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From:	Presidency
To:	Permanent Representatives Committee
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Subject:	- Commission Recommendation of 8.6.2015 on a European resettlement scheme - Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece = Main outstanding issues

Introduction

On 23 April 2015, the European Council committed to consider options for organising emergency relocation between all Member States and to set up a pilot project on resettlement across the EU, offering places to persons qualifying for protection.

In the European Agenda on Migration published on 13 May 2015, the European Commission committed to taking a number of concrete measures in order to respond to the immediate, emergency situation. Shortly afterwards, it presented a first implementation package, including a proposal for a Council Decision to trigger an emergency relocation of 40 000 persons in clear need of international protection from Italy and Greece based on Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) and a Recommendation proposing an EU-wide resettlement scheme to offer 20 000 places to people in clear need of international protection outside of the EU.

On 25 June 2015, the European Council agreed to the rapid adoption of a temporary and exceptional relocation mechanism over two years from the frontline Member States Italy and Greece to other Member States (40 000 persons in clear need of international protection) and agreed on an EU resettlement scheme (20 000 displaced persons in clear need of international protection).

The Presidency would like to update delegations on the state of play of voluntary pledges.

Tasked by the European Council of 25 June 2015 to agree rapidly on both instruments, the Presidency is seeking an agreement on a number of outstanding issues.

In order to make progress on specific issues, delegations are kindly invited to reflect on the following open questions:

Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece

Main outstanding issues:

1. Choice of applicants to be relocated from Italy and Greece - Article 3 (2) and recital 18

The Commission proposes a system based on a threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance as defined by Eurostat out of the total number at Union level of decisions on applications for international protection at first instance, taking account the latest available statistics. As a consequence, the Decision only applies to nationalities for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection is 75% or higher.

➤ *To take into account the changing nature of flows, should targeted groups of beneficiaries for relocation regularly be assessed, a) on a yearly basis or b) on quarterly basis?¹*

¹ Annually, based on the EU-wide average on Eurostat data for 2014, Syrians and Eritreans would qualify for the scheme. On a quarterly basis, based on the first quarter of 2015, Syrians, Eritreans and Iraqis would qualify for the scheme.

2. Secondary movements/ Onward movement within the Union and/or participating Associated States – article 6 (5) and recital 30

In its proposal, the Commission highlights especially that Member States should take measures in order to avoid secondary movements of relocated persons. It specifies in particular that Member States should inform the person concerned about the consequences of irregular onward movement. In article 6 (5), it also underlines that any applicant or beneficiary of international protection entering the territory of another Member State than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to go back immediately and taken back by the Member State of relocation, pursuant to the rules of the Dublin regulation and the Return directive.

There are already a number of existing tools to deter secondary movements at the disposal of Member States which are in line with the current acquis.

1. Concerning applicants for international protection, Member States should:
 - a. not issue them residence permits and travel documents²;
 - b. inform them early in the process on the consequences of onward irregular movement;
 - c. impose regular reporting obligations before the competent authorities;
 - d. under the Dublin procedure, send back to the Member State responsible an applicant who moved irregularly to another Member State while the examination of his/her application was pending or his/her application rejected.
2. Concerning beneficiaries of international protection³, Member States should:
 - a. inform them about the conditions under which they may legally enter and stay in another Member State;

² Except for serious humanitarian reasons.

³ Under the Schengen Borders Code, beneficiaries who are residing in a Member State and in possession of a valid travel document can legally stay for no more than 90 days in any 180-day period in another Member State than the one where they reside without a visa.

- b. impose reporting obligations before the competent authorities, in line with the rules applicable to nationals;
- c. require a beneficiary of international protection who is staying irregularly in another Member State to go back immediately to his Member State of residence and, if the person refuses to comply with a request to return voluntarily, may enforce such return using one of the preexisting national bilateral agreements. In the absence of such readmission agreements, enforced return to another Member State is possible under article 4(3) of the Return Directive, if direct return to a third country is practically impossible. Furthermore, Member States could decide, in case of enforced return to another Member State and as a matter of national law, to accompany the return decision with a national entry ban that would prevent the beneficiary, for a certain period of time, from re-entering the territory of that specific Member State.

➤ *Should other measures complement the above listed safeguards? If so, which ones?*⁴

3. Operational support to Italy and Greece – article 7

In addition to relocation, the Commission proposal lays down other measures of support to be provided to Italy and Greece. In particular, the proposal envisages an increase in the support by other Member States to Italy and Greece under the coordination of EASO and other relevant agencies. The aim is to assist, in case of need, Italy and Greece in particular in the screening and the initial stages of the processing of all applications as well as in the implementation of the relocation procedure (fingerprinting, identification of nationalities, registration/lodging, Dublin screening, initial interviews).

➤ *Is there a common understanding that the integrated approach will be used to implement the relocation scheme and to further support the Migration and Asylum systems of both countries?*

⁴ By analogy the same reasoning is applying to point 10 and recital 13 on a European resettlement scheme.

4. Complementary measures to be taken by Italy and Greece – article 8 (2) and recital 14

If Italy or Greece does not comply with the obligation referred to in paragraph 8 (1), the Commission may decide to suspend this Decision with regard to that Member State for a period of up to three months. The Commission may decide once to extend such suspension for a further period of up to three months.

➤ *Can Member States accept the proposed mechanism?*

5. Formerly proposed distribution key

Referring to the June European Council conclusions, Member States will agree by consensus on the distribution of 40 000 persons in clear need of international protection. The Presidency therefore proposes to delete the proposed criteria for the distribution keys and to adapt the text of the decision accordingly.

Commission Recommendation of 8.6.2015 on a European resettlement scheme

Main outstanding issue:

1. Priority regions – point 6 and recital 11

The Commission has identified priority regions for resettlement based on the situation in the neighborhood, on current displacements and on their link with Regional Development and Protection Programs. It suggests that persons in need of protection should in particular be resettled from countries in North Africa, the Middle East and the Horn of Africa in which the Regional Development and Protection Programs are implemented⁵.

➤ *The Presidency proposes to maintain the proposed priority regions. Can Member States agree to this choice?*

⁵ The following 13 countries are covered by the Regional Development and Protection Programs: Algeria, Egypt, Ethiopia, Iraq, Jordan, Kenya, Lebanon, Libya, Mauritania, Morocco, Niger, Sudan, Tunisia