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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION establishing provisional measures in the area of international protection for the benefit of Italy and Greece

COUNCIL DECISION (EU) 2015/...

of ...

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

¹ Opinion of 17 September 2015 (not yet published in the Official Journal).

Whereas:

- (1) According to Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), 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 and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State(s) concerned.
- (2) According to Article 80 TFEU, the policies of the Union in the area of border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility between the Member States, and Union acts adopted in this area are to 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 that region and call 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 Commission presented a ten-point plan of immediate action to be taken in response to the crisis, including a commitment to consider options for an emergency relocation mechanism.

- (4) At its meeting of 23 April 2015, the European Council decided, *inter alia*, to reinforce internal solidarity and responsibility and committed itself in particular to increasing emergency assistance to frontline Member States and to considering options for organising emergency relocation between Member States on a voluntary basis, as well as to deploying European Asylum Support Office (EASO) teams in frontline Member States for the 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 those Member States which receive the highest number of refugees and applicants for international protection in either absolute or relative terms.
- (6) Besides measures in the area of asylum, Member States at the frontline should increase their efforts to set up measures to cope with mixed migration flows at the external borders of the European Union. Such measures should safeguard the rights of those in need of international protection and prevent irregular migration.

- (7) 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 from Greece to other Member States of 40 000 persons in clear need of international protection, in which all Member States would participate.
- (8) The specific situations of the Member States result in particular from migratory flows in other geographical regions, such as the Western Balkans migratory route.
- (9) 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 confronted in 2015. Emergency financial assistance by the Commission and operational support by EASO were provided to several Member States to help them cope with this increase.
- (10) Among the Member States witnessing situations of considerable pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular have experienced unprecedented flows of migrants, including applicants for international protection who are in clear need of international protection, arriving on their territories, generating significant pressure on their migration and asylum systems.

- (11) On 20 July 2015, 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. On 14 September 2015, the Council adopted Decision (EU) 2015/1523¹, which provided for a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection.
- (12) During recent months, the migratory pressure at the southern external land and sea borders has again sharply increased, and the shift of migration flows has continued from the central to the eastern Mediterranean and towards the Western Balkans route, 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.

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).

- (13) According to data of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the central and eastern Mediterranean routes were the main areas for irregular border crossing into the Union in the first eight months of 2015. Since the beginning of 2015, 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 2015, 34 691 irregular border crossings were detected by Frontex and during July and August, 42 356, an increase of 20 %. A strong increase was also 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 2015, 53 624 irregular border crossings were detected by Frontex and during July and August 137 000, an increase of 250 %). A significant proportion of the total number of irregular migrants detected in those two regions included migrants of nationalities which, based on the Eurostat data, meet a high Union-level recognition rate.
- (14) 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 (an increase of 27 %). A similar increase in the number of applications was witnessed by Greece with 7 475 applicants (an increase of 30 %).

- (15) Many actions have been taken so far to support Italy and Greece in the framework of the migration and asylum policy, including by providing them with substantial emergency assistance and EASO operational support. Italy and Greece were the second and third largest beneficiaries of funding disbursed during the period 2007-2013 under the General Programme ‘Solidarity and Management of Migration Flows’ (SOLID), and, in addition, received substantial emergency funding. Italy and Greece will likely continue to be the main beneficiaries of the Asylum, Migration and Integration Fund (AMIF) in 2014-2020.
- (16) Due to the ongoing instability and conflicts in the immediate neighbourhood of Italy and Greece, and the repercussions in migratory flows on other Member States, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant proportion of the migrants who may be in need of international protection. This demonstrates the critical need to show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration.
- (17) On 22 September 2015, the Council noted the willingness and readiness of Member States to take part, in accordance with the principles of solidarity and fair sharing of responsibility between the Member States, which govern the Union policy on asylum and migration, in the relocation of 120 000 persons in clear need of international protection. The Council therefore decided to adopt this Decision.

- (18) It should be recalled that Decision (EU) 2015/1523 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 have presented to that end should be updated to take this Decision into account.
- (19) 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 Member State concerned the opportunity to present its views, the application of this Decision for a limited period where Italy or Greece does not respect its commitments in this regard.
- (20) As of ... *, 54 000 applicants should be proportionally relocated from Italy and Greece to other Member States. The Council and the Commission should keep under constant review the situation regarding massive inflows of third country nationals into Member States. The Commission should submit, as appropriate, proposals to amend this Decision in order to address the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States. In doing so, it should take into account the views of the likely beneficiary Member State.

* OJ: please insert a date: 12 months from the date of entry into force of this Decision.

Should this Decision be amended for the benefit of another Member State, that Member State should, on the date of entry into force of the relevant Council amending Decision, present a roadmap to the Council and the Commission which should include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of its systems in those areas, as well as measures to ensure appropriate implementation of this Decision with a view to allowing it better to cope, after the end of the application of this Decision, with a possible increased inflow of migrants on its territory.

- (21) 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) TFEU. Such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision.
- (22) In accordance with Article 78(3) TFEU, the measures envisaged for the benefit of Italy and of Greece 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 and Greece in dealing with the significant migration flows on their territories.

- (23) The measures to relocate from Italy and from Greece, provided for 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 Council¹ according to which Italy and Greece would otherwise have been responsible for the examination of an application for international protection based on the criteria set out in Chapter III of 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 1560/2003² and Commission Implementing Regulation (EU) No 118/2014³, 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.⁴

¹ 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).

² Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

³ Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 39, 8.2.2014, p. 1).

⁴ 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).

- (24) Relocation measures do not absolve Member States from applying Regulation (EU) No 604/2013 in full, including the provisions related to family reunification, the special protection of unaccompanied minors, and the discretionary clause on humanitarian grounds.
- (25) 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 and from Greece, 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 have to prevent, to the maximum extent possible, applicants who are likely to receive a negative decision on their application from being relocated to another Member State, and therefore from prolonging unduly their stay in the Union. A threshold of 75 %, based on the latest available updated Eurostat quarterly data for decisions at first instance, should be used in this Decision.

- (26) The provisional measures are intended to relieve the significant asylum pressure on Italy and on Greece, in particular by relocating a significant number of applicants in clear need of international protection who will have arrived in the territory of Italy or Greece following the date on which this Decision becomes applicable. Based on the overall number of third-country nationals who have entered Italy and Greece irregularly 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 and Greece. This number corresponds to approximately 43 % of the total number of third-country nationals in clear need of international protection who have entered Italy and Greece irregularly in July and August 2015. The relocation measure foreseen in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other, given the overall available figures on irregular border crossings in 2015. Given the figures at stake, 13 % of these applicants should be relocated from Italy, 42 % from Greece and 45 % should be relocated as provided for in this Decision.

- (27) Within three months of the entry into force of this Decision, a Member State may, 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, notify the Council and the Commission that it is unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with this Decision. Such exceptional circumstances include, in particular, a situation characterised by a sudden and massive inflow of nationals of third countries of such a magnitude as to place extreme pressure even on a well prepared asylum system otherwise functioning in line with the relevant Union *acquis* on asylum or a risk of sudden and massive inflow of nationals of third countries of such a high probability that it warrants an immediate action. Following an assessment, the Commission should submit proposals to the Council for an implementing decision regarding a temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned. Where justified, the Commission may propose to extend the time limit for relocation of the remaining allocation by up to 12 months beyond the duration of this Decision.

- (28) In order to ensure uniform conditions for the implementation of the relocation in the case of proportional relocation of 54 000 applicants from Italy and Greece to the other Member States, in the case where the participation of one or more Member States in the relocation of applicants should be suspended, or in the case where, following relevant notifications to the Council, other Member State(s) or Associated States take part in the relocation, implementing powers should be conferred on the Council.

The conferral of those powers upon the Council is justified in view of the politically sensitive nature of such measures, which touch on national powers regarding the admission of third country nationals on the territory of the Member States and the need to be able to adapt swiftly to rapidly evolving situations.

- (29) 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 provides for 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 that Regulation provides for the possibility of a lump sum payment of EUR 6 000 for the transfer of beneficiaries of international protection from another Member State.

(30) 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, pursuant to this Decision, applicants from Italy and Greece who are in clear need of international protection, receive a lump sum for each relocated person which is identical to the lump sum provided for in Article 18 of Regulation (EU) No 516/2014, namely EUR 6 000, and is implemented by applying the same procedures. This entails a limited, temporary derogation from Article 18 of that Regulation because the lump sum should be paid in respect of relocated applicants rather than in respect of beneficiaries of international protection. Such a temporary extension of the scope of potential recipients of the lump sum appears indeed to be an integral part of the emergency scheme set up by this Decision. Moreover, with regard to the costs for the transfer of persons relocated pursuant to this Decision, it is appropriate to provide that Italy and Greece receive a lump sum of at least EUR 500 for each person relocated from their respective territories, taking into account the actual costs necessary to transfer an applicant to the Member State of relocation. 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.

- (31) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the provisional measures by close administrative cooperation between Member States and operational support provided by EASO.
- (32) 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 of 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.
- (33) When deciding which applicants in clear need of international protection should be relocated from Italy and from Greece, priority should be given to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council¹. In this respect, any special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration.

¹ 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 (OJ L 180, 29.6.2013, p. 96).

- (34) The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning Common European Asylum System. Therefore, 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 applicants and to the necessity of ensuring a fair distribution of those applicants among Member States. With due respect for 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 and Greece, in consultation with EASO and, where applicable, liaison officers, may compile lists of possible applicants identified for relocation to that Member State.

- (35) 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 be 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 Union law to choose the Member State responsible for his or 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 for his or her fundamental rights. In line with Article 27 of that 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 a suspension of the implementation of the transfer decision pending the outcome of his or her appeal.

- (36) Before and after being transferred to the Member States of relocation, applicants enjoy the rights and guarantees provided for in Directive 2013/32/EU¹ and Directive 2013/33/EU² of the European Parliament and of the Council, including in relation to their special reception and procedural needs. In addition, Regulation (EU) No 603/2013 of the European Parliament and of the Council³ remains applicable in respect of applicants covered by this Decision, and Directive 2008/115/EC of the European Parliament and of the Council⁴ is applicable for the returning of third-country nationals not having the right to remain on the territory. The above is subject to the limitations in the application of those Directives.

¹ 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).

² Directive 2013/33/UE 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).

³ 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 (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 L 180, 29.6.2013, p. 1).

⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (37) In line with the Union *acquis*, a robust mechanism of identification, registration and fingerprinting for the relocation procedure should be ensured by Italy and Greece so as to quickly identify the persons in need of international protection who are eligible for relocation and to identify the migrants who do not qualify for international protection and should therefore be returned. This should also apply to persons who arrived on the territory of Italy or Greece between ...* and ...** in order for them to be eligible for relocation. When voluntary return is not practicable and other measures provided for in Directive 2008/115/EC are not adequate to prevent secondary movements, detention measures in line with Chapter IV of that Directive should be applied urgently and effectively. Applicants that elude the relocation procedure should be excluded from relocation.
- (38) 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, Member States should take the necessary preventive measures in the field of access to social benefits and legal remedies, in accordance with Union law. In addition, applicants should be informed of the consequences of irregular onward movement within the Member States and of the fact that, if the Member State of relocation grants them international protection, they are entitled to the rights attached to international protection only in that Member State.

* OJ: please insert a date: six months before the entry into force of this Decision.

** OJ: please insert the date of entry into force of this Decision.

- (39) Additionally, in line with the objectives set out in 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 for 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 for or beneficiaries of international protection should be required to go back to the Member State of relocation, and that Member State should take those persons back without delay.
- (40) 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 should be able to 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 State of relocation. In case the person refuses to return voluntarily, return to the Member State of relocation should be enforced.

- (41) Furthermore, if provided for in national law, in the 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.
- (42) 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 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 (EU) No 604/2013.
- (43) The specific support provided to Italy and to Greece through the relocation scheme should be complemented by additional measures, from the arrival of third-country nationals on the territory of Italy or of Greece 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 Directive 2008/115/EC.

- (44) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (45) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (46) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (47) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (48) In case where, following a notification made pursuant to Article 4 of Protocol No 21 by a Member State covered by that Protocol, the Commission confirms in accordance with Article 331(1) TFEU the participation of that Member State in this Decision, the Council should fix the number of applicants to be relocated to that Member State. The Council should also accordingly adapt the allocations of other Member States by reducing them in proportion.
- (49) 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.
- (50) 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

1. This Decision establishes provisional measures in the area of international protection for the benefit of Italy and of Greece, 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.
2. The Commission shall keep under constant review the situation regarding massive inflows of third country nationals into Member States.

The Commission will submit, as appropriate, proposals to amend this Decision in order to take into account the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States.

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 Council¹;

¹ 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).

- (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), respectively, 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;
- (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 or her application for international protection to the territory of the Member State of relocation;
- (f) ‘Member State of relocation’ means the Member State 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 pursuant to this Decision shall take place only in respect of an applicant who has lodged his or her application for international protection in Italy or in Greece 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 be applied only in respect of an applicant belonging to a nationality 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/EU of the European Parliament and of the Council¹ is, according to the latest available updated quarterly Union-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 be taken into account only in respect of applicants who have not already been identified as applicants who could be relocated in accordance with Article 5(3) of this Decision.

¹ 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).

Article 4

Relocation of 120 000 applicants to Member States

1. 120 000 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 in accordance with the table set out in Annex I.
 - (b) 50 400 applicants shall be relocated from Greece to the territory of the other Member States in accordance with the table set out in Annex II.
 - (c) 54 000 applicants shall be relocated to the territory of the other Member States, proportionally to the figures laid down in Annexes I and II, either in accordance with paragraph 2 of this Article or through an amendment of this Decision, as referred to in Article 1(2) and in paragraph 3 of this Article.

2. As of ... *, 54 000 applicants, referred to in point (c) of paragraph 1, shall be relocated from Italy and Greece, in proportion resulting from points (a) and (b) of paragraph 1, to the territory of other Member States and proportionally to the figures laid down in Annexes I and II. The Commission shall submit a proposal to the Council on the figures to be allocated accordingly per Member State.

* OJ: please insert a date: 12 months from the date of entry into force of this Decision.

3. If by ...*, the Commission considers that an adaptation of the relocation mechanism is justified by the evolution of the situation on the ground or that a Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows and taking into account the views of the likely beneficiary Member State, it may submit, as appropriate, proposals to the Council, as referred to in Article 1(2).

Likewise, a Member State may, giving duly justified reasons, notify the Council and the Commission that it is confronted with a similar emergency situation. The Commission shall assess the reasons given and submit, as appropriate, proposals to the Council, as referred to in Article 1(2).

4. In case where, following a notification made pursuant to Article 4 of Protocol No 21 by a Member State covered by that Protocol, the Commission confirms in accordance with Article 331(1) TFEU the participation of that Member State in this Decision, the Council shall, on a proposal from the Commission, fix the number of applicants to be relocated to the Member State concerned. In the same implementing decision, the Council shall also accordingly adapt the allocations of other Member States by reducing them in proportion.

* OJ: please insert a date: 12 months from the date of entry into force of this Decision.

5. A Member State may, in exceptional circumstances, by ...*, 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 shall 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).

6. The Council shall, within one month, decide on the proposals referred to in paragraph 5.
7. For the purpose of application of paragraphs 2, 4 and 6 of this Article, and of Article 11(2), the Council shall, on a proposal from the Commission, adopt an implementing decision.

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.

* OJ: please insert a date: three months after entry into force of this Decision.

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 and Greece 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 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 and Greece 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 of this Article.
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 be proposed for relocation only 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) of this Decision. Italy and Greece 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 Articles 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, after exchanging all relevant information, decide to appoint liaison officers to Italy and to Greece.
9. In line with the Union *acquis*, Member States shall fully implement their obligations. Accordingly, identification, registration and fingerprinting for the relocation procedure shall be guaranteed by Italy and by Greece. To ensure that the process remains efficient and manageable, reception facilities and measures shall be duly organised so as to temporarily accommodate people, in line with the Union *acquis*, until a decision is quickly taken on their situation. Applicants that elude the relocation procedure shall be excluded from relocation.

10. 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 two weeks before the expiry of that two-month 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, the time limit may also be extended, for a further four-week period, as appropriate, where Italy or Greece show objective practical obstacles that prevent the transfer from taking place.

Where the relocation procedure is not completed within these time limits and unless Italy and Greece agree with the Member State of relocation to a reasonable extension of the time limit, Italy and Greece shall remain responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013.

11. 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 of, and, where applicable, 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 and Greece shall inform the applicant in a language which the applicant understands or is reasonably supposed to understand of 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 and Greece 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 a Member State other than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to return immediately. The Member State of relocation shall take back the person without delay.

Article 7

Operational support to Italy and to Greece

1. In order to support Italy and Greece better to 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 and Greece 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 and Greece, including their clear identification, fingerprinting and registration, and, where applicable, the registration of their application for international protection and, upon request by Italy or Greece, 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 and to Greece through relevant activities coordinated by EASO, Frontex and other relevant Agencies.

Article 8

Complementary measures to be taken by Italy and Greece

1. Italy and Greece, shall, bearing in mind the obligations set out in Article 8(1) of Decision (EU) 2015/1523, and by ...*, notify to the Council and the Commission an updated roadmap taking into account the need to ensure appropriate implementation of this Decision.
2. Should this Decision be amended for the benefit of another Member State in accordance with Article 1(2) and Article 4(3), that Member State shall, on the date of entry into force of the relevant Council amending decision, present a roadmap to the Council and 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. That Member State shall fully implement that roadmap.
3. If Italy or Greece does not comply with the obligations referred to in paragraph 1, the Commission may decide, having given the Member 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).

* OJ: please insert a date - one month from entry into force of this Decision.

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) TFEU. Such measures may include, where appropriate, a suspension of the participation of that Member State in the relocation as provided for in this Decision, as well as possible compensatory measures for Italy and for Greece.

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 or Greece shall receive a lump sum of at least 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 from the pre-financing arrangements set out in that Regulation, Member States shall, in 2016, be paid a pre-financing amount of 50 % of their total allocation pursuant to this Decision.

Article 11

Cooperation with associated States

1. With the assistance of the Commission, bilateral arrangements may be made between, Italy and, respectively Iceland, Liechtenstein, Norway and Switzerland, and between Greece and, respectively, Iceland, Liechtenstein, Norway and Switzerland, on the relocation of applicants from the territory of Italy and of Greece to the territory of those 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.
2. In case such bilateral arrangements are made, Italy or Greece shall notify to the Council and the Commission the number of applicants who are to be relocated to the associated States. The Council shall accordingly adapt, on a proposal from the Commission, the allocations of Member States by reducing them in proportion.

Article 12

Reporting

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

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

Article 13

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 ...*.
3. It shall apply to persons arriving on the territory of Italy and Greece from ...** until ...*, as well as to applicants having arrived on the territory of those Member States from ...*** onwards.

Done at Brussels,

For the Council

The President

* OJ: please insert a date: 24 months from the date of entry into force of this Decision.

** OJ: please insert the date of entry into force of this Decision.

*** OJ: please insert a date: 6 months before the date of entry into force of this Decision.

ANNEX I

Allocations from Italy

	Allocation per Member State (15 600 applicants relocated)
Austria	462
Belgium	579
Bulgaria	201
Croatia	134
Cyprus	35
Czech Republic	376
Estonia	47
Finland	304
France	3 064
Germany	4 027
Hungary	306
Latvia	66
Lithuania	98
Luxembourg	56
Malta	17
Netherlands	922
Poland	1 201
Portugal	388
Romania	585
Slovakia	190
Slovenia	80
Spain	1 896
Sweden	567

ANNEX II

Allocations from Greece

	Allocation per Member State (50 400 applicants relocated)
Austria	1 491
Belgium	1 869
Bulgaria	651
Croatia	434
Cyprus	112
Czech Republic	1 215
Estonia	152
Finland	982
France	9 898
Germany	13 009
Hungary	988
Latvia	215
Lithuania	318
Luxembourg	181
Malta	54
Netherlands	2 978
Poland	3 881
Portugal	1 254
Romania	1 890
Slovakia	612
Slovenia	257
Spain	6 127
Sweden	1 830
