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Proposal for a

COUNCIL DECISION

**establishing provisional measures in the area of international protection for the benefit
of Italy and Greece**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. European Agenda on Migration

The European Commission presented a comprehensive European Agenda on Migration¹ on 13 May 2015, outlining, on the one hand, the immediate measures that will be proposed by the Commission to respond to the crisis situation in the Mediterranean and, on the other, the medium and long terms initiatives that need to be taken to provide structural solutions for better managing migration in all its aspects.

As part of the immediate measures, the Commission announced that, by the end of May, it will propose a mechanism to trigger the emergency response system envisaged under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU). The Agenda acknowledged that today Member States' asylum systems face an unprecedented pressure and that with the volumes of arrivals in particular to frontline Member States, their reception and processing capacities are already stretched to their limits. The Agenda announced that the proposal to trigger Article 78(3) will include a temporary distribution scheme for persons in clear need of international protection to ensure a fair and balanced participation of all Member States to this common effort. A redistribution key was included in the Annex to the Agenda, based on the criteria referred to therein (GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees).

The Agenda underlined that the swift response that will be taken to reply to the current crisis in the Mediterranean must serve as the blueprint for the EU's reaction to future crisis, whichever part of the common external border comes under pressure from East to West and from North to South.

1.2. Triggering Article 78(3) of the Treaty in respect of Italy and Greece

As part of the common policy on asylum, Article 78(3) of the Treaty provides a specific legal basis to deal with emergency situations. Based on a proposal by the European Commission, it enables the Council, after consulting the European Parliament, to adopt provisional measures for the benefit of Member State(s) confronted with an emergency situation characterised by a sudden inflow of nationals of third countries into one or more Member State(s). The provisional measures envisaged by Article 78(3) are exceptional in nature. They can only be triggered when a certain threshold of urgency and severity of the problems created in the Member State(s)' asylum system(s) by a sudden inflow of third country nationals is met.

The European Agenda on Migration, the recent statement of the European Council² and the European Parliament Resolution³ presented in the wake of the recent tragedies in the Mediterranean, all concur on the specific and urgent needs frontline Member States are confronted with and on the need to reinforce internal solidarity and propose concrete measures to provide support to the most affected Member States.

The statistical information regarding the numbers of irregular arrivals of third-country nationals in the Member States in 2014 and 2015, including of those who appear to be in clear need of international protection confirms that, at present, two frontline Member States, namely Italy and Greece are confronted with an exceptional migratory pressure.

¹ COM(2015) 240 final, 13.5.2015.

² Special meeting of the European Council (23 April 2015), Statement, EUCO 18/15.

³ P8_TA(2015)0176, 28 April 2015.

According to Frontex data, the Central and Eastern Mediterranean route were indeed the main areas for irregular border crossing into the EU in 2014, representing more than 75% of the EU total irregular border crossing. In 2014, more than 170 000 migrants arrived in Italy alone in an irregular manner, representing an increase of 277% compared to 2013. A steady increase was witnessed also by Greece with more than 50 000 irregular migrants reaching the country, representing an increase of 153% compared to 2013. Statistics for the first months of 2015 confirm this clear trend in respect of Italy. In addition, Greece has faced in the first four months of 2015 a sharp increase in the number of irregular border crossings, corresponding to more than 50% of the total number of irregular border crossings in 2014 (almost 28 000 in the first four months of 2015 in comparison to a total number of almost 55 000 in 2014). A significant proportion of the total number of irregular migrants detected in these two regions included migrants of nationalities which, based on the Eurostat data, meet a high EU level recognition rate (in 2014, the Syrians and the Eritreans, for which the EU level recognition rate is more than 75%, represented more than 40% in Italy and more than 50% in Greece).

According to Eurostat, 64 625 persons applied for international protection in Italy in 2014, compared to 26 920 in 2013 (an increase of 143%). A lesser increase in the number of applications was witnessed by Greece with 9 430 applicants (an increase of 15%).

According to Frontex data, another important migration route into the EU in 2014 was the Western Balkan route with 43 357 irregular border crossings (15% of the EU total irregular border crossing). However, the majority of migrants using the Balkan route are not *prima facie* in need of international protection, with Kosovars accounting for 51% of the arrivals.

Italy's and Greece's geographical situation, with the ongoing conflicts in the region of their immediate neighbourhood makes them more vulnerable than the other Member States in the immediate future with unprecedented flows of migrants expected to continue to reach their territories. These external factors of increased migratory pressure add to the existing structural shortcomings in their asylum systems, putting further into question their ability to deal in an adequate manner with this situation of high pressure.

None of the other Member States currently appear in an emergency situation like the one experienced by Italy and Greece with similar peaks in the numbers of irregular arrivals with a high proportion of persons in clear need of international protection, coupled with a serious vulnerability of their asylum systems.

Therefore, the current migratory landscape in Italy and Greece is unique in the EU and the strain on their capacity to process applications for international protection and to provide adequate reception conditions and integration perspectives to persons in clear need of international protection requires all the other Member States to show solidarity.

Developments in the migratory flows will continue to be closely monitored by the Commission with regard to all Member States, including Malta, which, due to its similar geographic situation to Italy and Greece, has handled similar emergencies in the past. Therefore, similar measures can be triggered in the future in respect of those Member States which may be confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.

2. CONSULTATION OF INTERESTED PARTIES

This proposal is presented as result of a prevailing crisis in the area of asylum in Italy and Greece. To prevent further deterioration of the asylum situation in these two countries and provide them with effective support, the Commission had to react rapidly and present promptly its proposal based on Article 78(3) of the Treaty in view of its swift adoption by the

Council and implementation of the provisional measures to the benefit of Italy and Greece by the Member States.

EU institutions and key actors have already expressed their broad views on this topic. In its 23 April 2015 statement, the European Council committed to consider options for organising emergency relocation between all Member States on a voluntary basis. In its 28 April 2015 resolution, the European Parliament has called upon the Council to seriously consider the possibility of triggering Article 78(3) of the Treaty.

The UNHCR⁴ has called the EU to commit to intra-EU solidarity tools to support in particular Greece and Italy, including by relocating Syrian refugees who are rescued at sea to different countries across Europe, based on a fair distribution system. The NGO sector has also expressed its views on the issue of relocation of persons in need of international protection.⁵

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The objective of the proposal is to establish provisional measures in the area of international protection for the benefit of Italy and Greece, in order to enable them to deal in an effective manner with the current significant inflow of third country nationals in their territories, putting their asylum systems under strain.

The measures foreseen in this Decision entail a temporary derogation from the criterion laid down in Article 13(1) of Regulation (EU) 604/2013 and the procedural steps, including the time limits, laid down in Articles 21, 22 and 29 of that Regulation. The legal and procedural safeguards set out in Regulation (EU) No 604/2013, including the right to an effective remedy, remain applicable in respect of applicants covered by this Decision.

In line with Article 78(3), the measures which can be taken for the benefit of a Member State must be provisional. At the same time, in order to ensure that the measures taken have a real impact in practice and provide genuine support for Italy and Greece to cope with the influx of migrants, the duration of these measures should not be too short. It is therefore proposed to apply the provisional measures foreseen in this proposal for a period of 24 months from the entry into force of this Decision.

The provisional measures envisaged by this proposal relate first and foremost to the relocation of applicants for international protection who appear *prima facie* to be in clear need of international protection from Italy and Greece to the other Member States.

The other Member States, defined in the proposal as the “Member States of relocation” become responsible for examining the application of the person to be relocated. The examination of the application will be carried out pursuant to the rules laid down in Directive 2011/95/EU and Directive 2005/85/EC, and, as from 20 July 2015, Directive 2013/32/EU which will replace Directive 2005/85/EC. The reception conditions will be provided pursuant to the rules laid down in Directive 2003/9/EC, and, as from 20 July 2015, Directive 2013/33/EU, which will replace Directive 2003/9/EC.

The proposal establishes a numerical target for the applicants to be relocated from Italy and Greece, namely 24 000 and 16 000 respectively and includes in its annexes two distribution keys which define the number of applicants that shall be relocated from Italy and Greece

⁴ UNHCR proposals to address current and future arrivals of asylum seekers, refugees and migrants by sea to Europe, March 2015, available at: <http://www.refworld.org/docid/55016ba14.html>.

⁵ See for instance ECRE’s Ten point plan to prevent deaths at sea, 23 April 2015, available at: www.ecre.org.

respectively to the other Member States. This allocation between Italy and Greece is based on their respective shares in the total number of the irregular border crossings in Italy and Greece of persons in clear need of international protection. This also takes into account the sharp increase in the number of irregular border crossing in Greece over the January-April 2015 period when comparing to the same period last year. It is proposed that Italy and Greece do not themselves contribute as relocating Member States. The total of 40 000 applicants that should be relocated from Italy and Greece corresponds to approximately 40% of the total number of persons in clear need of international protection who have entered irregularly in these two countries in 2014. Thus, the relocation measure proposed in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other hand.

The scope of the relocation procedure set out in this Decision is limited in two respects.

Firstly, it is proposed to apply this Decision only in respect of applicants who are, *prima facie*, in clear need of international protection. This proposal defines those applicants as those belonging to nationalities for which the EU average recognition rate as established by Eurostat is above 75%.

Secondly, it is proposed to make this Decision applicable only in respect of those applicants for whom Italy or Greece would in principle be the Member State responsible, in line with the take charge criteria defined in Regulation (EU) No 604/2013. By doing so, it is ensured that Regulation (EU) No 604/2013 remains applicable in respect of those applicants present in Italy and Greece, including those with a recognition rate of above 75%, for which one of the objective criteria laid down in that Regulation (for instance the presence of family members in another Member State) indicates that another Member State would be responsible. These applicants will therefore be transferred to the other Member States in application of Regulation (EU) No 604/2013 and not as part of the provisional measures envisaged in this proposal. At the same time, Regulation (EU) No 604/2013 remains applicable also in respect of those persons who have not been relocated under the present scheme and who can be sent back to Italy by the other Member States. In this last respect, the situation is different for Greece, where the *status quo* is that Member States have suspended the Dublin transfers to Greece, in implementation of the European Court of Human Rights *M.S.S. vs. Belgium and Greece* judgment, followed by the decision in *N.S. v. UK* of the Court of Justice of the European Union, which confirmed the existence of systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in Greece.

The proposal sets out a simple relocation procedure, to ensure a quick transfer of the persons concerned to the Member State of relocation. Each Member State shall appoint a national contact point for the purpose of the implementation of this Decision and communicate it to the other Member States and to the European Asylum Support Office (EASO). Italy and Greece, with the assistance of EASO, and, where applicable, of Member States' liaison officers, shall, at regular intervals of time, identify the applicants who could be relocated. In doing so, priority should be given to the vulnerable applicants. Italy and Greece shall then communicate to the contact points of the other Member States and to EASO the precise numbers of applicants that could be relocated. The other Member States shall indicate the number of applicants that can be relocated immediately to their territory and any other relevant information, such as in respect of the reception of families or vulnerable applicants. A formal decision to relocate an applicant needs then to be taken by Italy or Greece and notified to the applicant. The proposal specifies that applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 may not be relocated unless their fingerprints have been taken. The proposal also specifies that Member States retain the right to refuse to relocate an applicant for which it is likely that there are

national security or public order concerns. The proposal foresees that all the procedural steps must be carried out as soon as possible and that, in any event, the transfer of the applicant needs to take place no later than one month from his/her identification as applicant to be relocated. Finally, the proposal also specifies that for the purpose of the relocation procedure, Member States may decide to send to Italy and Greece liaison officers.

It is clear that the full commitment and genuine cooperation of Member States, in the framework of the coordinated support to be provided by EASO, is essential for ensuring an effective implementation of the provisional measures envisaged.

In addition to relocation, the proposal lays down other measures of support to be provided to Italy and Greece *sur place*. In particular, the proposal envisages an increase in the support provided by other Member States to Italy and Greece under the coordination of EASO and other relevant Agencies. The aim is to assist Italy and Greece in particular in the screening and the initial stages of the processing of applications as well as in the implementation of the relocation procedure set out in this proposal (in particular provision of information and specific assistance to the persons concerned and practical arrangements for implementing the transfers).

The proposal also provides the obligation for Italy and Greece to present to the Commission a roadmap which shall include adequate measures in the area of asylum, first reception and return enhancing the capacity, quality and efficiency of their systems in these areas as well as measures to ensure a proper application of this Decision. The proposal foresees the possibility for the Commission to suspend, under certain circumstances, the application of this Decision.

The proposal includes specific guarantees and obligations for the applicants who are subject to relocation to another Member State. The proposal specifies the right to receive information on the relocation procedure, the right to be notified with the relocation decision which must specify the precise Member State of relocation and the right to be relocated with the family members in the same Member State of relocation. The proposal also recalls the obligation to give primary consideration to the best interests of the child when deciding the Member State of relocation. This implies *inter alia* the obligation for Italy and Greece to indicate to the other Member States when the applicant to be relocated is an unaccompanied minor and, together with the Member State who manifested an interest in relocating that minor, to ensure that before relocation takes place, a best interests of the child assessment is carried out, in line with General Comment No 14 (2013) of the UN Committee on the rights of the child to have his or her best interests taken as primary consideration⁶. The proposal also recalls the consequences of the secondary movements of the applicants for or beneficiaries of international protection which were part of the relocation scheme based on the currently applicable EU law, i.e. where they enter without authorisation into the territory of another Member State than the responsible one (in this case, the Member State of relocation).

The proposal recalls the possibility, which derives from Article 78 (3) of the Treaty, for the Council, based on a proposal from the Commission and after consulting the European Parliament, to adopt provisional measures for the benefit of a Member State other than Italy or Greece which would be confronted with a similar emergency situation characterised by a sudden inflow of nationals of third countries. In addition, the proposal foresees that such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision.

The proposal specifies that the relocation measures provided for in this Decision will benefit from the financial support under the Asylum, Migration and Integration Fund (AMIF) set up

⁶ http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

by Regulation (EU) N°516/2014. To this end, Member States of relocation shall receive a lump sum of EUR 6 000 for each applicant for international protection relocated from Italy and Greece pursuant to this Decision. This financial support will be implemented by applying the procedures laid down in Article 18 of Regulation (EU) N° 516/2014.

The proposal requires Italy and Greece to report every three months on the implementation of this Decision, including of the roadmaps, to the Council and the Commission.

Finally, the proposal specifies that this Decision shall apply to persons arriving on the territory of Italy and Greece as from the date of the entry into force of the Decision. The Decision will also be applied to applicants having arrived on the territory of those Member States from 15 April 2015, date around which the tragic events occurred prompting the European Council to decide to reinforce internal solidarity and responsibility and committed in particular to increase emergency assistance to front line Member States.

3.2. Legal basis

The legal basis for the proposed Council Decision is Article 78(3) of the Treaty on the Functioning of the European Union.

In accordance with the provisions of Protocol No 21 annexed to the TFEU on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, the United Kingdom and Ireland do not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the TFEU. The United Kingdom and Ireland may notify the Council, within three months after a proposal or initiative has been presented, or at any time after its adoption, that they wish to take part in the adoption and application of any such proposed measures.

In accordance with the provisions of Protocol No 22 on the position of Denmark, annexed to the TFEU, Denmark does not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the TFEU. At any time Denmark may, in accordance with its constitutional requirements, notify the other Member States that it wishes to apply in full all relevant measures adopted on the basis of Title V of the TFEU.

The European Community has concluded agreements with Iceland, Norway, Switzerland and Liechtenstein associating them to the “Dublin/Eurodac acquis” (Regulation 343/2003 replaced by Regulation 604/2013 and Regulation 2725/2000 which will be replaced by Regulation 603/2014). This proposal does not constitute a development of the “Dublin/Eurodac acquis” and there is therefore no obligation on behalf of the associated states to notify to the Commission their acceptance of this Decision, once approved by the Council. The associated states may nevertheless decide to voluntarily participate in the provisional measures established by this Decision.

3.3. Subsidiarity principle

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

The emergency situation created by the sudden influx of third-country nationals in Italy and Greece as described above puts their asylum systems and resources under considerable strain. As a consequence of this, other Member States can become affected, due to the secondary

movements of these persons from Italy and Greece to these other States. It is clear that actions of individual Member States cannot satisfactorily reply to the common challenges all Member States are confronted with in this area. EU action in this field is therefore essential.

3.4. Proportionality principle

The different financial and operational measures taken so far by the European Commission and the EASO to support the asylum systems of Italy and Greece have not proven sufficient to address the current crisis situation in these two Member States. Given the urgency and the severity of the situation created by the influx described above, opting for further EU action in their respect does not go beyond what is necessary to achieve the objective of addressing the situation effectively. In particular, the proposal envisages the relocation over a period of two years of 24 000 and 16 000 applicants who are in clear need of international protection from Italy and Greece respectively to the territory of the other Member States. Based on the statistical data in 2014 and the first four months of 2015, the number of persons to be relocated represents 12% in respect of Italy and 19% in respect of Greece out of the total number of irregular border crossing in Italy and Greece respectively.

The remaining third country nationals who have or who have not applied for international protection will fall outside the relocation scheme and remain under the responsibility of Italy and Greece or of the State which has been identified as the Member State responsible pursuant to Regulation (EU) No 604/2013. At the same time, the support provided by the Member States of relocation to Italy and Greece is linked to the submission by Italy and Greece respectively and the monitoring by the Commission of the respect for those roadmaps which shall include specific measures to be taken by Italy and Greece to ensure that, following the end of applicability of the relocation procedure provided for in this proposal, their asylum and migration systems will be better equipped to deal with situations of particular pressure.

3.5. Impact on fundamental rights

As a result of introducing provisional measures in the area of international protection for the benefit of Italy and Greece, the fundamental rights as provided for in the EU Charter of Fundamental Rights ("the Charter") of the applicants who are in clear need of international protection will be safeguarded.

In particular, by ensuring a swift access of the persons concerned to an adequate procedure for granting international protection, this Decision aims to protect the right to asylum and to ensure protection against *non-refoulement*, as provided for in Articles 18 and 19 of the Charter. In addition, by ensuring the transfer of the persons concerned to a Member State which is in a position to give them adequate reception conditions and integration perspectives, this Decision aims to ensure full respect for the right to dignity and protection against torture and inhuman or degrading treatment or punishment, as provided for in Articles 1 and 4 of the Charter. This Decision also aims to protect the rights of the child, in line with Article 24 of the Charter and right to family unity, in line with Article 7 of the Charter.

3.6. Budgetary impact

This proposal entails additional costs for the EU Budget for a total amount of EUR 240 000 000.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (hereafter "the Treaty"), and in particular Articles 78(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) In accordance with Article 78(3) of the Treaty, in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures to the benefit of the Member State(s) concerned.
- (2) In accordance with Article 80 of the Treaty, the policies of the Union in the area of border checks, asylum and immigration and their implementation should be governed by the principles of solidarity and fair sharing of responsibility between Member States and Union acts adopted in this area must contain appropriate measures to give effect to this principle.
- (3) The recent crisis situation in the Mediterranean prompted the Union institutions to immediately acknowledge the exceptional migratory flows in this region and call for concrete measures of solidarity towards the frontline Member States. In particular, at a joint meeting of Foreign and Interior Ministers on 20 April 2015, the European Commission presented a ten-point plan of immediate actions to be taken in response to this crisis, including a commitment to consider options for an emergency relocation mechanism.
- (4) In its conclusions of 23 April 2015, the European Council decided, *inter alia*, to reinforce internal solidarity and responsibility and committed in particular to increase emergency assistance to frontline Member States and to consider options for organising emergency relocation between Member States on a voluntary basis as well as to deploy European Asylum Support Office (EASO) teams in frontline Member States for joint processing of applications for international protection, including registration and fingerprinting.
- (5) In its resolution of 28 April 2015, the European Parliament reiterated the need for the Union to base its response to the latest tragedies in the Mediterranean on solidarity and fair sharing of responsibility and to step up its efforts in this area towards Member States which receive the highest number of refugees and applicants for international protection in either absolute or proportional terms.

- (6) Several Member States were confronted with a significant increase in the total number of migrants, including applicants for international protection, arriving on their territories in 2014 and some continue to be so in the first months of 2015. Emergency financial assistance by the European Commission and operational support by EASO were provided to several Member States to help them cope with this increase.
- (7) Among the Member States witnessing situations of particular pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular have experienced unprecedented flows of migrants, including applicants for international protection who are in clear need of international protection, arriving on their territories, generating a significant pressure on their migration and asylum systems.
- (8) According to data of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the Central and Eastern Mediterranean route were the main areas for irregular border crossing into the Union in 2014. In 2014, more than 170 000 migrants arrived in Italy alone in an irregular manner, representing an increase of 277% compared to 2013. A steady increase was also witnessed by Greece with more than 50 000 irregular migrants reaching the country, representing an increase of 153% compared to 2013. Statistics for the first months of 2015 confirm this clear trend in respect of Italy. In addition, Greece has faced in the first months of 2015 a sharp increase in the number of irregular border crossings, corresponding to more than 50% of the total number of irregular border crossings in 2014 (almost 28 000 in the first four months of 2015 in comparison to a total number of almost 55 000 in 2014). A significant proportion of the total number of irregular migrants detected in these two regions included migrants of nationalities which, based on the Eurostat data, meet a high Union level recognition rate (in 2014, the Syrians and the Eritreans, for which the Union recognition rate is more than 75%, represented more than 40% of the irregular migrants in Italy and more than 50% of them in Greece). According to Eurostat, 30 505 Syrians were found to be irregularly present in Greece in 2014 compared to 8 220 in 2013.
- (9) According to Eurostat, 64 625 persons applied for international protection in Italy in 2014, compared to 26 920 in 2013 (that is to say an increase of 143%). A lesser increase in the number of applications was witnessed by Greece with 9 430 applicants (that is to say an increase of 15%).
- (10) According to Frontex data, another important migration route into the Union in 2014 was the Western Balkan route with 43 357 irregular border crossings. However, the majority of migrants using the Balkan route are not prima facie in need of international protection, with 51% of the arrivals being made up only of Kosovars.
- (11) Many actions have been taken so far to support Italy and Greece in the framework of the migration and asylum policy, including by providing to them substantial emergency assistance and EASO operational support. Italy and Greece have been the second and third largest beneficiary of funding disbursed during the period 2007-2013 under the General Programme "Solidarity and Management of Migration Flows" (SOLID) and received in addition substantial emergency funding. Italy and Greece will continue to be the main beneficiaries of the Asylum, Migration and Integration Fund (AMIF) over 2014-2020.
- (12) Due to the on-going instability and conflicts in the immediate neighbourhood of Italy and Greece, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant part of the migrants who may be in need of international protection. This demonstrates the critical need to

show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of international protection.

- (13) At the same time, Italy and Greece should provide structural solutions to address the shortcomings in the functioning of their asylum and migration systems. The measures laid down in this Decision should therefore go hand in hand with the establishment by Italy and Greece of a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas. In this respect, Italy and Greece should each within one month of entry into force of this Decision, present a roadmap to the Commission which should include adequate measures in the area of asylum, first reception and return enhancing the capacity, quality and efficiency of their systems in these areas, as well as measures to ensure appropriate implementation of this Decision with a view to enable them to better cope, after the end of the applicability of this decision, with a possible increased inflow of migrants on their territories.
- (14) The Commission should be entrusted with the power to suspend, where appropriate, the application of this Decision for a limited amount of time where Italy or Greece does not respect their commitments in this regard.
- (15) If a Member State other than Italy or Greece should be confronted with a similar emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State concerned, in line with Article 78(3) of the Treaty. Such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision.
- (16) In line with Article 78(3) of the Treaty, the measures envisaged for the benefit of Italy and Greece should be of a provisional nature. A period of 24 months is reasonable in view of ensuring that the measures provided for in this Decision have a real impact in respect of supporting Italy and Greece to deal with the significant migration flows on their territories.
- (17) The measures foreseen in this Decision entail a temporary derogation from the criterion laid down in Article 13(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council⁷ and the procedural steps, including the time limits, laid down in Articles 21, 22 and 29 of that Regulation.
- (18) A choice had to be made in respect of the criteria to be applied when deciding which and how many applicants are to be relocated from Italy and Greece. A clear and workable system is envisaged 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 asylum applications for international protection taken at first instance, based on the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants who are most likely in need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would

⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p.31).

prevent, to the maximum extent possible, applicants who are likely to receive a negative decision to their application from being relocated to another Member State and therefore prolong unduly their stay in the Union. Based on Eurostat data for 2014 first instance decisions, a threshold of 75%, which corresponds in that year to decisions on applications for Syrians and Eritreans, should be used in this Decision.

- (19) The provisional measures are intended to relieve the significant asylum pressure from Italy and Greece, in particular by relocating an important number of applicants in clear need of international protection who have arrived in the territory of Italy and Greece following the date on which this Decision becomes applicable. Based on the overall number of third-country nationals who have entered irregularly Italy and Greece in 2014 and the number of those who are in clear need of international protection, a total of 40 000 applicants in clear need of international protection should be relocated from Italy and Greece. This number corresponds to approximately 40% of the total number of third country nationals in clear need of international protection who have entered irregularly in Italy and Greece in 2014. Thus, the relocation measure proposed in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other hand. Based on the same overall available figures in 2014 and in the first four months of 2015 in Italy compared to Greece, 60% of these applicants should be relocated from Italy and 40% from Greece.
- (20) In line with the Annex to the Communication from the Commission on the European Agenda on Migration⁸, the proposed distribution key should be based on a) the size of the population (40% weighting), b) the total of the GDP (40% weighting), c) the average number of spontaneous asylum applications and the number of resettled refugees per one million inhabitants over the period 2010-2014 (10% weighting) and d) the unemployment rate (10% weighting). The distribution keys set out in Annex I and Annex II of this Decision take into account the fact that the Member States from which relocation will take place should not themselves contribute as a Member State of relocation.
- (21) The Asylum, Migration and Integration Fund (AMIF) set up by Regulation (EU) No 516/2014 of the European Parliament and of the Council⁹ provides support to burden-sharing operations agreed between Member States and is open to new policy developments in that field. Article 7(2) of Regulation (EU) No 516/2014 foresees the possibility for Member States to implement actions related to the transfer of applicants for international protection as part of their national programmes, while Article 18 of Regulation (EU) No 516/2014 foresees the possibility of a lump sum of EUR 6 000 for the transfer of beneficiaries of international protection from another Member State.
- (22) With a view to implementing the principle of solidarity and fair sharing of responsibility, and taking into account that this Decision constitutes a further policy development in this field, it is appropriate to ensure that the Member States that relocate applicants who are in clear need of international protection from Italy or Greece pursuant to this Decision receive a lump sum for each relocated person which is identical to the lump sum foreseen in Article 18 of Regulation (EU) No 516/2014 and implemented by applying the same procedures. This entails a limited, temporary

⁸ COM (2015) 240 final.

⁹ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p.168).

derogation from Article 18 of Regulation 516/2014, because the lump sum should be paid in respect of relocated applicants rather than beneficiaries of international protection. Such a temporary extension of the scope of potential recipients of the lump sum appears indeed an integral part of the emergency scheme set up by the present Decision.

- (23) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the provisional measures by a close administrative cooperation between Member States and operational support provided by EASO.
- (24) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented.
- (25) When deciding which applicants in clear need of international protection should be relocated from Italy and Greece, priority should be given to vulnerable applicants within the meaning of Article 22 of Directive 2013/33/EU of the European Parliament and of the Council¹⁰. In this respect, special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration.
- (26) In addition, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications of the applicants concerned which could facilitate their integration into the Member State of relocation, such as their language skills. In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants.
- (27) The appointment by Member States of liaison officers in Italy and Greece should facilitate the effective implementation of the relocation procedure, including the appropriate identification of the applicants to be relocated, taking into account in particular their vulnerability and qualifications.
- (28) The legal and procedural safeguards set out in Regulation (EU) No 604/2013 remain applicable in respect of applicants covered by this Decision. In addition, applicants should be informed of the relocation procedure set out in this Decision and notified with the relocation decision. Considering that an applicant does not have the right under EU law to choose the Member State responsible for his/her application, the applicant, should have the right to an effective remedy against the relocation decision in line with Regulation (EU) No 604/2013, only in view of ensuring respect of his/her fundamental rights.
- (29) Before and after being transferred to the Member States of relocation, applicants should enjoy the rights and guarantees set up in Council Directive 2003/9/EC¹¹ and Council Directive 2005/85/EC¹², and, as from 20 July 2015, Directive 2013/33/EU and Directive 2013/32/EU¹³ of the European Parliament and of the Council, including in

¹⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (OJ L 180, 29.6.2013, p.96).

¹¹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L31, 6.2.2003, p.18).

¹² Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p.13).

¹³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p.60).

relation to their special reception and procedural needs. In addition, Council Regulation (EC) No 2725/2000¹⁴ and, as from 20 July 2015, Regulation (EU) No 603/2013¹⁵ remains applicable in respect of applicants covered by this Decision.

- (30) Measures should be taken in order to avoid secondary movements of relocated persons from the Member State of relocation to other Member States. In particular, applicants should be informed of the consequences of onward movement within the Member States and of the fact that, if the Member State of relocation grants them international protection, in principle, they are only entitled to the rights attached to international protection in that Member State.
- (31) Since the objectives of this Decision cannot be sufficiently achieved by the Member States and can therefore, 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 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.
- (32) This Decision respects the fundamental rights and observes the principles recognised by the Charter.
- (33) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Decision.]*

OR

- (34) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Decision and are not bound by it or subject to its application.]*

OR

- (35) *[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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]*

¹⁴ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p.1).

¹⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L180, 29.06.2013, p.1).

(36) *In accordance with Article 3 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Decision.]*

OR

(37) *[In accordance with Article 3 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Decision.*

(38) *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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]*

(39) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(40) In view of the urgency of the situation, this Decision should enter into force on the date following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

Subject-matter

This Decision establishes provisional measures in the area of international protection for the benefit of Italy and Greece in view of enabling them to cope with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States.

Article 2

Definitions

For the purposes of this Decision, the following definitions apply:

(a) ‘application for international protection’ means an application for international protection as defined in point (h) of Article 2 of Directive 2011/95/EU of the European Parliament and of the Council¹⁶;

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

¹⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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 (OJ L 337, 20.12.2011, p.9).

(c) ‘international protection’ means refugee status and subsidiary protection status as defined in points (e) and (g) of Article 2 of Directive 2011/95/EU;

(d) ‘family members’ means family members as defined in point (g) of Article 2 of Regulation (EU) No 604/2013 of the European Parliament and of the Council;

(e) ‘relocation’ means the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of Regulation (EU) No 604/2013 indicate as responsible for examining his application for international protection to the territory of the Member State of relocation;

(f) ‘Member State of relocation’ means the Member States which becomes responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013 of an applicant following his relocation in the territory of that Member State.

Article 3

Scope

1. Relocation shall only take place in respect of applicants whose applications for international protection shall in principle be examined by Italy and Greece pursuant to the criteria for determining the Member State responsible set out in Chapter III of Regulation (EU) No 604/2013.

2. Relocation pursuant to this Decision shall only be applied in respect of applicants belonging to nationalities for which, according to the latest available EU-wide average Eurostat data, the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/13/EU is 75% or higher. In the case of stateless persons, the country of former habitual residence shall be taken into account.

Article 4

Distribution key

1. 24 000 applicants shall be relocated from Italy to the territory of the other Member States as set out in Annex I.

2. 16 000 applicants shall be relocated from Greece to the territory of the other Member States as set out in Annex II.

Article 5

Relocation procedure

1. For the purpose of the administrative cooperation required to implement this Decision, each Member State shall appoint a national contact point, whose address it shall communicate to the other Member States and to EASO. Member States shall, in liaison with EASO, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

2. Italy and Greece shall, at regular intervals during the period of application of this Decision, with the assistance of EASO and, where applicable, of Member States' liaison officers referred to in paragraph 8, identify the individual applicants to be relocated to the other Member States and communicate to the contact points of those Member States and to EASO the number of applicants that can be relocated. Priority shall be given for that purpose to vulnerable applicants within the meaning of Article 22 of Directive 2013/33/EU.

3. As soon as possible after receiving the information referred to in paragraph 2, Member States shall indicate the number of applicants who can be relocated immediately to their territory and any other relevant information, within the numbers set out in Annex I and Annex II respectively.
4. On the basis of the information received pursuant to paragraph 3, Italy and Greece shall, as soon as possible, take a decision to relocate each of the identified applicants to a specific Member State of relocation and shall notify the applicant in accordance with Article 6(4).
5. Applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 may only be relocated if their fingerprints have been taken.
6. The transfer of the applicant to the territory of the Member State of relocation shall take place as soon as possible following the date of the notification of the transfer decision referred to in Article 6(4).
7. Member States retain the right to refuse to relocate an applicant for which it is likely that there are national security or public order concerns.
8. For the implementation of all aspects of the relocation procedure described in this Article Member States may decide to send to Italy and Greece liaison officers.
9. The relocation procedure provided for in this Article shall not take longer than one month from the time of identification of the specific applicants to be relocated in line with paragraph 2 of this Article.

Article 6

Rights and obligations of applicants for international protection covered by this Decision

1. The best interests of the child shall be a primary consideration for Member States when implementing this Decision.
2. Member States shall ensure that family members who fall within the scope of this Decision are relocated to the territory of the same Member State.
3. Prior to the decision to relocate an applicant, Italy and Greece shall inform the applicant in a language which the applicant understands or is reasonably supposed to understand on the relocation procedure as set out in this Decision.
4. When the decision to relocate an applicant has been taken and before the actual relocation, Italy and Greece shall notify the person concerned of the decision to relocate him in writing. That decision shall specify the Member State of relocation.
5. An applicant or beneficiary of international protection who enters 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 laid down in Regulation (EU) No 604/2013 and Directive 2008/115/EC of the European Parliament and of the Council¹⁷ respectively.

¹⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p.98).

Article 7

Operational support to Italy and Greece

Member States shall increase their support in the area of international protection to Italy and Greece via the relevant activities coordinated by EASO and other relevant Agencies, in particular by providing when necessary national experts for the following support activities:

- (a) the screening of the third-country nationals arriving in Italy and Greece, including their clear identification, fingerprinting and registration of the applications for international protection;
- (b) the initial processing of the applications;
- (c) the provision to applicants or potential applicants that could be subject to relocation pursuant to this Decision of information and specific assistance that they may need;
- (d) the implementation of the transfer of the applicants to the Member State of relocation.

Article 8

Complementary measures to be taken by Italy and Greece

1. Italy and Greece shall each, within one month of entry into force of this Decision, present a roadmap to the Commission which shall include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of their systems in these areas as well as measures to ensure appropriate implementation of this Decision. Italy and Greece shall fully implement this roadmap.

2. If Italy or Greece does not comply with the obligation referred to in paragraph 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.

Article 9

Emergency situations in the Member States of relocation

In the event of an emergency situation characterised by a sudden inflow of nationals of third countries in a Member State of relocation, the Council, on a proposal from the Commission and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State concerned, pursuant to Article 78(3) of the Treaty. Such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision.

Article 10

Financial support

The Member State of relocation shall receive a lump sum of EUR 6 000 for each applicant for international protection relocated pursuant to this Decision. This financial support shall be implemented by applying the procedures laid down in Article 18 of Regulation (EU) No 516/2014.

Article 11

Reporting

Italy and Greece shall report to the Council and the Commission on the implementation of this Decision, including on the roadmaps referred to in Article 8, every three months.

Article 12
Entry into force

1. This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply until [24 months from the entry into force].
3. It shall apply to persons arriving on the territory of Italy and Greece as from [OJ to replace this by the exact date of entry into force] until [OJ to replace this by the exact date of entry into force plus 24 months] , as well as to applicants having arrived on the territory of those Member States from 15 April 2015 onwards.

Done at Brussels,

For the Council
The President