



Press and Information

Court of Justice of the European Union  
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Judgment in Joined Cases C-643/15 and C-647/15  
Slovakia and Hungary v Council

## **The Court dismisses the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers**

*That mechanism actually contributes to enabling Greece and Italy to deal with the impact of the 2015 migration crisis and is proportionate*

In response to the migration crisis that affected Europe in the summer of 2015, the Council of the European Union adopted a decision<sup>1</sup> in order to help Italy and Greece deal with the massive inflow of migrants. The decision provides for the relocation from those two Member States to other EU Member States, over a period of two years, of 120 000 persons in clear need of international protection.

The contested decision was adopted on the basis of Article 78(3) TFEU, which provides that ‘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 for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament’.

Slovakia and Hungary which, like the Czech Republic and Romania, voted against the adoption of the contested decision in the Council,<sup>2</sup> have asked the Court of Justice to annul the decision. In support of their actions they put forward pleas seeking to show (i) that the adoption of the decision was vitiated by errors of a procedural nature or arising from the choice of an inappropriate legal basis and (ii) that the decision was neither a suitable response to the migrant crisis nor necessary for that purpose.

In the proceedings before the Court, Poland has intervened in support of Slovakia and Hungary, while Belgium, Germany, Greece, France, Italy, Luxembourg, Sweden and the Commission have intervened in support of the Council.

By today’s judgment, **the Court dismisses in their entirety the actions brought by Slovakia and Hungary.**

First, the Court rejects the argument that a legislative procedure<sup>3</sup> should have been followed because Article 78(3) TFEU provides that the European Parliament is to be consulted when a measure based on that provision is adopted. The Court notes in this regard that a legislative procedure can be followed only where a provision of the Treaties expressly refers to it. As Article 78(3) TFEU does not contain any express reference to a legislative procedure, the contested decision **could be adopted in a non-legislative procedure** and is consequently a non-legislative act.

The Court holds in that connection that Article 78(3) TFEU enables the EU institutions to **adopt all the provisional measures necessary to respond effectively and swiftly to an emergency situation characterised by a sudden inflow of displaced persons.** Those measures may also

<sup>1</sup> 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 2015 L 248, p. 80).

<sup>2</sup> Finland abstained from the vote, whilst the other Member States voted in favour of the decision.

<sup>3</sup> The ordinary legislative procedure or a special legislative procedure, as referred to in Article 289 TFEU.

derogate from legislative acts, provided, in particular, that their material and temporal scope is circumscribed and that they have neither the object nor the effect of replacing or permanently amending legislative acts. Those conditions are met in the present case.

Since the decision is a non-legislative act, **its adoption was not subject to the requirements relating to the participation of national Parliaments and to the public nature of the deliberations and vote in the Council** (as those requirements apply only to legislative acts).

The Court then points out that the temporal scope of the contested decision (from 25 September 2015 to 26 September 2017) is precisely delineated; the provisional nature of the decision therefore cannot be denied.

The Court further holds that the **Conclusions of the European Council of 25 and 26 June 2015**, which stated that the Member States were to agree 'by consensus' on the distribution of persons in clear need of international protection and were to do so in a manner 'reflecting the specific situations of Member States', **could not prevent the adoption of the contested decision**. Those conclusions in fact related to another relocation plan which, in response to the inflow of migrants witnessed in the first six months of 2015, aimed to allocate 40 000 persons between the Member States. That plan formed the subject-matter of Decision 2015/1523<sup>4</sup> rather than of the decision challenged in this case. The Court adds that the European Council cannot under any circumstances alter the voting rules laid down by the Treaties.

In addition, the Court states that, although substantial amendments were made to the Commission's initial proposal for a decision, in particular the amendments giving effect to Hungary's request that it be removed from the list of Member States that were beneficiaries of the relocation mechanism<sup>5</sup> and classifying it as a Member State of relocation, **the Parliament was duly informed of those amendments before the adoption of its resolution on 17 September 2015**, which meant that it was able to take account of them in that resolution. The Court notes in this regard that other amendments made after that date did not affect the actual essence of the Commission's proposal.

The Court also holds that **the Council was not required to act unanimously when it adopted the contested decision**, even though, for the purpose of adopting the above-mentioned amendments, it had to depart from the Commission's initial proposal. The Court finds that the amended proposal was in fact approved on behalf of the Commission by two of its Members, who were authorised by the College of Commissioners for that purpose.

Moreover, the Court considers that the relocation mechanism provided for by the contested decision **is not a measure that is manifestly inappropriate for contributing to achieving its objective**, namely helping Greece and Italy to cope with the impact of the 2015 migration crisis.

In that regard, **the legality of the decision cannot be called into question on the basis of retrospective assessments of its efficacy**. Where the EU legislature must assess the future effects of a new set of rules, its assessment can be challenged only where it appears manifestly incorrect in the light of the information available to the legislature at the time of the adoption of the rules in question. That is not the case here, given that the Council carried out, on the basis of a detailed examination of the statistical data available to it at the time, an objective analysis of the effects of the measure on the emergency situation in question.

Concerning the last point, the Court observes in particular that the small number of relocations so far carried out under the contested decision can be explained by a series of factors that the Council could not have foreseen at the time when the decision was adopted, **including, in particular, the lack of cooperation on the part of certain Member States**.

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<sup>4</sup> Council Decision of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ 2015 L 239, p.146).

<sup>5</sup> Hungary states that it refused to be classified as a Member State benefiting from the temporary relocation mechanism to avoid being considered the Member State responsible for examining the applications for asylum which would have had to be made in the Member State where the migrants actually entered the EU.

Finally, the Court finds that the Council did not make a manifest error of assessment when it took the view that **the objective pursued by the contested decision could not be achieved by less restrictive measures. Thus, the Council did not exceed its broad discretion when it concluded that** the mechanism provided for by Decision 2015/1523, which was intended to relocate, on a voluntary basis, 40 000 persons, would not be sufficient to deal with the unprecedented inflow of migrants that had taken place in July and August 2015.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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