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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION on the temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

COUNCIL IMPLEMENTING DECISION (EU) 2016/....

of ...

**on the temporary suspension of the relocation
of 30 % of applicants allocated to Austria
under Decision (EU) 2015/1601
establishing provisional measures
in the area of international protection
for the benefit of Italy and Greece**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece¹, and in particular Article 4(5) and (7) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 248, 24.9.2015, p. 80.

Whereas:

- (1) On the basis of Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523¹, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Decision (EU) 2015/1601, 120 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States.
- (2) Decision (EU) 2015/1601 was adopted because of an emergency situation characterised by a sudden inflow of nationals of third countries into Italy and Greece and because of an urgent necessity to provide those Member States with swift relief, in accordance with the principle of solidarity and fair sharing of responsibility between Member States. It follows that each Member State of relocation should ensure that relocation takes place regularly, without delay and at a sufficient level.

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

- (3) Article 4(5) of Decision (EU) 2015/1601 provides that a Member State may, in exceptional circumstances, by 26 December 2015, notify the Council and the Commission that it is temporarily unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with paragraph 1 of that Article, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union (TEU). The Commission should assess the reasons given and submit proposals to the Council regarding a temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned in accordance with Article 4(1) of that Decision. Where justified, the Commission may propose to extend the time limit for relocating the applicants in the remaining allocation by up to 12 months beyond the date referred to in Article 13(2) of that Decision.
- (4) Austria faces exceptional circumstances, with an emergency situation characterised by a sudden inflow of nationals of third countries into its territory.
- (5) The considerable rise in irregular border-crossing into the Union and in secondary movements across the Union has led to a sharp increase in Austria in the number of applicants for international protection.

- (6) Eurostat figures confirm that there has been a sharp increase in applicants for international protection in Austria. The number of applicants for international protection increased by more than 230 % from 23 835 applicants for the period 1 January to 30 November 2014 to 80 880 applicants for the period 1 January to 30 November 2015, with more than 10 000 applicants for international protection per month since September 2015. Although European Asylum Support Office (EASO) data show a decrease in the number of applicants in December 2015 and January 2016 in comparison with the previous months, the number of applicants remains high.
- (7) In 2015, Austria had the second highest number, after Sweden, of applicants for international protection per capita in the Union (9 421 applicants per million inhabitants, according to available Eurostat data).
- (8) The current situation has put a significant strain on the Austrian asylum system, with serious practical consequences on the ground as regards reception conditions and the ability of the asylum system to deal with the applications.
- (9) The current migratory situation in Austria and the strain on its capacity to process applications for international protection and to provide adequate reception conditions to persons in clear need of international protection therefore justifies a temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601, which corresponds to 1 065 applicants, for a period of one year.

- (10) During the period of temporary suspension, Austria remains obliged to continue to relocate swiftly and regularly the remaining allocation of applicants.
- (11) The suspension of the relocation of 30 % of applicants for one year constitutes a sufficient and proportionate measure in response to the situation in Austria. An extension of the time limit for relocating the applicants in the remaining allocation beyond the date referred to in Article 13(2) of Decision (EU) 2015/1601 would not be justified. It is essential that relocation from Italy and Greece take place swiftly and regularly until 26 September 2017, in order to support Italy and Greece effectively with regard to the ongoing emergency situation.
- (12) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (13) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (14) The United Kingdom is not taking part in Decision (EU) 2015/1601. Therefore, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (15) Ireland is bound by Decision (EU) 2015/1601 and is therefore taking part in the adoption and application of this Decision, which implements Decision (EU) 2015/1601.
- (16) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (17) 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

The relocation to Austria of 1 065 of the applicants allocated to that Member State under Decision (EU) 2015/1601 shall be suspended until ... [one year after the date of adoption of this Decision].

Article 2

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

Done at ...,

For the Council

The President
