



Brussels, 10.2.2016  
COM(2016) 80 final

2016/0045 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

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

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Article 78(3) of the Treaty and the current temporary relocation schemes

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

On the basis of Article 78(3) TFEU, the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523<sup>1</sup>, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council decision (EU) 2015/1601<sup>2</sup>, 120 000 applicants for international protection are to be relocated from Italy and Greece and from other Member States if they are confronted to an emergency situation.

Under the Council Decision (EU) 2015/1601, 3 551 persons are allocated to Austria for relocation from Italy and Greece.

According to Article 4(5) of the Decision 2015/1601, 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, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union. 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 paragraph 1. 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).

By letter of 16 December 2015, Austria notified the Commission and the Council that it is confronted with a situation as referred to in Article 4(3) in the Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, giving reasons and requesting an adaptation of the relocation mechanism for the benefit of Austria. By letter of 22 December 2015, Austria requested, pursuant to Article 4(5) in the Council Decision (EU) 2015/1601, to benefit from a temporary suspension of the relocation of up to 30 % of applicants allocated to Austria under Council Decision (EU) 2015/1601 and from an extension of the time limit for

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<sup>1</sup> 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.

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

relocating the applicants in the remaining allocation by 12 months beyond the date referred to in Article 13(2) of Council Decision (EU) 2015/1601.

## **1.2. Triggering the application of Article 4(5) of the Council Decision 2015/1601 in respect of Austria**

Austria faces exceptional circumstances with an emergency situation characterised by a sudden inflow of nationals of third countries in its territory.

The considerable increase of irregular border crossing into the EU and of secondary movements across Europe has led to a sharp increase in Austria of the number of applicants for international protection.

Eurostat figures confirm a sharp increase of asylum applicants in Austria. The number of applicants for international protection increased by more than 230% from 23 835 applicants for the period from 1 January to 30 November 2014 to 80 880 applicants for the period from 1 January to 30 November 2015), with monthly number of applicants for international protection reaching level at more than 10 000 applicants per month since September. Available data from EASO for December 2015 and January 2016 shows a decrease of the number of applicants for international protection, like in several other Member States, with respectively 8 392 and 5 887 applicants. The figures for these two months are however higher than the corresponding monthly figures for the previous year.

Austria has in 2015 the second highest number of applicants for international protection per capita in the EU after Sweden (9 421 applicants per million inhabitants based on Eurostat data available).

The above situation has put a significant strain on the Austrian asylum system, with serious practical consequences on the ground as regards the reception conditions and ability of the asylum system to deal with the applications.

Therefore, 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 requires a temporary suspension of the relocation of up to 30 % of applicants allocated to Austria under Council Decision (EU) 2015/1601. 30 % of the allocation of Austria under Council Decision (EU) 2015/1601 represent 1 065 persons.

In order to help alleviate the significant pressure that Austria is confronted with, the temporary suspension for a period of one year of relocation of 30% of applicants allocated to Austria as a Member State of relocation under Council Decision (EU) 2015/1601 should be granted.

Austria is still bound to relocate swiftly and regularly the remaining allocation (2 486 applicants) by 26 September 2017, date until which the Council Decision (EU) 2015/1601 applies.

The suspension of relocation of 30% of applicants for 12 months constitutes a sufficient and proportionate measure in reaction 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 Council Decision (EU) 2015/1601 would not be justified. It is essential

relocation from Italy and Greece takes place swiftly and regularly until 26 September 2017, in order to effectively relieve Italy and Greece of the ongoing emergency situation.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **2.1. Summary of the proposed action**

In view of assisting Austria in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in its territory the proposed Council Implementing Decision provides for a temporary suspension of the relocation of up to 30 % of applicants allocated to Austria under Council Decision (EU) 2015/1601 for a period of one year.

Austria is still bound to relocate to its territory 3 551 persons under the Council Decision (EU) 2015/1601 from Italy and Greece by the deadline set by Article 13(2) of Council Decision (EU) 2015/1601.

The present Council Implementing Decision does not affect the situation of the third countries nationals that have already been relocated to Austria under Council Decision (EU) 2015/1601.

### **2.2. Legal basis and choice of instrument**

The legal basis for the proposed Council Implementing Decision is Article 4(5) of the Council Decision (EU) 2015/1601.

In accordance with Article 4(7) of Council Decision (EU) 2015/1601, the instrument proposed in a Council Implementing Decision.

### **2.3. Subsidiarity**

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

In this field the European Union exercised these powers by enacting Council Decision (EU) 2015/1601. The current action consists in suspending some obligations of a Member State under that Decision due to exceptional circumstances and can therefore only be taken by the European Union.

### **2.4. Proportionality**

Given the urgency and the severity of the situation created by the influx described above, the partial suspension of currently ongoing EU action in respect of Austria does not go beyond what is necessary to achieve the objective of addressing the situation effectively. The suspension relates only to Austria and is partial and temporary and does not affect the rights of applicants for international protection who might be relocated to Austria before the adoption of this proposal.

### **2.5. Impact on fundamental rights**

The fundamental rights as provided for in the EU Charter of Fundamental Rights ("the Charter") of the applicants for international protection who are within the scope of Council

Decision (EU) 2015/1601 are not affected. The partial suspension of obligations as a Member State of relocation relates only to Austria, is temporary and does not affect applicants who might have been relocated to Austria before the adoption of this proposal.

### **3. BUDGETARY IMPLICATIONS**

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

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**on the temporary suspension of the relocation of 30% of applicants allocated to Austria under Council 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 Greece<sup>3</sup>, and in particular Article 4(5) and 4(7) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On the basis of Article 78(3) TFEU, the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523<sup>4</sup>, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council Decision (EU) 2015/1601, 120 000 applicants for international protection are to be relocated from Italy and Greece to other Member States.
- (2) The Council Decision (EU) 2015/1601 was based on Article 78(3) TFEU, due to 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 these 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.
- (3) According to Article 4(5) of Council Decision (EU) 2015/1601 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, 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 Council Decision (EU) 2015/1601. Where justified, the Commission may propose to extend the time limit for relocating the applicants in

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<sup>3</sup> OJ L 248, 24.9.2015, p. 80.

<sup>4</sup> 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.

the remaining allocation by up to 12 months beyond the date referred to in Article 13(2) of Council Decision (EU) 2015/1601.

- (4) Austria faces exceptional circumstances with an emergency situation characterised by a sudden inflow of nationals of third countries in its territory.
- (5) The considerable increase of irregular border crossing into the EU and of secondary movements across Europe has led to a sharp increase in Austria of the number of applicants for international protection.
- (6) Eurostat figures confirm a sharp increase of asylum applicants in Austria. The number of applicants for international protection increased by more than 230 % from 23 835 applicants for the period from 1 January to 30 November 2014 to 80 880 applicants for the period from 1 January to 30 November 2015), with monthly number of applicants for international protection reaching level at more than 10 000 applicants per month since September. Despite a decrease in the number of applicants in December 2015 and January 2016 compared to the previous months, based on EASO data, the figures remain at a high level.
- (7) Austria had in 2015 the second highest number of applicants for international protection per capita in the EU after Sweden (9 421 applicants per million inhabitants according to available Eurostat data).
- (8) The above situation has put a significant strain on the Austrian asylum system, with serious practical consequences on the ground as regards the reception conditions and ability of the asylum system to deal with the applications.
- (9) Therefore, 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 justifies a temporary suspension of the relocation of 30 % of applicants allocated to Austria under Council 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 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 Council Decision (EU) 2015/1601 would not be justified. It is essential that relocation from Italy and Greece takes place swiftly and regularly until 26 September 2017, in order to effectively relieve Italy and Greece of the ongoing emergency situation.
- (12) Since the objectives of this Council Implementing 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 Council Implementing Decision does not go beyond what is necessary in order to achieve those objectives.
- (13) This Council Implementing Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.

- (14) As the United Kingdom is not taking part in Council Decision (EU) 2015/1601, the United Kingdom is not taking part in the adoption of this Council Implementing Decision and is not bound by it or subject to its application.
- (15) As Ireland is not taking part in Council Decision (EU) 2015/1601, Ireland is not taking part in the adoption of this Council Implementing Decision and is not bound by it or subject to its application.
- (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 Council Implementing Decision and is not bound by it or subject to its application.
- (17) In view of the urgency of the situation, this Council Implementing 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 Council Decision (EU) 2015/1601 shall be suspended until ... [*one year from the date of the adoption of the present Council Implementing Decision*]

*Article 2*

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

Done at Brussels,

*For the Council  
The President*