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COM(2016) 171 final

2016/0089 (NLE)

Proposal for a

COUNCIL DECISION

**amending Council Decision (EU) 2015/1601 of 22 September 2015 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. Article 78(3) of the Treaty and the current temporary relocation schemes

As part of the common policy on asylum, Article 78(3) of the Treaty on the Functioning of the EU (TFEU) 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) TFEU 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.

On the basis of Article 78(3) TFEU, the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523¹, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council Decision (EU) 2015/1601², 120 000 applicants for international protection are to be relocated from Italy and Greece and from other Member States if they are confronted with an emergency situation.

Under Article 4(2) of Council Decision (EU) 2015/1601 as of 26 September 2016, 54 000 out of 120 000 applicants should be relocated from Italy and Greece, to the territory of other Member States unless by that date, pursuant to Article 4(3), the Commission makes a proposal to allocate them to another beneficiary Member State(s) confronted with an emergency situation characterised by a sudden inflow of persons.

According to Article 1(2) the Commission shall keep under constant review the situation regarding massive inflows of third country nationals into Member States and submit as appropriate proposals to amend Decision 2015/1601 in order to take account of the evolution of the situation on the ground and its impact on the relocation mechanism as well as the evolving pressure on Member States, in particular frontline Member States.

The situation remains critical. According to Frontex data, during the first months of 2016, an average of 2 000 to 3 000 persons have entered irregularly Greece from Turkey on a daily basis. The restrictions imposed at the Greece/former Yugoslav Republic of Macedonia border have put additional strain on Greece³ and have increased the risk of new migratory routes developing through other EU Member States as the weather conditions improve. These new migratory routes are likely to affect frontline Member States.

The Commission adopted the First report on relocation and resettlement on 16 March, in line with the obligation under Article 12 of the two Council Decisions.⁴ The Communication

¹ Council Decision (EU) 2015/ 1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015, p. 146.

² Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, p. 80.

³ With the flows continuing, more than 100,000 migrants could be stranded in Greece within a month, according to the UNHCR.

⁴ COM(2016) 165 final.

summarises the challenges identified and lessons learned in these first months of implementation of the relocation and resettlement schemes and proposes recommendations and actions in the short term to improve the implementation rate.

The EU Heads of State and Government agreed on 7 March a series of principles as the basis for **an agreement with Turkey** which included "to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the EU Member States, within the framework of the existing commitments".

The implementation of the various schemes to allow for resettlement, humanitarian admission or other forms of legal admission would alleviate the migratory pressure on frontline Member States, and Greece in particular, by substituting dangerous and irregular migration flows to the EU of Syrian nationals/person displaced by the conflict in Syria with safe and legal pathways.

In this context, the Commission's Communication on next operational steps in EU-Turkey cooperation in the field of migration⁵ called for taking the necessary steps to transfer some of the commitments under the existing relocation decisions, notably all or part of the currently unallocated 54 000 places, to the so called 1:1 scheme. The resettlement or other legal pathways for the admission of persons in clear need of international protection can be considered equivalent to relocation, as all are concrete expressions of solidarity with other Member States or third countries experiencing mass influx of migrants.

1.2. Other solidarity instruments

In addition to the obligations under the relocation scheme and with a view to addressing the global migratory crisis comprehensively and to showing solidarity with third countries equally affected, the Commission recommended an EU resettlement scheme for 20 000 people in need of international protection. Following the **Commission Recommendation of 8 June 2015 on a European resettlement scheme**⁶, 27 Member States⁷ together with Dublin Associated States agreed on 20 July 2015⁸ to resettle through multilateral and national schemes 22 504 displaced persons from outside the EU who are in clear need of international protection. The resettling states agreed to take account of priority regions for resettlement, including North Africa, the Middle East, and the Horn of Africa. The resettlement places were distributed between Member States and Dublin Associated States according to the commitments set out in the Annex to the Conclusions.

On 15 December 2015, the Commission adopted a **Recommendation for a Voluntary Humanitarian Admission Scheme** with Turkey, proposing that participating States would admit persons displaced by the conflict in Syria who are in need of international protection and were registered by the Turkish authorities prior to 29 November 2015. Such a scheme would be a flanking measure to the mutual commitments contained in the Joint Action Plan between the EU and Turkey of 29 November 2015.

⁵ COM(2016) 166 final.

⁶ C(2015) 3560 final.

⁷ Hungary does not participate.

⁸ 11130/15; "Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection".

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. Summary of the proposed action

The present amendment consists in counting the efforts made by Member States by admitting *Syrians present in Turkey* through resettlement, humanitarian admission or other forms of legal admission towards the number of applicants for international protection to be relocated to their territory under Council Decision 2015/1601. In relation to the 54 000 applicants referred to in Article 4(1)(c) of Council Decision 2015/1601, this amendment enables Member States to subtract from their allocated number of relocated applicants the number of *Syrians present in Turkey* admitted to their territory through resettlement, humanitarian admission or other forms of legal admission under national or multilateral schemes other than the resettlement scheme established under the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015. Article 10 of Council Decision (EU) 2015/1601 applies, which means the Member States which use this facility will receive the sum of EUR 6 500.

2.2. Legal basis

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

2.3. Subsidiarity

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.

In this field the European Union exercised these powers by enacting Council Decision (EU) 2015/1601. The current action consists in allowing Member States to partially meet their obligations under that Decision by participating in other solidarity efforts.

2.4. Proportionality

Given the urgency and the severity of the situation created by the current refugee crisis, the measures provided for in this proposal do not go beyond what is necessary to achieve the objective of addressing the situation effectively.

2.5. Impact on fundamental rights

The fundamental rights as provided for in the EU Charter of Fundamental Rights ("the Charter") of the applicants for international protection who are within the scope of Decision (EU) 2015/1601 are not affected.

2.6 Variable geometry

Under the provisions of Protocol (No. 21), Ireland and the UK are not participating in this proposal, except if they opt into it within three months after the proposal or after the adoption.

Despite the fact that Ireland has opted into Decision 2015/1601, the previous sentence also applies to Ireland in accordance with Article 4a of Protocol 21.

In view of the fact that the UK has not yet opted into Decision (EU) 2015/1601, it would need to opt into the latter, too, if it wanted to opt into this measure, as it is not possible to opt into an amendment of a measure without being bound by the measure itself.

3. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

Proposal for a

COUNCIL DECISION

amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament⁹,

Whereas:

- (1) On the basis of Article 78(3) TFEU, the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523¹⁰, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council Decision (EU) 2015/1601¹¹, 120 000 applicants for international protection are to be relocated from Italy and Greece to other Member States.
- (2) Under Article 4(2) of Decision (EU) 2015/1601, as of 26 September 2016, 54 000 applicants should be relocated from Italy and Greece to the territory of other Member States unless by that date, pursuant to Article 4(3), the Commission makes a proposal to allocate them to another beneficiary Member States confronted with an emergency situation characterised by a sudden inflow of persons.
- (3) Article 1(2) of Decision (EU) 2015/1601 provides that the Commission is to keep under constant review the situation regarding massive inflows of third country nationals into Member States. The Commission should submit, as appropriate, proposals to amend that Decision in order to take into account the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States.
- (4) The EU Heads of State or Government agreed on 7 March to work on the basis of a series of principles for an agreement with Turkey, including to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the Member States, within the framework of the existing commitments. Those principles were further developed in the Commission's Communication on next operational steps

⁹ OJ C , , p. .

¹⁰ Council Decision (EU) 2015/ 1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015, p. 146.

¹¹ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, p. 80.

in EU-Turkey cooperation in the field of migration¹² which called for taking the necessary steps to transfer some of the commitments under the existing relocation decisions, notably all or part of the currently unallocated 54 000 places, to the so called 1:1 scheme.

- (5) Resettlement, humanitarian admission, or other forms of legal admission from Turkey under national and multilateral schemes can be expected to relieve the migratory pressure on Member States which are beneficiaries of relocation under Decision (EU) 2015/1601 by providing a legal and safe pathway to enter the Union and by discouraging irregular entries. Therefore, the solidarity efforts of Member States consisting in admitting to their territory Syrian nationals present in Turkey who are in clear need of international protection should be taken into account in relation to the 54 000 applicants for international protection referred to above. The number of persons so admitted from Turkey by a Member State should be deducted from the number of persons to be relocated to that Member State under Decision 2015/1601 in relation to those 54 000 applicants.
- (6) Mechanisms for admission may include resettlement, humanitarian admission or other legal pathways for admission of persons in clear need of international protection, such as humanitarian visa programmes, humanitarian transfer, family reunification programmes, private sponsorship projects, scholarship programmes, labour mobility schemes, and others.
- (7) The commitments that Member States undertook as part of the resettlement scheme agreed in the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 should not be affected by this Decision and should not count towards meeting the obligations under Decision 2015/1601. Therefore, a Member State which chooses to meet its obligations under Decision (EU) 2015/1601 by admitting Syrians present in Turkey through resettlement, cannot count this effort as constituting part of its commitment under the 20 July 2015 resettlement scheme.
- (8) To ensure a proper monitoring of the situation, Member States should report on a monthly basis to the Commission on Syrians present in Turkey admitted to their territory under the option provided for in this amendment specifying under which scheme, national or multilateral, the person has been admitted and the form of legal admission.
- (9) Since the objectives of this Decision 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 of the Treaty on European Union (TEU). 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 those objectives.
- (10) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (11) 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 TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the

¹² COM(2016)166 final.

United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (12) 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 TEU and to the TFEU, and without prejudice to Articles 4 and 4a 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.
- (13) 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 Decision and is not bound by it or subject to its application.
- (14) 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

In Article 4 of Decision (EU) 2015/1601 the following paragraph 3a is inserted:

"3a. In relation to the relocation of applicants referred to in point (c) of paragraph 1, the admission by Member States to their territory of Syrian nationals present in Turkey under national or multilateral legal admission schemes for persons in clear need of international protection other than the resettlement scheme which was the subject of the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 shall lead to a corresponding reduction of the obligation of the respective Member State.

Article 10 shall apply *mutatis mutandis* for every such legal admission leading to a reduction of the relocation obligation.

Every month Member States shall report to the Commission on the number of persons legally admitted for the purposes of this paragraph, indicating the type of scheme under which the admission has taken place and the form of legal admission used."

Article 2

Entry into force

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

Done at Brussels,

For the Council
The President