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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Brussels, 9.9.2015
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2015/0209 (NLE)

Proposal for a

COUNCIL DECISION

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

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, Greece and Hungary

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 statements of the European Council in April and June 2015¹ and European Parliament resolution² presented in the wake of the tragedies in the Mediterranean, all concur on the specific and urgent needs frontline Member States are

¹ Special meeting of the European Council (23 April 2015), Statement, EUCO 18/15; Meeting of the European Council (25-26 June 2015), Council Conclusions, EUCO 22/15

² P8_TA(2015)0176, 28 April 2015.

confronted with and on the need to reinforce internal solidarity and propose concrete measures to provide support to the most affected Member States.

The Council on 20 July 2015 reached a general approach on a draft decision establishing a temporary and exceptional relocation mechanism from Italy and Greece to other member states of persons in clear need of international protection³. On the same day, reflecting the specific situations of Member States, a Resolution of the representatives of the Governments of the Member States meeting within the Council on relocating from Greece and Italy 40 000 persons in clear need of international protection was adopted by consensus. Over a period of two years, 24 000 persons will be relocated from Italy and 16 000 persons will be relocated from Greece.

Since that agreement by the Council the migratory situation in the Central and Eastern Mediterranean has intensified. The flows of migrants and refugees has more than doubled over the summer months giving impetus to trigger a new emergency relocation mechanism to alleviate pressure faced by Italy, Greece and also Hungary. The statistical information regarding the numbers of irregular arrivals of third-country nationals in the Member States from 1 January to 31 July 2015, including of those who appear to be in clear need of international protection confirms the ensuing migratory pressures in Italy and Greece and depicts subsequent movements through Europe via the Hungarian-Serbian border resulting in exceptional pressures in Hungary.

According to Frontex data from 1 January to 30 August 2015, the Central and Eastern Mediterranean routes and Western Balkans route are the main areas for irregular border crossings into the EU representing 99% of the total EU irregular border crossings. Frontex data also demonstrates that the Western Balkans route now accounts for more than 30% of the total irregular border crossings detected so far in 2015 with the vast majority of those having arrived in the EU via Greece's external border. The majority of those arriving at the Central Mediterranean route include migrants from Syria and Eritrea, who according to Eurostat data for Q1 2015 have a recognition rate of over 75% at first instance. Similarly, the majority of those migrants arriving via the Eastern Mediterranean and Western Balkans route originate from Syria and Afghanistan.

The situation along the Eastern Mediterranean border intensified dramatically in the months of July and August 2015 alone with over 137 000 irregular migrants detected entering Greece via the Northeast Aegean and Dodecanese islands (Kos and Lesvos in particular) and via the Greek-Turkish border. In the same vein, Italy witnessed the arrival of over 42 000 irregular migrants via the Central Mediterranean and Hungary saw 78 472 via the Hungarian-Serbian border in the same period.

Greece received 7 475 applications for international protection between 1 January and 31 July 2015. This represents a 30% increase in applications compared with the same period in 2014 (5740). During the same period, Italy received 39 183 applications for international protection and Hungary received 98 072, which shows a 27 % (30 755) and 1290% (7 055) increase respectively compared with 2014.

The change in the demographic makeup of nationalities arriving via the Western Balkans towards Hungary since the beginning of 2015 and the significant increase in arrivals over the summer months, signify a new emergency situation that corresponds to the criteria envisaged under Article 78 (3). The significant increase of arrivals of Syrian nationals via this route

³ 3405th Justice and Home Affairs Council – Council Document 11097/15.

suggests that the flows of persons arriving are more than likely to be in need of international protection. The exponential rise in numbers over a short period of time has also hampered Hungary's ability to establish sufficient resources for reception capacity and asylum processes that meets current demands. As a result the Commission has awarded Hungary emergency assistance under the Asylum Migration and Integration Fund and the Internal Security Fund. Despite this acute need for assistance, onward movements towards Austria and Germany are prevalent and Hungary has become a country of transit for most migrants who prefer not to continue with their application or not to apply for international protection in Hungary. Similar migratory trends can be seen in both Greece and Italy. As such, a further measure for relocation from these three Member States is justified on the basis of the continued migratory pressures faced by all three Member States and the fact that most persons arriving at the external borders of the EU are seeking protection elsewhere because of the challenging environments they find themselves in upon arrival in Italy, Greece and Hungary.

Italy's and Greece's geographical situation, with the ongoing conflicts in the region of their immediate neighbourhood still 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.

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. 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. This notably includes possible future measures in case the situation in the East of Ukraine should further deteriorate.

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

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.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. 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, Greece and Hungary, 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, Greece and Hungary 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, Greece and Hungary 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, Greece and Hungary namely 15 600, 50 400 and 54 000 respectively and includes in its annexes three distribution keys which define the number of applicants that shall be relocated from Italy, Greece and Hungary respectively to the other Member States. This allocation between Italy, Greece and Hungary is based on their respective shares in the total number of the irregular border crossings in Italy, Greece and Hungary of persons in clear need of international protection. This also takes into account the sharp increase in the number of irregular border crossing in Hungary in the course of 2015 and in particular in July and August and in Greece over July and August 2015, as well as the continuously high number in Italy in July and August this year. It is proposed that Italy, Greece and Hungary do not themselves contribute as relocating Member States. The total of 120 000 applicants that should be relocated from Italy, Greece and Hungary corresponds to approximately 62% of the total number of persons in clear need of international protection who have entered irregularly in these in Italy and Greece between July and August 2015, and in Hungary in 2015. Specifically in the case of Hungary, it is proposed to relocate 54 000 applicants for international protection; as of end of July this year, there have been 98 072 applications made in Hungary. Thus, the relocation measure proposed in this Decision constitutes fair burden

sharing between Italy, Greece and Hungary on the one hand and the other Member States on the other hand.

The proposal foresees that where, in exceptional cases, a Member State notifies to the Commission, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, that it is temporarily unable to take part, in full or in part, in the relocation of applicants, for a period of one year, it should instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP to cover assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State to the relocation. In case of partial participation in the relocation, this amount shall be reduced in proportion. This amount should be allocated to the Asylum, Migration and Integration Fund as assigned revenue.

It must be ensured that the level of solidarity with the Member State under particular pressure, in terms of the number of persons to be relocated, remains unaffected. Therefore, the allocations under the distribution key that were foreseen for any Member State which has made a notification accepted by the Commission should be redistributed to the remaining Member States.

In order to ensure uniform conditions for the implementation of the relocation in the case that one or more Member States do(es) not take part in the relocation of applicants, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The examination procedure should be used to redistribute the allocations under the distribution key that were foreseen for the Member State(s) which do(es) not participate to the remaining Member States, because of the substantial implications of this redistribution as referred to in point a) of Article 2(1) of Regulation (EU) No 182/2011.

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, Greece or Hungary 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, Greece and Hungary, 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 or Hungary 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).

Member States shall at regular intervals indicate the number of applicants who can be relocated to their territory. Italy, Greece and Hungary, with the assistance of EASO, and, where applicable, of Member States' liaison officers, shall on that basis identify the individual applicants who could be relocated to the other Member States. In doing so, priority should be given to vulnerable applicants. Following approval of the Member State of relocation, a formal decision to relocate an applicant needs then to be taken by Italy, Greece or Hungary 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 where 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 two months from the indication by the Member State of relocation of the number of applicants who could be relocated swiftly, with the possibility for a prolongation, if justified, of a further two weeks for the Member State of relocation, or of four weeks for Italy, Greece or Hungary in case of justifiable practical obstacles.

In addition to relocation, the proposal lays down other measures of support to be provided to Italy, Greece and Hungary *sur place*. In particular, the proposal envisages an increase in the support provided by other Member States to Italy, Greece and Hungary under the coordination of EASO and other relevant Agencies. The aim is to assist the three Member States 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 recalls the obligation for Italy and Greece to update, and provides for the obligation for Hungary, 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, Greece and Hungary 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 recalls the consequences of any 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 authorization 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, Greece or Hungary which would be confronted with a similar emergency situation characterised by a sudden inflow of nationals of third countries. This could become necessary notably in case the situation in the East of Ukraine further deteriorates. 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 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, Greece and Hungary 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. With regard to the costs of the transfer, the proposal foresees that Italy, Greece and Hungary receive a lump sum of EUR 500 for each person relocated from their territory.

The proposal requires the Commission to report to the Council every six months on the implementation of this Decision, as well as on the implementation of the roadmaps, based on information provided by Italy, Greece and Hungary.

Finally, the proposal specifies that this Decision shall apply to persons arriving on the territory of Italy, Greece and Hungary 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 one month before the entry into force of this decision.

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.

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

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

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.

2.3. 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, Greece and Hungary 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, Greece and Hungary 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.

2.4. 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, Greece and Hungary 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 15 600, 50 400 and 54 000 applicants who are in clear need of international protection from Italy, Greece and Hungary respectively to the territory of the other Member States. Based on the statistical data for July and August 2015 as regards Italy and Greece and all of 2015 as regards Hungary, the number of persons to be relocated represents 36 % in respect of Italy, Greece and Hungary respectively, out of the total number of irregular border crossing in Italy, Greece and Hungary 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, Greece and Hungary 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, Greece and Hungary is linked to the update or submission by these three Member States respectively and the monitoring by the Commission of the respect for those roadmaps which shall include specific measures to be taken by Italy, Greece and Hungary 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.

2.5. Impact on fundamental rights

As a result of introducing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary 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.

2.6. Budgetary impact

This proposal entails additional costs for the EU Budget for a total amount of EUR 780 000 000.

Proposal for a

COUNCIL DECISION

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

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 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 called 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 organizing 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) At its meeting of 25 and 26 June 2015, the European Council decided, *inter alia*, that three key dimensions should be advanced in parallel: relocation/resettlement, return/readmission/reintegration and cooperation with countries of origin and transit. The European Council agreed in particular, in the light of the current emergency situation and the commitment to reinforce solidarity and responsibility, on the temporary and exceptional relocation over two years from Italy and Greece to other Member States of 40 000 persons in clear need of international protection, in which all Member States would participate. It called on the rapid adoption of the Council Decision to that effect and concluded that, to that end, all Member States will agree by consensus on the distribution of such persons, reflecting the specific situations of Member States.
- (7) The specific situations of the Member States result in particular from migratory flows in other geographical regions, such as the Western Balkans migratory route.
- (8) 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.
- (9) Among the Member States witnessing situations of particular pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece, and, most recently, Hungary in particular are experiencing 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.
- (10) The Council on 20 July 2015 reached a general approach on a draft decision establishing a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection. On the same day, reflecting the specific situations of Member States, a Resolution of the representatives of the Governments of the Member States meeting within the Council on relocating from Greece and Italy 40 000 persons in clear need of international protection was adopted by consensus. Over a period of two years, 24 000 persons will be relocated from Italy and 16 000 persons will be relocated from Greece.
- (11) During the last weeks, the migratory pressure at the Southern external land and sea borders again has sharply increased, and the shift of migration flows has continued from the Central to the East Mediterranean and the Western Balkans route towards Hungary, as a result of the increasing number of migrants arriving in and from Greece. In view of the situation, further provisional measures to relieve the asylum pressure from Italy and Greece should be warranted, as should new measures for the benefit of Hungary.

- (12) 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 the first eight months of 2015. Since the beginning of this year, approximately 116 000 migrants arrived in Italy in an irregular manner, (including approximately 10 000 irregular migrants who have been registered by local authorities, but have yet to be confirmed in Frontex data). During May and June this year, 34 691 irregular border crossings were detected by Frontex and during July and August 42 356, which means an increase of 20%. A strong increase was witnessed by Greece in 2015, with more than 211 000 irregular migrants reaching the country (including approximately 28 000 irregular migrants who have been registered by local authorities, but have yet to be confirmed in Frontex data). During May and June of this year, 53 624 irregular border crossings were detected by Frontex and during July and August 137 000, which means an increase of 250%). More than 145 000 irregular border crossings were detected in Hungary in the first eight months of 2015 (including approximately 3 000 irregular migrants who have been registered by local authorities, but have yet to be confirmed in Frontex data). During May and June this year, 53 642 irregular border crossings were detected and during July and August 78 472, which means an increase of 150%. A significant proportion of the total number of irregular migrants detected in these regions included migrants of nationalities which, based on the Eurostat data, meet a high Union level recognition rate.
- (13) According to Eurostat and EASO figures, 39 183 persons applied for international protection in Italy between January and July 2015, compared to 30 755 in the same period of 2014 (that is to say an increase of 27%). A similar increase in the number of applications was witnessed by Greece with 7 475 applicants (that is to say an increase of 30%). Hungary faced a very sharp increase in the first half of 2015 as compared to the same period 2014: 98 072 persons applied for international protection between January and July 2015 and 7 055 in the same period of 2014. This corresponds to an increase of 1290%.
- (14) 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. Hungary has received EUR 25.5 million over 2007-2013 from the SOLID funds, including emergency assistance, and will receive more than EUR 64 million for the period 2014-2020 under the AMIF and the Internal Security Fund (Borders). Additionally, under both funds, substantial emergency assistance has already been granted to Hungary in 2014 and 2015.
- (15) Due to the on-going instability and conflicts in the immediate neighbourhood of Italy and Greece, and the repercussions in migratory flows on Hungary, 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, Greece and Hungary and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration.

- (16) It should be recalled that the decision establishing a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection of [date] sets out an obligation for Italy and, Greece to provide structural solutions to address exceptional pressures on their asylum and migration systems, by establishing a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas. The roadmaps which Italy and Greece are due to present to that end should be adapted to take this Decision into account. Likewise, Hungary should on the date 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 its system in these areas, as well as measures to ensure appropriate implementation of this Decision with a view to allowing it to better cope, after the end of the applicability of this decision, with a possible increased inflow of migrants on its territory.
- (17) Bearing in mind that the European Council agreed on a set of interlinked measures, the Commission should be entrusted with the power to suspend, where appropriate and having given the State concerned the opportunity to present its views, the application of this Decision for a limited amount of time where Italy, Greece or Hungary do not respect their commitments in this regard.
- (18) If any Member State 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, on the basis of Article 78(3) of the Treaty.
- (19) Such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision. The fact that Hungary made no pledges under the Decision establishing a temporary and exceptional relocation mechanism from Italy and Greece to other member states of persons in clear need of international protection adopted on [date] 2015, is duly taken into account and there is therefore no need in this decision to formally suspend its participation as per Article 9 of that decision.
- (20) In accordance with Article 78(3) of the Treaty, the measures envisaged for the benefit of Italy, Greece and Hungary 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, Greece and Hungary to deal with the significant migration flows on their territories.
- (21) The measures to relocate from Italy, Greece and Hungary foreseen in this Decision entail a temporary derogation from the rule set out in Article 13(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council⁷ according to which Italy Greece and Hungary would have been otherwise responsible for the examination of an application for international protection based on the criteria set out in Chapter III of

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).

that Regulation as well as a temporary derogation from the procedural steps, including the time limits, laid down in Articles 21, 22 and 29 of that Regulation. The other provisions of Regulation (EU) No 604/2013 including the implementing rules set out in Commission Regulation (EC) No 1560/2003 and Commission Implementing Regulation (EU) No 118/2014 remain applicable including the rules contained therein on the obligation for the transferring Member States to meet the costs necessary to transfer an applicant to the Member State of relocation and on the cooperation on transfers between Member States as well as on transmission of information through the DubliNet electronic communication network. This Decision also entails a derogation from the consent of the applicant for international protection as referred to in Article 7(2) of Regulation (EU) No 516/2014 of the European Parliament and of the Council.⁸

⁸ 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 Decision 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).

- (22) Relocation measures do not dispense Member States from applying in full the provisions under Regulation (EU) No 604/2013 including those related to family reunification, special protection of unaccompanied minors, and the discretionary clause on humanitarian grounds.
- (23) 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, Greece and Hungary, without prejudice to decisions at national level on asylum applications. 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 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 in clear 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 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. A threshold of 75%, based on the latest available updated Eurostat quarterly data for first instance decisions, should be used in this Decision.
- (24) The provisional measures are intended to relieve the significant asylum pressure from Italy, Greece and Hungary, in particular by relocating an important number of applicants in clear need of international protection who have arrived in the territory of Italy, Greece and Hungary following the date on which this Decision becomes applicable. Based on the overall number of third- country nationals who have entered irregularly Italy, Greece and Hungary in 2015 and the number of those who are in clear need of international protection, a total of 120 000 applicants in clear need of international protection should be relocated from Italy, Greece and Hungary. This number corresponds to approximately 62% of the total number of third-country nationals in clear need of international protection who have entered irregularly in Italy, Greece in July and August 2015, and Hungary throughout 2015. This relocation measure proposed in this Decision constitutes fair burden sharing between Italy, Greece and Hungary on the one hand and the other Member States on the other hand, given the overall available figures in 2015 on irregular border crossing. These figures compared between Italy, Greece and Hungary, 13 % of these applicants should be relocated from Italy, 42 % from Greece and 45 % from Hungary.
- (25) Relocation of applicants in clear need of international protection should take place on the basis of a distribution key set out in Annexes I, II and III. 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 asylum applications per one million inhabitants over the period 2010-2014⁹ (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution) and d) the unemployment rate (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution). The distribution

⁹ For Croatia, the period 2013-2014 is taken into account.

key set out in Annex I, II and III of this Decision takes into account the fact that the Member States from which relocation will take place should not themselves contribute as a Member State of relocation.

- (26) Where a Member State notifies to the Commission, in exceptional circumstances and giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, that it is temporarily unable to take part, in full or in part, in the relocation of applicants, for a period of one year, it should instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP to cover assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State to the relocation. In case of partial participation in the relocation, this amount should be reduced in proportion. This amount should be allocated to the Asylum, Migration and Integration Fund as assigned revenue.
- (27) It must be ensured that the level of solidarity with the Member State under particular pressure, in terms of the number of persons to be relocated, remains unaffected. Therefore, the allocations under the distribution key that were foreseen for any Member State which has made a notification accepted by the Commission should be redistributed to the remaining Member States.
- (28) In order to ensure uniform conditions for the implementation of the relocation in the case that one or more Member States do(es) not take part in the relocation of applicants, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.¹⁰
- (29) The examination procedure should be used to redistribute the allocations under the distribution key that were foreseen for the Member State(s) which do(es) not participate to the remaining Member States, because of the substantial implications of this redistribution as referred to in point a) of Article 2(1) of Regulation (EU) No. 182/2011.
- (30) The Asylum, Migration and Integration Fund (AMIF) set up by Regulation (EU) No 516/2014 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.

¹⁰ OJ L 55, 28.2.2011, p. 13.

- (31) 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, Greece or Hungary 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 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. Moreover with regard to the costs for the transfer of persons relocated pursuant to this Decision, it is appropriate to provide that Italy, Greece and Hungary receive a lump sum of EUR 500 for each person relocated from their territory. Member States should be entitled to receive additional pre-financing to be paid in 2016 following the revision of their national programmes under the Asylum, Migration and Integration Fund to implement actions under this Decision.
- (32) 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.
- (33) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect to the fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof.
- (34) When deciding which applicants in clear need of international protection should be relocated from Italy, Greece and Hungary, priority should be given to vulnerable applicants within the meaning of Article 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council¹¹. 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.
- (35) The integration of applicants in clear need of international protection in the host society is the cornerstone of a well-functioning Common European Asylum System. Therefore, 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 and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation. 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

¹¹ 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).

applicants and to the necessity of ensuring a fair distribution of those applicants among Member States. With due respect of the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which Italy, Greece and Hungary, in consultation with EASO and, where applicable, liaison officers may compile lists of possible applicants identified for relocation to that Member State.

- (36) The appointment by Member States of liaison officers in Hungary should facilitate the effective implementation of the relocation procedure, including the appropriate identification of the applicants who could be relocated, taking into account in particular their vulnerability and qualifications. As regards both the appointment of liaison officers in Hungary and the fulfilment of their tasks, the Member State of relocation and Hungary should exchange all relevant information and continue cooperating closely throughout the relocation procedure.
- (37) 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 which constitutes a transfer decision within the meaning of Article 26 of Regulation (EU) No 604/2013. 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. In line with Article 27 of this Regulation, Member States may provide in their national law that the appeal against the transfer decision does not automatically suspend the transfer of the applicant but that the person concerned has the opportunity to request to suspend the implementation of the transfer decision pending the outcome of his or her appeal.
- (38) 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/EC¹² and Council Directive 2005/85/EC¹³, and, as from 20 July 2015, Directive 2013/33/EU and Directive 2013/32/EU¹⁴ of the European Parliament and of the Council, including in relation to their special reception and procedural needs. In addition, Council Regulation (EC) No 2725/2000¹⁵ and, as from 20 July 2015, Regulation (EU) No 603/2013¹⁶ remains applicable in respect of applicants covered by this Decision.

¹² Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p.18).

¹³ 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).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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

- (39) Measures should be taken in order to avoid secondary movements of relocated persons from the Member State of relocation to other Member States which could hamper the efficient application of this Decision. In particular, applicants should be informed of the consequences of onward irregular 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.
- (40) Additionally, in line with the objectives set out in Council Directive 2013/33/EU, the harmonisation of reception conditions amongst Member States should help to limit secondary movements of applicants for international protection influenced by the variety of conditions for their reception. With a view to reaching the same objective, Member States should consider imposing reporting obligations and providing applicants for international protection with material reception conditions that include housing, food and clothing only in kind as well as, where appropriate ensuring that applicants are directly transferred to the Member State of relocation. Likewise, during the period of the examination of applications for international protection, as provided in the asylum and Schengen acquis, except for serious humanitarian reasons, Member States should neither provide applicants with national travel documents, nor give them other incentives, such as financial ones, which could facilitate their irregular movements to other Member States. In case of irregular movements to other Member States, applicants should be sent back to the Member State of relocation pursuant to the rules set out in Regulation (EU) No 604/2013.
- (41) In order to avoid secondary movements of beneficiaries of international protection, Member States should also inform the beneficiaries about the conditions under which they may legally enter and stay in another Member State and could impose reporting obligations. Pursuant to Directive 2008/115/EC, Member States should require a beneficiary of international protection who is staying irregularly on their territories to go back immediately to the Member States of relocation. In case the person refuses to return voluntarily, return to the Member State of relocation should be enforced.
- (42) Furthermore, if provided for in national law, in case of enforced return to the Member State of relocation, the Member State which enforced the return may decide to issue 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.
- (43) As the purpose of this Decision is to address an emergency situation and to support Italy and Greece in reinforcing their asylum systems, it should allow them to make, with the assistance of the European Commission, bilateral arrangements with Iceland, Liechtenstein, Norway and Switzerland on the relocation of persons falling within the scope of this Decision. Such arrangements should also reflect the core elements of this Decision, in particular those relating to the relocation procedure and the rights and obligations of applicants as well as those relating to Regulation 604/2013.

(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).

- (44) The specific support provided to Italy, Greece and Hungary through the relocation scheme should be complemented with additional measures, from the arrival of third-country nationals on the territory of Italy, Greece and Hungary until the completion of all applicable procedures, coordinated by EASO and other relevant Agencies, such as Frontex coordinating the return of third- country nationals not having the right to remain on the territory, in accordance with the provisions of Directive 2008/115/EC.
- (45) 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.
- (46) This Decision respects the fundamental rights and observes the principles recognised by the Charter.
- (47) [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

- (48) [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

- (49) [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, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (50) 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, Ireland has notified (, by letter of ...) its wish to take part in the adoption and application of this Decision.]

OR

- (51) [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, the United Kingdom has notified (, by letter of ...) its wish to take part in the adoption and application of this Decision.

- (52) 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, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]
- (53) 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.
- (54) 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, Greece and Hungary in view of supporting them in better coping 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 Council¹⁷;
- (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;
- (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;

¹⁷ 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).

- (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 or her relocation in the territory of that Member State.

Article 3
Scope

1. Relocation shall only take place in respect of applicants who have lodged their application for international protection in Italy, Greece or Hungary and for whom those States would have otherwise been responsible 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 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 2013/32/EU¹⁸ is, according to the latest available updated quarterly EU-wide average Eurostat data, 75% or higher. In the case of stateless persons, the country of former habitual residence shall be taken into account. Quarterly updates shall only be taken into account in respect of applicants who have not already been identified as applicants who could be relocated in accordance with Article 5(3).

Article 4
Relocation of applicants to Member States

1. Applicants shall be relocated to the other Member States as follows:
 - (a) 15 600 applicants shall be relocated from Italy to the territory of the other Member States as set out in Annex I.
 - (b) 50 400 applicants shall be relocated from Greece to the territory of the other Member States as set out in Annex II.
 - (c) 54 000 applicants shall be relocated from Hungary to the territory of the other Member States as set out in Annex III.
2. A Member State may, in exceptional circumstances, within one month of the entry into force of this Decision, notify to the Commission that it is temporarily unable to

¹⁸ 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)

take part, totally or in part, in the relocation of applicants from the Member State benefiting from relocation, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union. The Commission shall assess the reasons given and address a decision to such Member State. Where the Commission finds that the notification is duly justified, the Member State shall be freed, for a period of one year, from its obligation to take part in the relocation of applicants under this Decision, and shall instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP; in case of partial participation in the relocation, this amount shall be reduced in proportion. This contribution shall be used to finance assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State, pursuant to the provisions of 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 Decision No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC¹⁹. It shall constitute assigned revenue within the meaning of Article 21(4) of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002²⁰.

3. The Commission shall adopt an implementing act redistributing the allocations under the distribution key that were foreseen for any Member State which has made a notification accepted by the Commission pursuant to paragraph 2 to the remaining Member States, in line with the distribution key set out in Annexes I, II and III. Such implementing act shall be adopted in accordance with the examination procedure referred to in Article 13(2).

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 and other relevant agencies, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities, including about the grounds referred to in paragraph 7.
2. Member States shall, at regular intervals, and at least every three months, indicate the number of applicants who can be relocated swiftly to their territory and any other relevant information.
3. Based on this information, Italy, Greece and Hungary shall with the assistance of EASO and, where applicable, of Member States' liaison officers referred to in paragraph 8, identify the individual applicants who could be relocated to the other Member States and, as soon as possible, submit all relevant information to the contact points of those Member States. Priority shall be given for that purpose to

¹⁹ OJ L 150, 20.5.2014, p. 168.

²⁰ OJ L 298, 26.10.2012, p. 1.

vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU.

4. Following approval of the Member State of relocation, Italy, Greece and Hungary shall, as soon as possible, take a decision to relocate each of the identified applicants to a specific Member State of relocation, in consultation with EASO, and shall notify the applicant in accordance with Article 6(4). The Member State of relocation may decide not to approve the relocation of an applicant only if there are reasonable grounds as referred to in paragraph 7.
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 proposed for relocation if their fingerprints have been taken and transmitted to the Central System of Eurodac, pursuant to that Regulation.
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 to the person concerned of the transfer decision referred to in Article 6(4). Italy, Greece and Hungary shall transmit to the Member State of relocation the date and time of the transfer as well as any other relevant information.
7. Member States retain the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Article 12 and 17 of Directive 2011/95/EU.
8. For the implementation of all aspects of the relocation procedure described in this Article Member States may decide to appoint to Italy, Greece and Hungary liaison officers after exchanging all relevant information.
9. In line with the EU *acquis*, Member States shall fully implement their obligations.
10. Accordingly, identification, registration and fingerprinting for the relocation procedure will be guaranteed by Italy, Greece and Hungary and the necessary facilities will be in place. Applicants that elude the relocation procedure shall be excluded from relocation.
11. The relocation procedure provided for in this Article shall be completed as swiftly as possible and not later than two months from the time of the indication given by the Member State of relocation as referred to in paragraph 2, unless the approval by the Member State of relocation referred to in paragraph 4 takes place less than 2 weeks before the expiry of this two months period. In such case, the time limit for completing the relocation procedure may be extended for a period not exceeding a further two weeks. In addition, this time limit may also be extended, with a further 4 weeks period, as appropriate, where Italy, Greece or Hungary justify objective practical obstacles preventing the transfer from taking place.
12. Where the relocation procedure is not completed within this time limit and unless Italy, Greece or Hungary agree with the Member State of relocation to a reasonable extension of the time limit, Italy, Greece and Hungary remain responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013.

13. Following the relocation of the applicant, the Member State of relocation shall take and transmit to the Central System of Eurodac the fingerprints of the applicant in accordance with Article 9 of Regulation (EU) No 603/2013 and update the data sets in accordance with Article 10, and where applicable, with Article 18 of that Regulation.

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, Greece and Hungary 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, Greece and Hungary 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 the Member State of relocation shall take back the person.

Article 7

Operational support to Italy, Greece and Hungary

1. In order to support Italy, Greece and Hungary to better cope with the exceptional pressure on their asylum and migration systems caused by the current increased migratory pressure at their external borders, Member States shall increase their operational support in cooperation with Italy, Greece and Hungary in the area of international protection through relevant activities coordinated by EASO, Frontex and other relevant Agencies, in particular by providing as appropriate national experts for the following support activities:
 - (a) the screening of the third-country nationals arriving in Italy, Greece and Hungary, including their clear identification, fingerprinting and registration, and, where applicable, the registration of their application for international protection and, upon request by Italy, Greece, and Hungary their initial processing;
 - (b) 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;

- (c) the preparation and organisation of return operations for third-country nationals who either did not apply for international protection or whose right to remain on the territory has ceased.
2. In addition to the support provided under paragraph 1 and for the purpose of facilitating the implementation of all steps of the relocation procedure, specific support shall be provided as appropriate to Italy, Greece and Hungary through relevant activities coordinated by EASO, Frontex and other relevant Agencies.

Article 8

Complementary measures to be taken by Italy, Greece and Hungary

1. Italy and Greece, shall, bearing in mind the obligations set out in Article 8 paragraph 1 of the Decision [YZY/2015] of [date] 2015 establishing a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection notify by [*a month from the entry into force of this decision*] an up-dated roadmap taking into account the need to ensure appropriate implementation of this decision.
2. Hungary shall, on the date 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 its systems in these areas as well as measures to ensure appropriate implementation of this Decision. Hungary shall fully implement this roadmap.
3. If Italy, Greece or Hungary do not comply with an obligation referred to in paragraph 1 or 2, the Commission may decide, having given the State concerned the opportunity to present its views, to suspend the application of 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. Such suspension shall not affect the transfers of applicants that are pending following approval of the Member State of relocation pursuant to Article 5(4).

Article 9

Further emergency situations

In the event of an emergency situation characterised by a sudden inflow of nationals of third countries in a Member State, 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 participation of that Member State to the relocation as provided for in this Decision as well as possible compensatory measures for Italy, Greece and Hungary.

Article 10

Financial support

1. For each person relocated pursuant to this Decision

- (a) the Member State of relocation shall receive a lump sum of EUR 6 000;
 - (b) Italy, Greece and Hungary shall receive a lump sum of EUR 500.
2. This financial support shall be implemented by applying the procedures laid down in Article 18 of Regulation (EU) No 516/2014. By way of exception to the pre-financing arrangements set out in Regulation (EU) No 514/2014, Member States shall be paid in 2016 a pre-financing amount of 50% of their total allocation pursuant to this Decision.

Article 11
Cooperation with Associated States

With the assistance of the Commission, bilateral arrangements may be made between, respectively, Italy, Greece and Hungary and Iceland, Liechtenstein, Norway and Switzerland on the relocation of applicants from the territory of Italy, Greece and Hungary to the territory of the latter States. The core elements of this Decision, in particular those relating to the relocation procedure and the rights and obligations of applicants, shall be duly taken into account in those arrangements.

Article 12
Reporting

On the basis of the information provided by Member States and the relevant agencies, the Commission shall report to the Council every six months on the implementation of this Decision.

The Commission shall also report to the Council every six months on the implementation of the roadmaps referred to in Article 8, based on information provided by Italy, Greece and Hungary.

Article 13
Committee procedure

1. The Commission shall be assisted by the committee referred to in Article 44 of Regulation 604/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.²¹

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

²¹ OJ L 55, 28.2.2011, p. 13.

Article 14
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, Greece and Hungary as from [*exact date of entry into force*] until [*exact date of entry into force plus 24 months*], as well as to applicants having arrived on the territory of those Member States from [1 month *before the entry into force of this Decision*] onwards.

Done at Brussels,

For the Council
The President