests should also include the choice of the Member State concerned as regards the exclusion or the cessation of the border procedure for specific categories of applicants. Together with such a request, the Member State concerned should be able to notify the Commission of its intention to apply the derogation from the registration deadline, before it is authorised to do so in a Council implementing decision, as well as the precise reasons for which immediate action is required. The application of that derogation should not exceed ten days from the day following the request unless authorised in the Council implementing decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to limit the time gap between the end of such period and the adoption of the corresponding Council implementing decision.
- (25) Considering that a Member State could be faced with several of the situations described in this Regulation at the same time, it is possible for that Member State to request various measures under this Regulation and be authorised to apply or benefit from those measures simultaneously, which are conceived as complementary.

- (26) In order to allow for the proper management of a situation of crisis, including instrumentalisation, or *force majeure*, and to ensure predictability and the appropriate adaptation of the relevant rules on the asylum procedure to such situations, including the asylum border procedure, power should be conferred upon the Commission to assess the situation, upon a reasoned request by the Member State concerned, and to determine, by way of an implementing decision, whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or *force majeure*.

(27) In a situation of crisis, the solidarity measures to address such a situation should go beyond those provided for in Regulation (EU) 2024/...⁺. For that reason, when assessing the situation, the Commission should take into account quantitative and qualitative indicators provided for in Article 9 of that Regulation and substantiated information provided by the requesting Member State and information gathered pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council¹³ and Regulation (EU) 2019/1896 of the European Parliament and of the Council¹⁴ and the European Annual Asylum and Migration Report referred to in Regulation (EU) 2024/...⁺. In situations of instrumentalisation, the Commission should also take into account the reasons why the Toolbox is not sufficient to address the situation. The Commission should gather sufficient information to properly assess whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or *force majeure*, in consultation with the relevant Agencies, in particular the European Union Agency for Asylum (the ‘Asylum Agency’), the European Border and Coast Guard Agency and the European Union Agency for the Fundamental Rights, as well as international organisations, in particular the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM), and other relevant organisations.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

¹³ 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).

¹⁴ 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).

- (28) To ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is relevant to consider whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.
- (29) In order to provide for an appropriate response that is necessary and proportionate to address the situation, the Commission proposal should identify, where relevant, the specific derogations that Member States should be authorised to apply. In a situation of instrumentalisation, the persons subject to instrumentalisation to whom the relevant derogations could be applied should be clearly identified. In a situation of crisis, where appropriate and after consultation with the Member State facing the situation of crisis, the Commission should include in its proposal a draft Solidarity Response Plan, indicating the relevant solidarity measures and their level required for the specific situation, including the total amount of relocations, financial contributions or alternative solidarity measures and their level, recognising that the various types of solidarity are of equal value, and respecting the full discretion of Member States in choosing the solidarity measures.

- (30) Whereas in a situation of migratory pressure, relocation or responsibility offsets are to cover 60 % of the relocation needs under Regulation (EU) 2024/...⁺, in a situation of crisis, it is important that all solidarity needs of the Member State concerned are addressed. For that reason, if a Council implementing decision establishes a Solidarity Response Plan, the Member State facing the situation of crisis should have priority to use the unallocated solidarity pledges or those that have not yet been implemented and that are available in the Annual Solidarity Pool established in accordance with Article 57 of Regulation (EU) 2024/...⁺. If that is not possible or if the Annual Solidarity Pool does not contain sufficient pledges to cover the identified needs, the Member State facing the situation of crisis should also be able to make use of the contributions contained in the Council implementing decision, recognising that the various types of solidarity are of equal value. With a view to addressing all the needs of the Member State concerned, if the combination of the relocation pledges available in the Annual Solidarity Pool and in the Council implementing decision is not sufficient, responsibility offsets should become mandatory to cover the needs set out in the Solidarity Response Plan. For that to happen, there should be persons present on the territory of the contributing Member State to whom the offsets apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (31) Situations of crisis or *force majeure* are also liable to put at risk the essential functions of a Member State. In order to strengthen mutual trust between the Member States and to improve coordination at Union level, implementing powers should be conferred upon the Council to adopt an implementing decision authorising a Member State to apply the derogations and the solidarity measures provided for in this Regulation where the conditions laid down are met. The time period for the application of the measures authorised by the initial implementing decision should be three months. It should be possible to extend that period for a further three months upon confirmation by the Commission that the situation of crisis or *force majeure* persists. The Council should be empowered to further extend the authorisation to apply the derogations and the solidarity measures, by up to three months, on the basis of a Commission proposal, if the circumstances justifying the extension of the derogations and solidarity measures persist. It should be possible to extend that period by a further three months upon confirmation by the Commission that the situation persists. The Council should be empowered to repeal the application of the measures on the basis of a Commission proposal when the circumstances justifying the application of the derogations and solidarity measures have come to an end. It should be possible for the decision extending the authorisation to amend the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principles of proportionality and necessity are respected.

- (32) The Council implementing decision should specify, where appropriate, the specific derogations that the Member State facing a situation of crisis, or *force majeure* is authorised to apply, depending on the nature of each derogation, and set the date from which they could be applied. Moreover, the decision should state the grounds on which it is based and the personal scope of the derogations.
- (33) The Council implementing decision should establish, where appropriate, a Solidarity Response Plan, indicating the specific solidarity and support measures required and the levels thereof, as well as the pledges made by the contributing Member States. To that end, the pledging exercise should take place in the framework of the adoption of the Council implementing decision. It is important to ensure the full discretion of the contributing Member States to choose between the types of solidarity and support measures.
- (34) Given the importance of applying the measures set out in this Regulation only for as long and to the extent strictly necessary, the Commission and the Council should keep the situation under constant monitoring and review as regards the necessity and proportionality of those measures. In that context, the Commission should pay particular attention to compliance with fundamental rights and humanitarian standards and can request the Asylum Agency to initiate a monitoring exercise of the concerned Member State's asylum or reception system pursuant to Article 15(2) of Regulation (EU) 2021/2303.

- (35) The procedural rules set out in Regulation (EU) 2024/...⁺ for carrying out relocation apply for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, taking into account the gravity and urgency of that situation.
- (36) To ensure the smooth implementation of the solidarity mechanism under this Regulation, the EU Solidarity Coordinator should, in addition to the tasks laid down in Regulation (EU) 2024/...⁺, support relocation activities and promote a culture of preparedness, cooperation and resilience among Member States. In a situation of crisis, the EU Solidarity Coordinator should, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism. The office of the EU Solidarity Coordinator should be provided with sufficient staff and resources to effectively fulfil its role under this Regulation. When implementing relocation, primary consideration should be given to vulnerable persons.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (37) Vulnerable persons should be given primary consideration for relocation, in particular when they have special reception needs within the meaning of Article 24 of Directive (EU) 2024/...⁺, or are in need of special procedural guarantees as referred to in Articles 20 to 23 of Regulation (EU) 2024/...⁺⁺. According to Article 24 of Directive (EU) 2024/...⁺, applicants falling within any of the following categories are more likely to have special reception needs: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders including post traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (38) In contrast to the rules set out in Regulation (EU) 2024/...⁺ where Member States are not obliged to take responsibility above their fair share, in a situation of crisis, the implementation of the Solidarity Response plan could potentially lead to one or several contributing Member States taking responsibility for examining applications for international protection above their fair share. In such cases, such a Member State should be entitled to reduce proportionally the part above the fair share from the implementation of solidarity pledges under the upcoming annual cycles of Regulation (EU) 2024/...⁺ over a period of five years. Such reduction could also be applied in a Council implementing decision adopted pursuant to Article 4(3) with the corresponding amount of applications beyond the fair share and within five years from the date in which the Council implementing decision that led the Member State to go beyond its fair share is no longer in force. It should be possible for the reductions under the upcoming annual cycles and in a Council implementing decision to be applied alternatively or simultaneously, provided that they correspond to and do not go beyond the number of applications for which that Member State contributed above its fair share.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (39) When a Member State is facing a situation of crisis or *force majeure*, it might need to divert resources to manage arrivals of third-country nationals and stateless persons at its borders. As a result, that Member State might need time to reorganise its resources and increase its capacity, including with the support of the relevant Union agencies. That Member State might also need more time to be able to decide on applications without allowing entry into its territory. In such a situation, it should be possible for that Member State to derogate from the deadlines for registration and border procedure.
- (40) Where a Member State applies one or more of the measures provided for in this Regulation, the Member State should inform third-country nationals and stateless persons in a language which they understand or are reasonably supposed to understand, about the derogations applied and the duration of the measures. Member States are obliged to address any special procedural and special reception needs of the applicants that could arise and provide information in an appropriate manner accordingly. Moreover Article 8 on provision of information and Article 36(3) with regard to the information on the possibility to appeal the decision on the application, of the Regulation (EU) 2024/...⁺ apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (41) Where derogations from the asylum procedure are applied, the safeguards for applicants with special procedural and special reception needs, including medical conditions, should be a primary consideration for the competent authorities. For that reason, the Member State facing a situation of crisis or *force majeure* should not apply, or should cease to apply, the derogations from the asylum procedure in cases where there are medical reasons for not applying the border procedure in accordance with Article 53(2), point (d), of Regulation (EU) 2024/...⁺, where the necessary support cannot be provided to applicants with special procedural needs in accordance with Article 53(2), point (b), of that Regulation or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive (EU) 2024/...⁺⁺. The Member State concerned should prioritise the examination of applications from persons with special procedural needs in accordance with Regulation (EU) 2024/...⁺ and with special reception needs as defined in Article 2, point (14) of Directive (EU) 2024/...⁺⁺, especially minors and their family members.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (42) In situations of crisis and *force majeure*, the Member State should be authorised to derogate from Regulation (EU) 2024/...⁺ in order to register applications for international protection no later than four weeks after they are made. Such an extension should be without prejudice to the rights of asylum applicants guaranteed by the Charter, Regulation (EU) 2024/...⁺ and Directive (EU) 2024/...⁺⁺. Without prejudice to the exception provided for during the period between the request and the adoption of the Council implementing decision, in a situation of crisis, characterised by mass arrivals of third-country nationals and stateless persons, the extension of the registration period should only be applied during the time period set out in the initial Council implementing decision.
- (43) When confronted with a situation of crisis or *force majeure*, it should be possible for the Member State concerned to extend the examination of applications for international protection at the border by six weeks. The extension should not be used in addition to the period referred to in Article 51(2), third subparagraph, of Regulation (EU) 2024/...⁺.
- (44) When faced with a situation of crisis or *force majeure*, a Member State should be able to request measures from among several options with regard to the application of the border procedure, taking into account the composition of the flows and their diverse nature, depending on the precise situation of crisis.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (45) In situations of crisis, characterised by mass arrivals of third-country nationals and stateless persons, or of *force majeure*, it could be necessary to allow a Member State not to apply the border procedure in respect of persons who come from third countries where the Union-wide average recognition rate is below 20 %. In order to apply such a derogation, the Council implementing decision should assess whether the measures contained in the contingency plan of the Member State concerned, referred to in Article 32 of Directive (EU) 2024/...⁺ are sufficient to address the situation. In any event, Member States are obliged to apply the border procedure in the situations referred to in Article 42(1), points (c) and (f), of Regulation (EU) 2024/...⁺⁺.
- (46) In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to allow a Member State to lower the threshold for the mandatory application of the border procedure provided for in Article 42(1), point (j), of Regulation (EU) 2024/...⁺⁺. In any event, the reduced threshold should not go below 5 %. Member States are obliged to apply the border procedure in the situations referred to in Article 42(1), points (c) and (f), of that Regulation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (47) In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to broaden the scope of the application of the border procedure, established by Article 43 of Regulation (EU) 2024/...⁺ and to allow a Member State to take a decision in the framework of a border procedure also on the merits of an application in cases where the applicant is a national or, in the case of stateless persons, a former habitual resident, of a third country, for which the proportion of decisions granting international protection Union-wide is 50 % or lower. As a result, in the application of the crisis border procedure, Member States should continue to apply the border procedure as provided by Articles 43 to 54 of that Regulation but could extend the application of the border procedure to third-country nationals or stateless persons who come from third countries where the Union-wide average recognition rate is above 20 % but under 50 %, taking into account the rapidly evolving protection needs that might arise in the country of origin as reflected in quarterly updates of Eurostat data. This broadening of the scope of the border procedure should not affect the grounds and other rules applicable to the mandatory border procedure under that Regulation. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to Article 47 or counted for the application of the annual cap pursuant to Article 50 of that Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (48) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that that person is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. In accordance with Directive (EU) 2024/...⁺, minors should, as a rule, not be detained, but should be placed in accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention could be used, in accordance with Union law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible and never in prison accommodation or any other facility destined for law enforcement purposes. Minors are not to be separated from their parents or care givers, and the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible must be done to ensure that a viable range of adequate alternatives to detention of minors is available and accessible.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (49) In a situation of instrumentalisation and to prevent a third country or a hostile non-state actor from targeting specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible for a Member State to derogate from the asylum procedure set out in this Regulation by taking a decision in the framework of the border procedure, as set out in Articles 44 to 55 of Regulation (EU) 2024/...⁺ on the merits of all applications for international protection. The principles and guarantees set out in that Regulation should be respected. The Council implementing decision authorising the Member State to apply the referred derogations should specify the third-country nationals or stateless persons subject to the situation of instrumentalisation. Where applying this derogation, specific attention should be given to certain categories of third-country nationals and stateless persons who have been subject to instrumentalisation, in particular minors under the age of 12 and their family members, and vulnerable persons with special procedural or special reception needs. Those groups should therefore either be excluded from the border procedure, or, when an individual assessment concludes that their applications are likely to be well-founded, that procedure should cease to apply to them. The choice between those alternatives remains at the discretion of the Member State requesting the application of that derogation. The choice indicated in the request should be reflected in the Council implementing decision authorising the application of this derogation. The broadening of the scope of the border procedure in a situation of instrumentalisation should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation (EU) 2024/...⁺. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to Article 48 or counted for the application of the annual cap pursuant to Article 51 of that Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (50) In order to support the Member State concerned in providing the necessary assistance to third-country nationals and stateless persons falling under the scope of this Regulation, United Nations agencies, and the UNHCR in particular, and other relevant partner organisations entrusted with specific tasks by Member States, should have effective access to the border under the conditions set out in Directive (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺. The UNHCR should be allowed access to applicants, including to those at the border. To this end, the Member State concerned should maintain cooperation with those organisations.
- (51) Specific rules should be laid down for situations of crisis characterised by mass arrivals and for *force majeure*, to allow Member States to extend the time limits set out in Regulation (EU) 2024/...⁺⁺⁺ under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply simultaneously to the time limits set out for sending and replying to take charge requests and take back notifications as well as the time limit to transfer an applicant to the Member State responsible. The time limits should be extended irrespective of whether that Regulation provides for shorter time limits for certain situations.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (52) In order to ensure effective access to the procedure for granting international protection, where the transfer does not take place due to the persistence of the situation of crisis characterised by mass arrivals or *force majeure*, or where the transferring Member State does not implement the transfer when the applicant is available to the competent authorities of the transferring Member State, a maximum time limit to carry out the transfer to a Member State facing that situation should be set out. That maximum time limit should not be longer than one year from the acceptance of the take charge request, from the confirmation of the take back notification by another Member State or from the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of Regulation (EU) No 2024/...⁺. That maximum time limit is without prejudice to the possibility to extend the time limits pursuant to Article 46(2) of that Regulation for carrying out a transfer.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (53) In order to avoid the Common European Asylum System becoming non-functional due to mass arrivals of such extraordinary scale and intensity that, even if a Member State has a well-prepared asylum, reception and return system, if the situation is not addressed by the Union as a whole, it could create a serious risk of serious deficiencies in the treatment of applicants, the Member State should, in those most exceptional circumstances, be able to be relieved of its obligation to take back an applicant pursuant to Article 16(2) and Article 38(4) of Regulation (EU) 2024/...⁺. However, in order to ensure that the application of such a derogation does not lead to additional pressure on the Member State facing that situation, that derogation should only apply retroactively to applications already registered in that Member State within four months before the date on which the Council implementing decision is adopted.
- (54) Where, in accordance with Regulation (EU) 2024/...⁺⁺, objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from that Regulation could be well-founded, it is in the interest of both the determining authorities and the applicants concerned to conclude the examination of the merits of the application as soon as possible and to allow for a swift and efficient granting of international protection in a situation of crisis.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (55) Applicants whose applications are examined in the context of the expedited procedure provided for in this Regulation enjoy all of the rights and guarantees, to which applicants are entitled in accordance with Regulation (EU) 2024/...⁺, including the right to information and to an effective remedy.
- (56) When applying a Commission recommendation on expedited procedure, there should be no interview on the merits, but if there are doubts whether the applicant belongs to the category or categories of persons identified in that recommendation or whether the exclusion grounds apply, such an interview might be needed. In all cases, the procedure should not last longer than four weeks from the date of the lodging of the application. Where a Member State has established that an applicant is a threat to internal security, that Member State should be able not to apply the expedited procedure in respect of that applicant. In such circumstances, the application should be examined in accordance with Articles 36 and 40 of Regulation (EU) 2024/...⁺.
- (57) Applicants whose applications are examined in the context of the expedited procedure provided for in this Regulation, should, in accordance with Article 29 of Regulation (EU) 2024/...⁺, receive a document certifying their status in a language they can understand or can reasonably be supposed to understand.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (58) The relevant Union Agencies, UNHCR and other relevant organisations can be consulted at the different stages of the application of the expedited procedure.
- (59) To ensure a sufficient level of preparedness for a situation of crisis, Member States should include in their contingency plans measures needed to respond to and resolve a situation of crisis, including measures needed to overcome challenges in the functioning of the Common European Asylum System and to protect the rights of applicants and beneficiaries of international protection as well as foster future resilience in the Member State concerned. Member States should also use all the tools available under national and Union law, including making use of anticipation and early warning tools under the EU mechanism for preparedness and management of crises related to migration provided for in Commission Recommendation (EU) 2020/1366¹⁵.
- (60) Without prejudice to the above and where relevant, in a situation of crisis, all mechanisms for crisis included in the Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with the applicable legal acts. Thereafter, the Commission should, in the context of the Technical-Level Migration Forum, ensure coordination and exchange of information with other platforms that are relevant to manage the situation of crisis, including the EU Migration Preparedness and Crisis Management Network in accordance with Recommendation (EU) 2020/1366, and the Integrated Political Crisis Response (IPCR) arrangements.

¹⁵ Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (OJ L 317, 1.10.2020, p. 26).

- (61) A Member State facing a situation of crisis or *force majeure* can request support from the Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. In addition and as appropriate, the Asylum Agency can propose assistance on its own initiative in accordance with Article 16(1), point (d), of Regulation (EU) 2021/2303, whereas the European Border and Coast Guard Agency can propose assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned, and Europol can propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁶.
- (62) To support Member States that undertake relocation as a solidarity measure, financial support from the EU budget should be provided, including from the thematic facility as set out in Regulation (EU) 2021/1147 of the European Parliament and of the Council¹⁷.

¹⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

¹⁷ 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).

- (63) Since the objectives of this Regulation, namely to provide for the necessary adaptation of the rules on asylum procedures and where relevant those on solidarity in order to ensure that Member States are able to address situations of crisis and *force majeure*, in the field of asylum and migration management within the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (64) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention¹⁸, Denmark has to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.

¹⁸ OJ L 66, 8.3.2006, p. 38.

- (65) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (66) As regards Iceland and Norway, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway¹⁹.
- (67) As regards Switzerland, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²⁰.

¹⁹ OJ L 93, 3.4.2001, p. 40.

²⁰ OJ L 53, 27.2.2008, p. 5.

- (68) As regards Liechtenstein, Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13 of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²¹ refers,

HAVE ADOPTED THIS REGULATION:

²¹ OJ L 160, 18.6.2011, p. 39.

Chapter I

General provisions

Article 1

Subject matter

1. This Regulation addresses exceptional situations of crisis, including instrumentalisation, and *force majeure*, in the field of migration and asylum within the Union by means of temporary measures. It provides for enhanced solidarity and support measures that build upon Regulation (EU) 2024/...⁺ while ensuring the fair sharing of responsibility, and for temporary specific rules derogating from those set out in Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺.
2. Temporary measures adopted pursuant to this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of applicants and beneficiaries of international protection, and be consistent with the obligations of the Member States under the Charter, international law and the Union asylum *acquis*. This Regulation shall not affect the fundamental principles and guarantees, established by the legislative acts from which derogations are allowed pursuant to this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. The measures adopted pursuant to this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited manner and only in exceptional circumstances. Member States may apply the measures provided for in Chapter IV and benefit from the measures provided for in Chapter III only upon request and to the extent provided for in the Council implementing decision referred to in Article 4(3) without prejudice to Article 10(5).
4. For the purposes of this Regulation, a situation of crisis means:
- (a) an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional, including as a result of a situation at local or regional level, such that there could be serious consequences for the functioning of the Common European Asylum System; or
 - (b) a situation of instrumentalisation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

Member States may request the authorisation to apply measures listed in Chapter III and IV in particular where there is an unexpected significant increase in the caseload of applications for international protection at the external borders. Member States may apply the derogations provided for in the Council implementing decision referred to in Article 4(3) in the situation of instrumentalisation only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.

5. For the purposes of this Regulation, *force majeure* refers to abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with obligations under Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Chapter II

Governance

Article 2

Reasoned request by a Member State

1. Where a Member State considers itself to be in a situation of crisis or *force majeure*, it may, given those exceptional circumstances, submit a reasoned request to the Commission, in order to benefit from solidarity measures allowing for the proper management of that situation and to allow for possible derogations from the relevant rules on the asylum procedure, while ensuring that the applicants' fundamental rights are respected.
2. A reasoned request as referred to in paragraph 1 shall include:
 - (a) a description of:
 - (i) how, as a result of a situation of crisis as referred to in Article 1(4), point (a), the Member State's asylum and reception system, including child-protection services, has become non-functional, as well as the measures taken so far to address the situation and a justification proving that that system, although well-prepared and notwithstanding the measures already taken, is unable to address the situation; or

- (ii) how the Member State is faced with a situation of instrumentalisation as referred to in Article 1(4), point (b), that is putting its essential functions at risk, including the maintenance of law and order or the safeguard of its national security; or
 - (iii) how the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided notwithstanding the exercise of all due care, and how that situation of *force majeure* prevents it from fulfilling its obligations laid down in Article 27, Article 45(1) and Article 51(2) of Regulation (EU) 2024/...⁺ and in Articles 39, 40, 41 and 46 of the Regulation (EU) 2024/...⁺⁺;
- (b) where relevant, the type and level of solidarity measures provided for in Article 8(1) that it considers necessary;
 - (c) where relevant, the derogations provided for in Articles 10 to 13 that it considers necessary; and
 - (d) if the Member State requests to apply the derogation provided for in Article 11(6), whether it intends to provide for the exclusion of specific categories of applicants as referred to in paragraph 7, point (a), or paragraph 7, point (b) of that Article or the cessation of the border procedure for specific categories of applicants following an individual assessment as provided for in paragraph 9 of that Article.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 3

Commission implementing decision establishing a situation of crisis or force majeure

1. Following the submission of a reasoned request as referred to in Article 2, the Commission, in close cooperation with the requesting Member State and in consultation with relevant Union agencies and international organisations, in particular UNHCR and IOM, shall expeditiously assess the situation and, where the conditions set out in Article 1 are met, adopt an implementing decision as referred to in paragraph 8 of this Article.
2. The Commission may also adopt a recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.
3. The Commission shall immediately notify the European Parliament, the Council and the Member States that it is undertaking an assessment as referred to in paragraph 1.
4. When assessing whether the Member State is facing a situation of instrumentalisation as referred to in Article 1(4), point (b), of this Regulation, the Commission shall assess *inter alia* the following:
 - (a) whether a third country or a hostile non-state actor is facilitating the movement of third-country nationals or stateless persons into the Union;
 - (b) whether the information provided by the Member State adequately demonstrates that any actions falling under point (a) have the aim of destabilising the Union or the Member State concerned;

- (c) whether there is an unexpected significant increase in the caseload of applications for international protection at the external borders or in the Member State concerned compared to the average number of applications;
 - (d) whether the response to the implications of the situation of instrumentalisation on the migration and asylum system of the Member State concerned cannot be sufficiently addressed by means of the measures contained in the Toolbox in accordance with Article 6(3) of Regulation 2024/...⁺.
5. The Commission shall determine whether the conditions with regard to the situation faced by the Member State as set out in Article 1 are met, taking into account the reasoned request as referred to in Article 2, and in the light of the information provided and the indicators relating to the Member State concerned referred to in Article 9 of Regulation (EU) 2024/...⁺. The Commission shall assess the information provided in the reasoned request against the situation in the Member State concerned during the preceding two months and as compared to the overall situation in the Union.
6. The Commission shall determine in particular:
- (a) whether the requesting Member State's asylum, reception, including child-protection services, or migration system, although well-prepared, and notwithstanding the measures already taken, has become non-functional as a result of a situation of mass arrivals of third-country nationals or stateless persons rendering that Member State unable to address the situation and whether there might be serious consequences for the functioning of the Common European Asylum System.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (b) whether the Member State is faced with a situation of instrumentalisation as referred to in Article 1(4), point (b), to be addressed with the necessary and proportionate use of the measures set out in this Regulation;
- (c) whether the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided notwithstanding of the exercise of all due care, and how such situation of *force majeure* prevents it from fulfilling its obligations set out in Article 27, Article 51(2) and Article 60(1) of Regulation (EU) 2024/...⁺ and in Articles 39, 40, 41 and 46 of the Regulation (EU) 2024/...⁺⁺.

7. When adopting an implementing decision as referred to in paragraph 8 of this Article, the Commission shall indicate why the response to the situation of instrumentalisation cannot be sufficiently addressed by means of the measures set out in the Toolbox in accordance with Article 6(3) of Regulation (EU) 2024/...⁺⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

8. Where the Commission determines pursuant to paragraph 5 of this Article that the assessment referred to in paragraph 1 demonstrates the existence of the conditions set out in Article 1, taking into account the reasoned request as referred to in Article 2, and in the light of the information provided and the indicators relating to the Member State concerned referred to in Article 9 of Regulation (EU) 2024/...⁺, the Commission shall adopt, without delay and in any case no later than two weeks from the submission of the reasoned request referred to in Article 2 of this Regulation, an implementing decision determining whether the requesting Member State is in a situation of crisis referred to in Article 1(4), point (a) or (b), of this Regulation, or *force majeure*. The Commission shall transmit the implementing decision to the European Parliament and the Council.

Article 4

Commission proposal and Council implementing decision authorising derogations and establishing solidarity measures

1. Simultaneously with the adoption of the Commission implementing decision referred to in Article 3, the Commission shall, where appropriate, make a proposal for a Council implementing decision. The Commission shall immediately inform the European Parliament of that proposal.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. The Commission's proposal for a Council implementing decision referred to in paragraph 1 shall ensure that the principles of necessity and proportionality are respected and shall include:
- (a) where appropriate, the specific derogations as referred to in Articles 10 to 13 that the Member State should be authorised to apply;
 - (b) where appropriate, where the Member State is facing a situation of crisis, a draft Solidarity Response Plan, after consultation with the Member State, that ensures the full discretion of contributing Member States in choosing between the types of solidarity measures, and that includes:
 - (i) where appropriate, the total amount of relocation contributions needed to address the situation of crisis;
 - (ii) where appropriate, the other relevant solidarity measures referred to in Article 8(1), points (b) and (c), and the level of such measures needed to address the specific situation of crisis;
 - (iii) where applicable, the total amount of solidarity measures to be taken from the available pledges in the Annual Solidarity Pool;
 - (iv) where the available pledges in the Annual Solidarity Pool do not cover the needs identified in subpoints (i) and (ii) of this point, the Solidarity Response Plan shall also establish the additional pledges needed to cover such needs; and

- (v) the indicative contributions of each Member State to contribute their fair share, calculated in accordance with the reference key set out in Article 66 of Regulation (EU) 2024/...⁺; and
- (c) where the Member State is facing a situation of crisis as referred to in Article 1(4), point (b), the identification of the third-country nationals or stateless persons subject to that situation.

When setting up the solidarity needs of the Member State, the Commission shall take into account whether the Member State is already a benefitting Member State pursuant to Articles 58 and 59 of Regulation (EU) 2024/...⁺.

Where, in the reasoned request as referred to in Article 2, the Member State considers that relocation is the primary or only solidarity measure to address the situation, the Commission shall take that into account in its proposal for a Council implementing decision, without prejudice to the discretion of the contributing Member States to choose between the types of solidarity measures.

3. The Council shall assess the Commission's proposal for a Council implementing decision as referred to in paragraph 1 and adopt an implementing decision within two weeks of receipt of that proposal, authorising the Member State to apply the derogations provided for in Articles 10 to 13 and establishing a Solidarity Response Plan as referred to in paragraph 2, point (b), of this Article, including the solidarity measures that the Member State can benefit from in order to address the situation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. Where appropriate, when adopting the proposal for a Council implementing decision as referred to in paragraph 1, the Commission may adopt a recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.
5. The Council implementing decision shall ensure that the principles of necessity and proportionality are respected, shall state the grounds on which it is based and set the date from which the derogations laid down in Articles 10 to 13 may be applied, as well as the time period for their application, in accordance with Article 5. The Council implementing decision shall:
 - (a) where appropriate, identify the specific derogations referred to in Articles 10 to 13 that the Member State concerned is authorised to apply;
 - (b) where appropriate, establish a Solidarity Response Plan that includes:
 - (i) the total amount of relocation contributions needed to address the situation of crisis giving full consideration to the assessment of the Commission;
 - (ii) the other relevant solidarity measures referred to in Articles 8(1), points (b) and (c), and the level of such measures needed to address the situation of crisis;
 - (iii) the total amount of solidarity measures to be taken from the Annual Solidarity Pool;

- (iv) the additional pledges needed to cover the needs to address the situation of crisis, if the existing pledges in the annual Solidarity Pool are not sufficient;
 - (v) the specific contribution by each Member State pledged under the mandatory fair share calculated in accordance with the reference key set out in Article 66 of Regulation (EU) 2024/...⁺;
- (c) where the Member State concerned is facing a situation of crisis as referred to in Article 1(4), point (b), identify the third-country nationals or stateless persons subject to that situation.

The Council shall transmit the implementing decision immediately to the European Parliament and the Commission.

Article 5

Duration

1. Without prejudice to paragraph 3 of this Article, the period for the application of the derogations and solidarity measures set out in the Council implementing decision as referred to in Article 4(3) shall be three months. Unless that decision is repealed pursuant to Article 6 (3), that period may be extended once by three months upon confirmation by the Commission that the situation of crisis or *force majeure* persists.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. At the end of the period referred to in paragraph 1 and upon request of the Member State concerned, the Commission may submit a proposal for a new Council implementing decision to amend or extend the specific derogations or the Solidarity Response Plan referred to in Article 4(5) for a period not exceeding three months. Unless that decision is repealed pursuant to Article 6(3), that period may be extended once by three months upon confirmation by the Commission of the persistence of the situation of crisis or *force majeure*. Article 4(3) and (5) shall apply.
3. The Member State facing a situation of crisis or *force majeure*, shall apply Articles 10 to 13 no longer than what is strictly necessary to address the situation, and, in any case, no longer than the period set out in the Council implementing decision referred to in Article 4(3). The total duration of the application of the measures shall not exceed the duration of the situation of crisis or *force majeure* and shall be a maximum of 12 months.

Article 6

Monitoring

1. The Commission and Council shall constantly monitor whether a situation of crisis or *force majeure*, identified in a Commission implementing decision as referred to in Article 3(8) persists.
2. The Commission shall pay particular attention to the compliance with fundamental rights and humanitarian standards and may request the Asylum Agency to initiate a specific monitoring exercise pursuant to Article 15(2) of Regulation (EU) 2021/2303.

3. Where the Commission considers that the circumstances that led to the establishment of the situation of crisis or *force majeure* have ceased to exist, it shall propose to repeal the Council implementing decision referred to in Article 4(3). Where the Commission considers it appropriate on the basis of relevant information, it shall propose the adoption of a new Council implementing decision authorising the amendment or extension of the measures as established in accordance with Article 5(2).
4. The Commission shall report to the European Parliament and the Council, every three months after the entry into force of the Council implementing decision as referred to in Article 4(3), on the application of that decision, in particular on the effectiveness of the measures undertaken in resolving the situation of crisis or *force majeure* and shall determine whether the situation persists and whether the measures continue to be necessary and proportionate.

Article 7

EU Solidarity coordinator

The EU Solidarity Coordinator, as established by Articles 15 and 60 of Regulation (EU) 2024/...⁺ shall, in addition to the tasks listed under those Articles:

- (a) support the relocation activities from the Member State concerned to the contributing Member State under this Regulation;
- (b) promote a culture of preparedness, cooperation and resilience among Member States in the field of asylum and migration, including through the sharing of best practices.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

For that purpose, the EU Solidarity Coordinator shall be updated by the EU Migration Preparedness and Crisis Management Network in the framework of the relevant stages of the Migration Preparedness and Crisis Blueprint pursuant to Recommendation (EU) 2020/1366 in its original version.

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

Chapter III

Solidarity measures applicable in a situation of crisis

Article 8

Solidarity and support measures in a situation of crisis

1. A Member State facing a situation of crisis may request the following types of contributions in the reasoned request referred to in Article 2:
 - (a) relocations, to be conducted following the procedures set out in Articles 67 and 68 of Regulation (EU) 2024/...⁺:
 - (i) of applicants for international protection;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(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 Annual Solidarity Pool;

(b) financial contributions aiming at actions that are relevant to address the situation of crisis in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States pursuant to Article 64 of Regulation (EU) 2024/...⁺;

(c) alternative solidarity measures as referred to in Article 56(2), point (c), of Regulation (EU) 2024/...⁺, specifically needed to address the situation of crisis and in accordance with Article 65(2) and (3) of that Regulation; such measures shall be counted as financial solidarity and their actual value shall be established based on objective criteria.

2. When implementing relocations referred to in paragraph 1, point (a), of this Article, Member States shall give primary consideration to the relocation of vulnerable persons in accordance with Article 60 of Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 9
Responsibility offsets

1. Where the additional relocation pledges set out in the Council implementing decision referred to in Article 4(3) and the pledges available in the Annual Solidarity Pool are below the relocation needs identified in that Council implementing decision:
 - (a) the contributing Member States shall take responsibility, up to 100 % of the relocation needs identified in the Solidarity Response Plan established in the Council implementing decision, for applications for international protection for which the Member State facing a situation of crisis has been determined as responsible;
 - (b) when applying point (a) of this subparagraph and where necessary, the contributing Member States shall take responsibility above their fair share by way of derogation from Article 63(7) of Regulation (EU) 2024/...⁺;
 - (c) when applying points (a) and (b) of this subparagraph, Article 63(6), (8) and (9) of Regulation (EU) 2024/...⁺ shall apply *mutatis mutandis*.

Where Directive 2001/55/EC is activated in relation to the same situation as referred to in Article 1(4), point (a), and Member States agree at the moment of activation not to apply Article 11 of that Directive, mandatory offsets pursuant to this Article shall not apply.

Where the Council implementing decision referred to in Article 4(3) authorises the Member State concerned to apply Article 13, mandatory offsets pursuant to this Article shall not apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. Where the application of paragraph 1 of this Article is not sufficient to cover 100 % of the relocation needs identified in the Council implementing decision referred to in Article 4(3), the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with Article 13(4) of Regulation (EU) 2024/...⁺ and following the procedure set out in Article 57 of that Regulation.
3. 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 69 of Regulation (EU) 2024/...⁺.
4. Where a contributing Member State has become responsible for applications above its fair share in accordance with paragraph 1, point (b), of this Article or Article 13, it shall be entitled to:
 - (a) proportionally reduce from its fair share in relation to future solidarity contributions under the upcoming annual cycles of Regulation (EU) 2024/...⁺, with the corresponding number of applications for which that Member State contributed above its fair share over a period of five years;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

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

5. Where a Member State intends to avail itself of the possibility provided for in paragraph 4, it shall notify the Commission accordingly. The notification shall contain the number of applications for which the Member State took responsibility above its fair share and the reduction it intends to apply under the upcoming annual cycles of Regulation (EU) 2024/...⁺ or during the implementation of a Council implementing decision adopted pursuant to Article 4(3).

If, on completing its examination of the notification referred to in the first subparagraph, the Commission confirms that the Member State concerned has contributed above its fair share, the Commission shall authorise, by means of an implementing act, the Member State concerned to reduce from its fair share the corresponding number of applications for which that Member State contributed above its fair share under the upcoming annual cycles of Regulation (EU) 2024/...⁺ or when implementing a Council implementing decision adopted pursuant to Article 4(3) within the period referred to in paragraph 4, point (b), of this Article to support another Member State or where responsibility offsets are required pursuant to paragraph 1, point (b), of this Article.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

6. Where the solidarity needs of other Member States that are benefitting Member States pursuant to Article 58 or 59 of Regulation (EU) 2024/...⁺ cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Annual Solidarity Pool pursuant to Article 4(5), point (b), of this Article, the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with Article 13 of Regulation (EU) 2024/...⁺ and following the procedure set out in Article 57 of that Regulation.
7. Where, as a result of the measures required to support the Member State facing a situation of crisis that are included in the Council implementing decision as referred to in Article 4(3), another Member State considers itself to be under migratory pressure or facing a significant migratory situation within the meaning of Article 2, points (24) and (25) respectively, of Regulation (EU) 2024/...⁺ or facing a situation of crisis, the Member State concerned may request solidarity measures, full or partial reductions of its solidarity contributions in accordance with that Regulation, or solidarity and support measures in accordance with this Regulation.

When assessing the Member State's reasoned request as referred to in Article 2 of this Regulation, the Commission shall also take into account whether that Member State has taken responsibility for examining applications for international protection above its fair share, in addition to the information set out in Articles 9 and 10 of Regulation 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Chapter IV

Derogations

Article 10

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

1. In a situation of crisis or *force majeure*, by way of derogation from Article 27 of Regulation (EU) 2024/...⁺, the Member State facing that situation may register applications made within the period during which this paragraph is applied, no later than four weeks after those applications are made.
2. When applying paragraph 1, the Member State concerned shall prioritise the registration of applications of persons with special reception needs as defined in Directive (EU) 2024/...⁺⁺ and of minors and their family members.
3. When applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well-founded.
4. In a situation of crisis as referred to in Article 1(4), point (a), the derogation referred to in paragraph 1 of this Article may only be applied during the time period set out in the initial Council implementing decision referred to in Article 4(3) and not during any subsequent extensions thereof pursuant to Article 5(1) or (2).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

5. In accordance with Article 3 of Directive (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺, Member States shall ensure that applicants are able to access and exercise their rights under those instruments in an effective manner as soon as they make an application, regardless of when the registration takes place. The Member State concerned shall duly inform the third-country nationals or stateless persons in a language which they understand, or are reasonably supposed to understand, about the measure applied, the location of the registration points, including the border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure.
6. When submitting a reasoned request as referred to in Article 2(1), a Member State may notify the Commission that it considers it necessary to apply the derogation referred to in paragraph 1 of this Article before it is authorised to do so in the Council implementing decision as referred to in Article 4(3), indicating the precise reasons for which immediate action is required.

In such a case, the Member State concerned may apply the derogation referred to in paragraph 1 of this Article for a period not exceeding 10 days from the day following the date of the submission of the request, unless the Council implementing decision as referred to in Article 4(3) authorises the Member State concerned to continue to apply that derogation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

7. The extension of the time limit for registration of applications for international protection is without prejudice to the obligations to comply with the deadlines set out in Article 15(1), point (b), of Regulation (EU) 2024/...⁺.

Article 11

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

1. In a situation of crisis or *force majeure*, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 51(2) of Regulation (EU) 2024/...⁺⁺, by extending the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks. That period shall not be used in addition to the period referred to in Article 51(2), third subparagraph, of that Regulation.
2. In a situation of crisis as referred to in Article 1(4), point (a), or *force majeure*, by way of derogation from Article 45(1) of Regulation (EU) 2024/...⁺⁺, Member States may not be required to examine, in a border procedure, applications made by applicants referred to in Article 42(1), point (j), of that Regulation, when the measures in the contingency plan of the concerned Member State referred to in Article 32 of Directive (EU) 2024/...⁺⁺⁺ are not sufficient to address that situation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. In a situation of crisis as referred to in Article 1(4), point (a), by way of derogation from Article 45(1) of Regulation (EU) 2024/...⁺, Member States may reduce the threshold provided for in Article 42(1), point (j), to 5 %.
4. In a situation of crisis as referred to in Article 1(4), point (a), by way of derogation from Article 44(1), point (b), of Regulation (EU) 2024/...⁺, Member States may, in a border procedure, take decisions on the merits of an application in cases where the applicant is a national or, in the case of stateless persons, a former habitual resident of, a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 50 % or lower, in addition to the cases referred to in Article 42(1), point (j), of that Regulation, taking into account the rapidly evolving protection needs that might arise in the country of origin as reflected in quarterly updates of Eurostat data.
5. When applying paragraph 3 or 4 of this Article, the Member State concerned shall prioritise the examination of applications for international protection lodged by persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺⁺ and in Regulation (EU) 2024/...⁺, and minors and their family members. When applying paragraph 3, 4 or 6 of this Article, the Member State concerned may also prioritise the examination of application for international protection s which are likely to be well-founded.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

6. In a situation of crisis as referred to in Article 1(4), point (b), by way of derogation from Article 44(1), point (b), and Article 53(2), point (a), of Regulation (EU) 2024/...⁺, Member States may, in a border procedure, take decisions on the merits of all applications that are made by any third-country national or stateless person who is subject to instrumentalisation and that are registered within the period during which this paragraph is applied.
7. When applying paragraph 6, Member States shall:
- (a) exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺⁺ and in Regulation (EU) 2024/...⁺; or
 - (b) cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded:
 - (i) minors under the age of 12 and their family members; and

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (ii) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺ and in Regulation (EU) 2024/...⁺⁺.

This paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in Article 46 of Regulation (EU) 2024/...⁺⁺.

8. Where the Member State concerned is authorised to apply the derogation referred to in paragraph 6 of this Article, the Council implementing decision as referred to in Article 4(3) shall specify whether paragraph 7, point (a) or (b), applies, based on the indication made by the Member State concerned in accordance with Article 2(2), point (d).
9. The Member State facing a situation of crisis or *force majeure* shall not apply or shall cease to apply the derogation from the asylum procedure provided for in paragraphs 4 and 6 of this Article in cases where there are medical reasons for not applying the border procedure in accordance with Article 53(2), point (d), of Regulation (EU) 2024/...⁺⁺, or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive (EU) 2024/...⁺ or with special procedural needs in accordance with Article 53(2), point (c), of Regulation (EU) 2024/...⁺⁺.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

10. For the purpose of applying the derogations referred to in this Article, the basic principles of the right to asylum and the respect of the principle of non-refoulement, as well as the guarantees provided for in Chapters I and II of Regulation (EU) 2024/...⁺ shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected.

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

11. The derogations provided for in this Article do not affect the process of determining the Member State responsible within the framework of Regulation (EU) 2024/...⁺⁺. Where that process is longer than the maximum duration of the asylum border procedure in a situation of crisis or *force majeure*, the process and the remainder of the asylum procedure shall be completed in the territory of the determining Member State in accordance with Article 51 of Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 12

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

1. In a situation of crisis as referred to in Article 1(4), point (a), or *force majeure* which renders it impossible for a Member State facing such a situation to comply with the time limits set out in Articles 39, 40, 41 and 46 of Regulation (EU) 2024/...⁺ or to receive persons for whom it is responsible pursuant to that Regulation, Member States may derogate from the time limits set out in Articles 39, 40, 41 and 46 of that Regulation simultaneously.
2. Where a Member State applies the derogation provided for in paragraph 1 of this Article, it shall:
 - (a) submit a take charge request as referred to in Article 39 of Regulation (EU) 2024/...⁺ within four months of the date on which the application was registered;
 - (b) reply to a take charge request as referred to in Article 40 of Regulation (EU) 2024/...⁺ within two months of receipt of the request;
 - (c) submit a take back notification as referred to in Article 41 of Regulation (EU) 2024/...⁺ within one month of receiving the Eurodac hit or confirm receipt within one month of such notification; and

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (d) carry out a transfer as referred to in Article 46(1) of Regulation (EU) 2024/...⁺ within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of that Regulation.
3. If the Member State referred to in paragraph 1 does not comply with the time limits set out in paragraph 2, point (a), (b) or (d), of this Article, the responsibility for examining the application for international protection pursuant to Regulation (EU) 2024/...⁺ shall lie with it or be transferred to it.
4. Where paragraph 1 of this Article is applied, transfers pursuant to Article 46 of Regulation (EU) 2024/...⁺ to the Member State responsible that faces a situation of crisis as referred to in Article 1(4), point (a), of this Regulation or *force majeure*, shall not be carried out until that Member State is no longer facing that situation, unless, due to the individual circumstances of the applicant, the responsible Member State has agreed to receive the person concerned. If the transfer does not take place within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of Regulation (EU) 2024/...⁺, including due to the persistence of the situation of crisis referred to in Article 1(4), point (a), of this Regulation or *force majeure*, by way of derogation from Article 46(1) of Regulation (EU) 2024/...⁺, the Member State responsible, facing that situation, shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the transferring Member State.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 13

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

1. By way of derogation from Article 36(1), point (b), and Article 38(4) of Regulation (EU) 2024/...⁺, in a situation of crisis as referred to in Article 1(4), point (a), of this Regulation where the mass arrivals of third-country nationals or stateless persons are of such extraordinary scale and intensity that it could create a serious risk of serious deficiencies in the treatment of applicants, thereby creating a serious risk that the Common European Asylum System is rendered non-functional, the Member State facing that situation may be relieved of its obligation to:
 - a) take back an applicant, a third-country national or stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 16(1) of Regulation (EU) 2024/...⁺⁺ where that responsibility was determined pursuant to Article 16(2) of Regulation (EU) 2024/...⁺; or
 - b) take back an applicant pursuant to Article 38(4) of Regulation (EU) 2024/...⁺.

This paragraph shall only apply where the application was registered in the Member State facing that situation within the period set out in the Council implementing decision referred to in Article 4(3) of this Regulation which shall not exceed four months before the date of adoption of that Council implementing decision.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

2. Where paragraph 1 of this Article is applied, and the Member State facing that situation was determined as responsible pursuant to Article 16(2) of Regulation (EU) 2024/...⁺, that Member State shall be relieved of its obligation to take back the person concerned and responsibility shall be transferred to the Member State where the second application was registered.

The Member State that becomes responsible pursuant to the first subparagraph of this paragraph shall indicate in Eurodac that it has become the Member State responsible in accordance with Article 16(3) of Regulation (EU) 2024/...⁺⁺.

3. By way of derogation from paragraphs 2 and 4 of Article 38 of Regulation (EU) 2024/...⁺, where paragraph 1 of this Article is applied and the Member State facing that situation is obliged to take back an applicant pursuant to Article 38(4) of Regulation (EU) 2024/...⁺, the Member State where the second application is registered shall apply the procedures set out in Part III of that Regulation, with the exception of Article 16(2), Article 17(1) and (2), Article 25(5) and Article 33(1) and (2), and the obligation to take back an applicant pursuant to Article 38(4) shall be transferred to that Member State.

Where no Member State responsible can be determined under the first subparagraph of this paragraph, the Member State where the second application was registered shall be responsible for examining the application for international protection. Applications for international protection for which a Member State has sent a take back notification pursuant to Article 41 of Regulation (EU) 2024/...⁺ before the date of adoption of the Council implementing decision referred to in Article 4(3) of this Regulation shall not be affected by this subparagraph.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

The Member State that becomes responsible pursuant to the second subparagraph of this paragraph shall indicate in Eurodac that it has become the Member State responsible in accordance with Article 16(1) of Regulation (EU) 2024/...⁺.

Chapter V

Expedited procedure

Article 14

Expedited procedure

1. Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or of former habitual residence, or from a part of such a country, or on the basis of the criteria set out in Regulation (EU) 2024/...⁺⁺ could be well-founded, the Commission may, after consultation with the High-Level EU Solidarity Forum, adopt a recommendation for the application of an expedited procedure by providing all relevant information in view of facilitating, in particular, the application by the determining authorities of Article 13(11), point (a), and Article 34(5), point (a), of Regulation (EU) 2024/...⁺⁺⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24(2016/0224A(COD)).

2. Where, following the adoption of a recommendation as referred to in paragraph 1 of this Article, the determining authority applies Article 13(12), point (a), of Regulation (EU) 2024/...⁺ to omit the personal interview and Article 34(5), point (a), of that Regulation to prioritise the examination of the application because it is likely to be well-founded, it shall ensure, by way of derogation from Article 35(4) of that Regulation, that the examination of the merits of the application is concluded no later than four weeks from the lodging of the application.
3. When considering whether to adopt a recommendation as referred to in paragraph 1, the Commission may consult the relevant Union agencies, UNHCR and other relevant organisations.

Chapter VI

Final provisions

Article 15

Specific provisions and guarantees

In a situation of crisis, where a Member State applies a derogation as referred to in Articles 10 to 13, it shall duly inform third-country nationals or stateless persons in a language which they understand or are reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, which are accessible for registering and lodging an application for international protection, and the duration of the measures.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24(2016/0224A(COD)).

Article 16
Crisis preparedness

1. National strategies established by Member States in accordance with Article 7 of Regulation (EU) 2024/...⁺ shall also include:
 - (a) preventive measures to ensure a sufficient level of preparedness and to reduce the risk of situations of crisis, and contingency planning, taking into account the contingency planning pursuant to Regulations (EU) 2021/2303 and (EU) 2019/1896 and Directive (EU) 2024/...⁺⁺ and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint;
 - (b) an analysis of measures needed to respond to and resolve situations of crisis and *force majeure* in the Member State concerned, including measures to protect the rights of applicants and beneficiaries of international protection and other forms of protection.
2. For the purposes of paragraph 1, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as regional and local authorities, as appropriate and in accordance with national law.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. The Member States shall revise, where necessary, the national strategies established in accordance with Article 7 of Regulation (EU) 2024/...⁺ and in any case, no later than one year from the date on which the situation of crisis ended in accordance with Article 5 of this Regulation.

Article 17

Cooperation and assessment

1. In order to ensure the smooth application of the measures included in the Council implementing decision referred to in Article 4(3) of this Regulation, the EU Solidarity Coordinator shall convene a first meeting of the Technical-Level EU Solidarity Forum as referred to in Article 14(5) of Regulation (EU) 2024/...⁺ immediately following the adoption of such a Council implementing decision. Following that first meeting, the Technical-Level EU Solidarity Forum shall meet as many times as necessary.
2. The Member State in a situation of crisis may request the assistance of all authorities that are able to increase, at short notice, the human resources of its competent authorities in accordance with Article 5 of Regulation (EU) 2024/...⁺⁺ and the assistance of experts deployed by the Asylum Agency in accordance with Article 5, point (a), of that Regulation, and Article 16(2), point (b), and Article 21(3), point (d), of Regulation (EU) 2021/2303.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. The Commission, the European Parliament, the Council, the relevant Union agencies and the Member State facing a situation of crisis or *force majeure* shall closely cooperate and regularly inform each other on the implementation of the Council implementing decision referred to in Article 4(3).
4. The Member State facing a situation of crisis or *force majeure* shall continue reporting all relevant data to the Commission, including statistics that are relevant for the implementation of this Regulation. The Member State concerned shall also provide the Commission with the specific information needed for it to carry out the review under Article 6(3) and to make the proposal for repeal or extension of the Council implementing decision as well as any other information the Commission may request on that basis.
5. The Member State facing a situation of crisis or *force majeure* shall continue to cooperate closely with the UNHCR and any other organisations entrusted by the Member State with tasks under this Chapter and Regulation (EU) 2024/...⁺ and Directive (EU) 2024/...⁺⁺.
6. In exercising their powers and carrying out their responsibilities pursuant to this Article, the Commission and the Council shall ensure at all times that the principles of necessity and proportionality are respected.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

Article 18
Financial support

1. Member States undertaking relocation as a solidarity measure shall be able to benefit from Union financial support under the conditions set out in Article 11(9) of Regulation (EU) 2021/1147, including for early integration measures implemented by regional and local authorities.
2. Emergency funding support for a Member State in a situation of crisis may be allocated pursuant to Article 31(1), point (a), of Regulation (EU) 2021/1147, including for the construction, maintenance and renovation of reception facilities required for the implementation of this Regulation, in accordance with the standards provided for in Directive (EU) 2024/...⁺.

Article 19
Amendment to Regulation (EU) 2021/1147

In Article 31(1) of Regulation (EU) 2021/1147, the following point is added:

- ‘(ba) a situation of crisis within the meaning of Article 1(4), point (a), of Regulation (EU) 2024/... of the European Parliament and of the Council^{*++}.

^{*} Regulation (EU) 2024/... of the European Parliament and of the Council of ... addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L, ..., ELI: ...).’

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

Article 20
Entry into force

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

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

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

Done at...,

For the European Parliament
The President

For the Council
The President
