



Strasbourg, 15.12.2015
COM(2015) 677 final

2015/0314 (NLE)

Proposal for a

COUNCIL DECISION

establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Council Decision (EU) 2015/1523 and Article 9 of 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) 2015/1523¹, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council decision (EU) 2015/1601², 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) 2015/1523, 1 369 persons and under the Council Decision (EU) 2015/1601, 4 358 persons are allocated to Sweden for relocation from Italy and Greece.

A Member State may, according to Article 4(3)(2) of the Decision 2015/1601, notify the Commission and the Council that it is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows, giving duly justified reasons. The Commission shall assess the reasons given and submit, as appropriate, proposals to the Council.

Pursuant to Article 9 of Council Decision (EU) 2015/1523 and Article 9 of the Council Decision (EU) 2015/1601, 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 those Decisions, as well as possible compensatory measures for Italy and for Greece.

By letter of 5 November 2015, Sweden 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 duly justified reasons and requesting an adaptation of the relocation mechanism for the benefit of Sweden. By letter of 8

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.

² 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.

December 2015, Sweden formally requested the suspension of its obligations under Council Decisions (EU) 2015/1523 and (EU) 2015/1601.

1.2. Triggering the application of Article 9 of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 in respect of Sweden

Sweden faces 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 Sweden of the number of applicants for international protection.

Eurostat figures confirm a sharp increase of asylum applicants in Sweden. The number of applicants for international protection increased by more than 60% from 68 245 applicants for the period from 1 January to 31 October 2014 to 112.040 applicants for the period from 1 January to 31 October 2015).

In addition, the monthly number of applicants for international protection has reached even higher level recently: the number of applicants doubled between August (11 735) and September (24 261) and reached 39 055 in October 2015 (61% increase from September).

Sweden has in 2015 by far the highest number of applicants for international protection per capita in the EU (11.503 applicants per million inhabitants).

Sweden is also facing a difficult situation because of the significant recent increase in the number of unaccompanied minors, with one out of four applicants claiming to be an unaccompanied minor.

The above situation has put a very significant strain on the Swedish 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 Sweden is unique in the EU 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 temporary suspension of the obligations of Sweden under the relocation mechanism and providing it, as appropriate, with operational support.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. Summary of the proposed action

In view of assisting Sweden in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in its territory the proposed Decision suspends the obligations of Sweden as a Member State of relocation under Council Decisions (EU) 2015/1523 and Council Decision (EU) 2015/1601 for the period of one year.

It also provides for operational support to be granted to Sweden, as appropriate, through relevant activities coordinated by EASO and, if required, by other relevant Agencies.

Sweden is still bound to relocate to its territory 1 369 persons under the Council Decision (EU) 2015/1523 and 4 358 persons under the Council Decision (EU) 2015/1601 from Italy

and Greece once the present Decision has expired. It should provide the Council and the Commission with a roadmap setting out concrete steps that it will take in order to ensure effectiveness of its asylum and migration systems and resume relocation once the suspension ceases to have effect.

The present Decision does not affect the situation of the third countries nationals that have already been relocated to Sweden under Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601.

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.

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) 2015/1523 and Council Decision (EU) 2015/1601. The current action consists in suspending obligations of a Member State under those Decisions due to emergency circumstances, and additional operational support coordinated by EU Agencies, 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 suspension of currently ongoing EU action in respect of Sweden and additional operational support do not go beyond what is necessary to achieve the objective of addressing the situation effectively. The suspension relates only to Sweden, is temporary and does not affect the rights of applicants for international protection who have already been relocated to Sweden.

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 Decisions (EU) 2015/1523 and (EU) 2015/1601 are not affected. The suspension of obligations of Sweden as a Member State of relocation relates only to Sweden, is temporary and does not affect applicants already relocated to Sweden.

3. BUDGETARY IMPLICATIONS

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

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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 Parliament³,

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) 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) 2015/1523⁴, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council Decision (EU) 2015/1601⁵, 120 000 applicants for international protection are to be relocated from Italy and Greece to other Member States.
- (4) Article 9 of Council Decision (EU) 2015/1523 and Article 9 of Council Decision (EU) 2015/1601 provide that 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

³ OJ C , , p. .

⁴ 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.

⁵ 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.

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 those Decisions, as well as possible compensatory measures for Italy and for Greece.

- (5) Sweden faces an emergency situation characterised by a sudden inflow of nationals of third countries in its territory due to a sharp shift of migratory flows. On 8 December Sweden formally requested the suspension of its obligations under Council Decisions (EU) 2015/1523 and (EU) 2015/1601.
- (6) The considerable increase of irregular border crossing into the EU and of secondary movements across Europe has led to a sharp increase in Sweden of the number of applicants for international protection, who mainly entered the EU via Italy and Greece.
- (7) Eurostat figures confirm a sharp increase of asylum applicants present in Sweden. The number of applicants for international protection increased by more than 60% from 68 245 applicants for the period from 1 January to 31 October 2014 to 112.040 applicants for the period from 1 January to 31 October 2015.
- (8) In addition, the monthly numbers of applicants for international protection has reached an even higher level recently: it has doubled between August (11 735) and September (24 261) and reached 39 055 in October 2015 (61% increase from September).
- (9) Sweden has in 2015 by far the highest number of applicants for international protection per capita in the EU (11 503 applicants per million inhabitants).
- (10) Sweden is also facing a difficult situation because of the significant recent increase in the number of unaccompanied minors, with one out of four applicants claiming to be an unaccompanied minor.
- (11) The above situation has put a very significant strain on the Swedish asylum system, with serious practical consequences on the ground as regards the reception conditions and ability of the asylum system to deal with these applications. In order to help alleviate the significant pressure that Sweden is confronted with, the obligations of Sweden as a Member State of relocation under Council Decisions (EU) 2015/1523 and 2015/1601 should be suspended for the period of one year.
- (12) The suspension should be complemented, as appropriate, by additional support measures coordinated by EASO and, where needed, other relevant Agencies.
- (13) Sweden should submit to the Council and the Commission a roadmap setting out the measures that it will take in order to ensure the effectiveness of its asylum and migration system and to resume its obligations under Decisions (EU) 2015/1523 and (EU) 2015/1601.
- (14) 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.
- (15) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.

- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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 Sweden, in view of supporting it in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries.

Article 2
Suspension of obligations under Council Decisions (EU) 2015/1523 and (EU) 2015/1601

Obligations of Sweden as a Member State of relocation under Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601 shall be suspended until ... [*one year from the date of the adoption of the present Council Decision*]

Article 3
Operational support to Sweden

In order to support Sweden to better cope with the exceptional pressure on its asylum and migration systems, specific support shall be provided, as appropriate, to Sweden through relevant activities coordinated by EASO and, if required, by other relevant Agencies.

Article 4
Complementary measures to be taken by Sweden

By [*one month from entry into force of this decision*] Sweden shall notify to the Council and the Commission a roadmap setting out the steps that it will take to ensure the effectiveness of its asylum and migration system and to resume its obligations under Council Decisions (EU) 2015/1523 and (EU) 2015/1601.

Article 5
Entry into force

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

Done at Strasbourg,

For the Council
The President