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COM(2015) 450 final

2015/0208 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a crisis relocation mechanism and amending 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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The European Agenda on Migration adopted by the European Commission on 13 May 2015<sup>1</sup> outlines immediate measures required to respond to the current urgent and complex challenges in the area of migration as well as medium and long term initiatives that need to be taken to provide structural solutions for better managing migration in all its aspects.

As part of the immediate measures, on 27 May 2015, the European Commission adopted a proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece<sup>2</sup>, by which it triggered the emergency response system envisaged under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU). On 20 July 2015, the Council reached a general approach on this Decision<sup>3</sup> which establishes a temporary and exceptional relocation mechanism for persons in clear need of international protection over two years from Italy and Greece to other Member States. The Council should formally adopt the Decision once the European Parliament gives its opinion, which is expected in September 2015.

Due to the unprecedented flows of migrants which continued to increase in Italy and Greece and the shift in the migration flows from the Central to the East Mediterranean and the Western Balkans route towards Hungary, the Commission has adopted [on 9 September 2015] another proposal based on Article 78(3) TFEU containing further provisional measures to relieve the asylum pressure from Italy and Greece, as well as a new measure for the benefit of Hungary.

The European Commission also announced that the triggering of the emergency response system under Article 78(3) TFEU will be the precursor of a lasting solution. It announced in that respect that it will table by the end of 2015 a legislative proposal for a permanent system for relocation that should be triggered in crisis situations.

The overall objective of this legislative proposal is to ensure that the Union has at its disposal a robust crisis relocation mechanism to structurally deal with situations of crisis in the asylum area in an effective manner. Such mechanism should be rapidly triggered in respect of any Member State that experiences crisis situations of such a magnitude as to put under significant strain even well prepared and functioning asylum systems, also taking into account the size of the Member State concerned. The proposed relocation mechanism aims, on the one hand, to ensure, in situations of crisis, a fair sharing of responsibilities between Member States for large numbers of applicants in clear need of international protection, and, on the other hand, the proper application of the Dublin system including the full protection of the rights of applicants for international protection. Whereas the proposal aims to introduce in Regulation (EU) No 604/2013 a crisis relocation mechanism as a permanent framework for the implementation of relocation measures, these measures will be applied in respect of specific crisis situations in a given Member State and will, by definition, remain temporary.

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<sup>1</sup> COM(2015) 240 final.

<sup>2</sup> COM (2015) 286 final.

<sup>3</sup> 11132/15, 24 July 2015.

- **Consistency with existing policy provisions in the policy area**

*A comprehensive migration approach*

The proposal is part of a comprehensive and systemic approach towards migration called for by all Union institutions and which the Commission started to implement immediately after the adoption of the European Agenda on Migration. Key to guaranteeing the effectiveness of such a comprehensive approach is ensuring that policies are implemented on the ground in a coherent and complementary manner. Therefore, where needed in light of the specific situation of a Member State, the crisis relocation mechanism should be complemented by additional measures on the ground to be taken by that Member State, from the arrival on its territory of third country nationals until the completion of all applicable procedures. Under the 'Hotspot' approach proposed by the Commission, the EU Agencies will provide comprehensive and targeted support to Member States which are faced with disproportionate migratory pressures at the external borders. The operational support that can be provided using this approach includes registration and screening of irregular migrants, debriefing of irregular migrants, asylum support by channelling applicants for international protection into the appropriate asylum procedure and assisting with the registration of applications for international protection as well as the preparation of the case files, stepping up information exchange and cooperation for the purposes of investigations into criminal networks facilitating irregular migration into the EU as well as secondary movement within the EU, and the coordination of return operations.

Such a concerted effort will enable Member States to address the migratory pressure in a swifter and more effective manner in full compliance with fundamental rights, and also strengthen their capacities for facing migration, asylum as well as internal security challenges.

*Interactions with emergency relocation schemes based on Article 78(3) TFEU*

The proposal establishing a crisis relocation mechanism has to be distinguished from the proposals adopted by the Commission on the basis of Article 78(3) TFEU for the benefit of certain Member States confronted with a sudden inflow of third country nationals on their territories.

While the measures proposed by the Commission on the basis of Article 78(3) TFEU are provisional, the proposal establishing a crisis relocation mechanism introduces a method for determining for a temporary period in crisis situations which Member State is responsible for examining applications for international protection made in a Member State confronted with a crisis situation, with a view to ensure a fairer distribution of applicants between Member States in such situations and thereby facilitate the functioning of the Dublin system even in times of crisis.

This proposal sets strict conditions for triggering the crisis relocation mechanism in relation to a given Member State, in particular the fact that the Member State is confronted with a crisis situation jeopardising the application of the Dublin Regulation due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons, which places significant demands on its asylum system.

The establishment of a crisis relocation mechanism is without prejudice to the possibility for the Council to adopt, on a proposal from the Commission, provisional measures for the benefit of a Member State confronted by an emergency situation as characterised by Article 78(3) TFEU. The adoption of emergency measures on the basis of Article 78(3) TFEU will

remain relevant in exceptional situations where an emergency response, possibly encompassing a wider migratory support, is needed, should the conditions for using the crisis relocation mechanism not be met.

*Future possible amendments of Regulation (EU) No 604/2013*

**AS ANNOUNCED IN THE EUROPEAN AGENDA ON MIGRATION AND IN LINE WITH THE OBLIGATIONS DERIVING FROM REGULATION (EU) NO 604/2013, THE COMMISSION IS CURRENTLY UNDERTAKING A COMPREHENSIVE 'FITNESS CHECK' OF THE DUBLIN SYSTEM, BY CONDUCTING AN EVIDENCE-BASED REVIEW COVERING THE LEGAL, ECONOMIC AND SOCIAL EFFECTS OF THE SYSTEM, INCLUDING ITS EFFECTS ON FUNDAMENTAL RIGHTS. THIS WORKS WILL BE THE BASIS FOR A POSSIBLE FURTHER REVISION OF THE DUBLIN SYSTEM, IN PARTICULAR IN VIEW OF ACHIEVING A FAIRER DISTRIBUTION OF APPLICANTS FOR INTERNATIONAL PROTECTION IN EUROPE IN ALL CIRCUMSTANCES AND NOT ONLY IN SITUATIONS OF CRISIS. 2. LEGAL BASIS, SUBSIDIARITY, PROPORTIONALITY, FUNDAMENTAL RIGHTS**

- **Legal basis**

This proposal amends Regulation (EU) No 604/2013 and should therefore be adopted on the same legal basis, namely Article 78, second paragraph, point (e) of the TFEU, in accordance with the ordinary legislative procedure.

The crisis relocation mechanism contained in this proposal entails permanent derogations, to be activated in specific situations of crisis to the benefit of specific Member States, notably from the principle laid down in Article 3(1) of Regulation (EU) No 604/2013 according to which an application for international protection shall be examined by the Member State which the criteria set out in Chapter III indicate as being responsible. In place of this principle, the proposal establishes, for well prescribed crisis circumstances, a mandatory distribution key for determining the responsibility for examining applications.

- **Variable geometry**

In accordance with the Protocol 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, the United Kingdom and Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

The United Kingdom and Ireland are bound by Regulation 604/2013, following the notification of their wish to take part in the adoption and application of that Regulation based on the above-mentioned Protocol. The position of these Member States with regard to Regulation 604/2013 does not affect their position with regard to their possible participation in this Regulation<sup>4</sup>.

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas"). However, given that Denmark applies the

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<sup>4</sup> For such a Member State, the fact of not participating in the amending Regulation would not appear to make the application of the Dublin Regulation as amended inoperable in the sense of Article 4a of Protocol 21.

current Dublin Regulation, on the basis of an international agreement that it concluded with the EC in 2006<sup>5</sup>, it shall, in accordance with Article 3 of that agreement, notify the Commission of its decision whether or not to implement the content of the amended Regulation.

- **Impact of the proposal on non EU Member States associated to the Dublin system**

In parallel to the association of several non-EU Member States to the Schengen acquis, the Union concluded several agreements associating these countries also to the Dublin/Eurodac acquis:

- the agreement associating Iceland and Norway, concluded in 2001<sup>6</sup>;
- the agreement associating Switzerland, concluded on 28 February 2008<sup>7</sup>;
- the protocol associating Liechtenstein, concluded on 7 March 2011<sup>8</sup>.

In order to create rights and obligations between Denmark – which as explained above has been associated to the Dublin/Eurodac acquis via an international agreement – and the associated countries mentioned above, two other instruments have been concluded between the Union and the associated countries<sup>9</sup>.

**In accordance with the three above-cited agreements, the associated countries shall accept the Dublin/Eurodac acquis and its development without exception. They do not take part in the adoption of any acts amending or building upon the Dublin acquis (including therefore this proposal) but have to notify to the Commission within a given time-frame of their decision whether or not to accept the content of that act, once approved by the Council and the European Parliament. In case Norway, Iceland, Switzerland or Liechtenstein do not accept an act amending or building upon the Dublin/Eurodac acquis, the respective agreements will be terminated, unless the Joint/Mixed Committee established**

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<sup>5</sup> Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L66, 8.3.2006, p.38).

<sup>6</sup> Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway (OJ L 93, 3.4.2001, p. 40).

<sup>7</sup> Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 53, 27.2.2008, p. 5).

<sup>8</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 160 18.6.2011 p. 39).

<sup>9</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (concluded on 24.10.2008, OJ L 161, 24.06.2009, p. 8) and Protocol to the Agreement between the Community, Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, Iceland and Norway (OJ L 93, 3.4.2001).

**by the agreements decides otherwise by unanimity. • Subsidiarity (for non-exclusive competence)**

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

The proposal introduces a relocation mechanism with a view to structurally deal with crisis situations in any Member State generated by large and disproportionate inflow of persons and achieve a fair sharing of responsibilities between Member States in times of crisis, involving a derogation from the criteria for allocating responsibility contained in the Dublin regulation. By definition, EU action will intervene where a Member State cannot alone cope with the situation. In addition, the proposal aims at ensuring the correct application of the Dublin system in times of crisis and at tackling the issue of secondary movements of third country nationals between Member States, a problem which is trans-national by nature. It is clear that actions of individual Member States cannot satisfactorily reply to the common challenges all Member States are confronted with in this area. The principles of solidarity and shared responsibility make EU action in this field essential.

- **Proportionality**

Regulation (EU) No 604/2013 does not provide, in its current form, for tools enabling sufficient responses to situations of extreme pressure put on Member States' asylum systems. The various financial and operational measures available to the European Commission and the EASO to support the asylum systems of several Member States have been proven insufficient to alone address crisis situations. In order to provide an adequate framework for urgent and severe situations in the asylum area, opting for further EU action in this respect does not go beyond what is necessary to achieve the objective of addressing the situation effectively.

- **Fundamental rights**

As a result of introducing the crisis relocation mechanism, the fundamental rights as provided for in the EU Charter of Fundamental Rights ("the Charter") of the applicants who are in clear need of international protection will be safeguarded.

In particular, by ensuring a swift access of the persons concerned to an adequate procedure for granting international protection, this proposal aims to protect the right to asylum and to ensure protection against *non-refoulement*, as provided for in Articles 18 and 19 of the Charter. In addition, by ensuring the transfer of the persons concerned to a Member State which is in a position to give them adequate reception conditions and integration perspectives, this proposal aims to ensure full respect for the right to dignity and protection against torture and inhuman or degrading treatment or punishment, as provided for in Articles 1 and 4 of the Charter. This Decision also aims to protect the rights of the child, in line with Article 24 of the Charter and right to family unity, in line with Article 7 of the Charter.

### **3. CONSULTATION OF INTERESTED PARTIES**

The proposal establishing a mechanism to structurally deal with situations of crisis in the asylum area is presented as result of a prevailing crisis in the area of asylum in several

Member States which demonstrates the urgent need for a more structural system for rapid Union action. The proposal is a follow-up to the European Agenda on Migration which has been widely consulted on with all interested parties.

Other EU institutions and key actors have already expressed their broad views on this topic. In its 23 April 2015 statement, the European Council committed to consider options for organising emergency relocation between all Member States on a voluntary basis. In the context of the discussion on the Agenda on Migration, European Parliament (plenary session of 19 May 2015) and the Council (15 June 2015) exchanged views also on the relocation mechanism. In its report, the LIBE Committee of the European Parliament has called upon the Commission to make a proposal for a permanent relocation scheme, to be adopted in accordance with the ordinary legislative procedure<sup>10</sup>.

UNHCR and the civil society called the EU to commit to more intra-EU solidarity tools and ensure a fairer distribution system of applicants for international protection.

#### **4. BUDGETARY IMPLICATIONS**

The setting up of a permanent framework for a crisis relocation mechanism entails no implication for the EU budget. The budgetary implications of the activation of the framework will have to be assessed in relation to the specific circumstances of given Member States.

#### **5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL**

The proposal amends Regulation (EU) No 604/2013 by introducing a crisis relocation mechanism and conferring the power to the Commission to adopt acts in accordance with Article 290 TFEU in respect of triggering the application of the mechanism as well as its suspension in respect of a particular Member State, under clearly prescribed conditions.

The following essential elements are provided for:

- **Conditions for applying the crisis relocation mechanism in respect of a Member State**

For triggering the crisis relocation mechanism the Commission must establish, on the basis of substantiated information, in particular information gathered by EASO and Frontex, that a Member State is confronted with a crisis situation jeopardizing the application of Regulation (EU) No 604/2013 due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons, which places significant demands on its asylum system. The crisis situation should be of such a magnitude as to place extreme pressure even on a well prepared and functioning asylum system, while also taking into account the size of the Member State concerned.

The proposal provides for clear indicators that the Commission should inter alia take into account in making this assessment: the total number of applicants for international protection and of irregular entries of third country nationals and stateless persons in the six months preceding the adoption of the delegated act, the increase in such numbers compared to the same period in the previous year as well as the number of applications per capita in the

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<sup>10</sup> Report on the proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Ska Keller (A8-0245/2015).

Member State benefiting from relocation over the previous 18 months compared to the Union average.

- **Categories of applicants to be relocated**

It is proposed to trigger the crisis relocation mechanism only in respect of applicants who are, *prima facie*, in clear need of international protection and for which the Member State in a crisis situation would have otherwise been responsible, under the criteria set out in Chapter III of Regulation (EU) No 604/2013. The proposal defines those applicants as those belonging to nationalities for which, based on the latest available updated quarterly EU-wide average Eurostat data, the recognition rate is 75% or higher.

- **Description of the crisis relocation mechanism**

Under the crisis relocation mechanism, the applications of these persons shall be examined by another Member State (the Member State of relocation). In such case, the relocation procedure as set out in Annex IV shall apply, in derogation from Articles 21, 22 and 29 of Regulation (EU) No 604/2013.

The proposal sets out a simple relocation procedure, to ensure a quick transfer of the persons concerned to the Member State of relocation. Each Member State shall appoint a national contact point and communicate it to the other Member States and to the European Asylum Support Office (EASO).

Member States shall at regular intervals, and at the latest every three months, indicate the number of applicants who can be relocated swiftly to their territory and any other relevant information. The Member State benefiting from relocation, with the assistance of EASO, and, where applicable, of the other Member States' liaison officers, shall then identify the individual applicants who could be relocated and propose to the other Member States that these applicants be relocated to their territory. In doing so, priority should be given to vulnerable applicants. Following approval of the Member State of relocation, a formal decision to relocate an applicant needs then to be taken by the Member State benefiting from relocation and notified to the applicant. The proposal specifies that applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 may not be relocated unless their fingerprints have been taken. The proposal also specifies that Member States retain the right to refuse to relocate an applicant only in relation to national security or public order concerns or exclusion provisions set out in Article 12 and 17 of Directive 2011/95/EU. The proposal foresees that all the procedural steps must be carried out as soon as possible and no later than two months from the indication by the Member State of relocation of the number of applicants who could be relocated swiftly. In case of justifiable practical obstacles, further limited derogations are foreseen.

The proposal includes specific guarantees for the applicants who are subject to relocation to another Member State. The proposal specifies the right to receive information on the relocation procedure, the right to be notified with the relocation decision which must specify the precise Member State of relocation and the right to be relocated with the family members in the same Member State of relocation. The obligation to give primary consideration to the best interests of the child as laid down by Regulation (EU) No 604/2013 remain applicable when deciding the Member State of relocation. This implies *inter alia* the obligation for a Member State benefiting from relocation to indicate to the other Member States when the applicant to be relocated is an unaccompanied minor and, together with the Member State who manifested an interest in relocating that minor, to ensure that before relocation takes



place, a best interests of the child assessment is carried out, in line with General Comment No 14 (2013) of the UN Committee on the rights of the child to have his or her best interests taken as primary consideration<sup>11</sup>.

- **Triggering of the crisis relocation mechanism**

When the Commission establishes that the conditions for relocation are fulfilled in respect of a particular Member State, it shall adopt a delegated act for triggering the application of the relocation mechanism. This delegated act shall (a) ascertain that there is a crisis situation in the Member State benefiting from relocation; (b) determine the number of persons to be relocated from that Member State; (c) determine the distribution of those persons between Member States by applying the formula for a distribution key, and (d) set the period of application of the crisis relocation mechanism. The delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a maximum period of one month from its notification by the Commission. The delegated act can be applicable for a maximum of two years.

- **Method for setting the number of persons to be relocated**

The proposal provides for objective and verifiable indicators to be taken into account by the Commission when determining, in the context of adopting a delegated act triggering the crisis relocation mechanism in respect of a particular Member State, the number of persons to be relocated from that Member State and in particular: the number of applicants per capita in the Member State benefiting from relocation in the 18 months, and in particular in the six months, preceding the adoption of the delegated act compared to the Union average; the capacity of the asylum system of that Member State; and the participation of the Member State in previous solidarity initiatives as well as the extent to which the Member State has benefited from previous EU solidarity measures.

Moreover, a maximum threshold for the persons to be relocated is established, namely 40% of the number of applications lodged with that Member State in the six months preceding the adoption of the delegated act.

- **Specific rules in case a Member State is temporarily unable to take part in the relocation of applicants**

Given that exceptional circumstances cannot be excluded, the proposal foresees that a Member State may, within one month of the entry into force of the delegated act triggering the application of the relocation mechanism, notify to the Commission, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, that it is temporarily unable to take part, fully or in part, in the relocation of applicants, for a period of one year. The Member State should instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP to cover assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State to the relocation. In case of partial participation in the relocation, this amount shall be reduced in proportion. This amount should be allocated to the Asylum, Migration and Integration Fund as assigned revenue.

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[http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

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

The proposal provides that the delegated act triggering the application of the relocation mechanism shall in such circumstances be amended.

- **Complementary measures to be taken by the Member State benefiting from relocation**

Reflecting the dual principles of solidarity and responsibility, the proposal sets out the obligation for the Member State benefiting from relocation to present to the Commission, on the date of entry into force of the delegated act, a roadmap with measures to ensure appropriate implementation of the crisis relocation mechanism. Where a Member State has been called upon by the Commission to draw up a crisis management action plan pursuant to Article 33(3) of Regulation (EU) No 604/2013, the measures aimed to ensure an appropriate implementation of the relocation mechanism shall be presented as part of that action plan, which should include wider asylum related measures aimed at, inter alia, strengthening the capacity of its asylum system. Moreover, the proposal specifies the conditions under which the Commission may decide to suspend the application of the relocation mechanism for the benefit of a Member State should it fail to comply with its obligations.

Finally, the proposal recalls the rules applicable to prevent and deal with situations of secondary movements by applicants for and beneficiaries of international protection and provides for new rules in case of secondary movements of beneficiaries of international protection who, after having been relocated, entered and stayed irregularly on the territory of another Member State. In particular, it is provided that the Member State of relocation shall take back a beneficiary of international protection who, after having been relocated, made an application in another Member State than the Member State of relocation or who is on the territory of another Member State than the Member State of relocation without a residence document.

- **Calculation of the distribution key**

1. Distribution key

- a) Population - 40% weighting

- b) Total GDP - 40% weighting

- c) Average number of asylum applications over the 5 preceding years per million inhabitants with a cap of 30% of the population and GDP - 10% weighting

- d) Unemployment rate with a cap of 30% of the population and GDP - 10% weighting

2. Formula

$$\text{Population effect}_{MS/AS} = \frac{\text{Population}_{MS/AS}}{\text{Population}_{EU+(32)}}$$

$$\text{GDP effect}_{MS/AS} = \frac{\text{GDP}_{MS/AS}}{\text{GDP}_{EU+(32)}}$$

$$\text{Asylum effect}_{MS/AS} = \min \left\{ \frac{\frac{1}{\sum_{i=1}^{32} \text{Average(5 preceding years) applicants per Million inhabitants}_{MS/ASi}}}{\frac{1}{\sum_{i=1}^{32} \text{Average(5 preceding years) applicants per Million inhabitants}_{MS/ASi}}}, 30\%(\text{Population effect}_{MS/AS} + \text{GDP effect}_{MS/AS}) \right\}$$

$$\text{Unemployment effect}_{MS/AS} = \min \left\{ \frac{\frac{1}{\text{Unemployment rate}_{MS/AS}}}{\frac{1}{\sum_{i=1}^{32} \text{Unemployment rate}_{MS/ASi}}}, 30\%(\text{Population effect}_{MS/AS} + \text{GDP effect}_{MS/AS}) \right\}$$

$$\text{Capped Quota}_{MS/AS} = \text{Allocation} * (40\% \text{ Population effect}_{MS/AS} + 40\% \text{ GDP effect}_{MS/AS} + 10\% \text{ Asylum effect}_{MS/AS} + 10\% \text{ Unemployment effect}_{MS/AS})$$

$$\text{Residual Quota}_{MS/AS} = (\text{Allocation} - \sum_{i=1}^{32} \text{Capped Quota}_{MS/ASi}) * (50\% \text{ Population effect}_{MS/AS} + 50\% \text{ GDP effect}_{MS/AS})$$

$$\text{Final Allocation Quota}_{MS/AS} = \text{Capped Quota}_{MS/AS} + \text{Residual Quota}_{MS/AS}$$

$$\text{Final share}_{MS/AS} (\text{de facto key}) = \frac{\text{Final Allocation Quota}_{MS/AS}}{\text{Allocation}} * 100\%$$

### 3. Calculation

The simulation below is meant to show how the allocation of 120 000 applicants to a country X is calculated if all Member States and Associated States (EU+) participate.

#### (a) Population

To calculate the effect of the population criterion on the distribution key, the number of inhabitants of the country X is divided by the number of inhabitants of all 28 Member States and 4 Associated States (EU+= 32).

##### Example:

Population of the country X: 4.625.885; The sum of EU+ population: 521.959.960

$$\text{Population effect}_x = \frac{4.625.885}{521.959.960} = 0,89\%$$

The effect of the population criterion on the distribution key for the country X is 0,89%.

#### (b) Total GDP

To calculate the effect of the total GDP criterion on the distribution key, the total GDP of the country X is divided by a sum of the total GDP for 28 EU Member States and 4 Associated States (EU+= 32).

##### Example:

Total GDP of the country X (in million Eur): 185.411; The sum of total GDP of EU+ (in million Eur): 14.854.924

$$\text{GDP effect}_x = \frac{185.411,7}{14.854.924} = 1,25\%$$

The effect of the GDP criterion on the distribution key for the country X is 1,25%.

#### (c) Average number of asylum applications over the 5 preceding years per million inhabitants with a cap of 30% of the population and GDP effect - 10% weighting

(Inverse effect)

The asylum applications effect on the distribution key is inversely proportional, i.e. the higher the number of asylum applications, the lower the factor.

In order to avoid that this criterion has a disproportionate effect on the entire key, a cap is applied, whereby the value of the asylum applications effect cannot exceed 30% of the sum of the population and GDP effect.

**Example:**

Average number of asylum applications over 5 years per million inhabitants in the country

X: 287 country X: 287, Inverted value:  $\frac{1}{287} = 0,00348$ .

The sum of the average number of asylum applications over 5 years per million inhabitants for all EU+ (inverted value): 0,14831

$$\text{Asylum effect}_x = \frac{\frac{1}{287}}{0,14831} = \frac{0,00348}{0,14831} = \underline{2,35\%}$$

$$\text{Cap}_x = 30\% (0,89\% (\text{population effect}) + 1,25\% (\text{GDP effect})) = \underline{0,64\%}$$

The actual effect of the asylum applications criterion for the country X is 2,35%, but the value of the cap (0,64%) is applied for the calculation of the key.

(d) Unemployment rate with a cap of 30% of the population and GDP effect - 10% weighting

As in the case of the asylum applications criterion, the unemployment rate effect on the key is inversely proportional, i.e. the higher the rate, the lower the factor. In order to avoid that this criterion has a disproportionate effect on the entire key, a cap is applied, whereby the value of the unemployment rate effect cannot exceed 30% of the sum of the population and GDP effect.

**Example:**

Unemployment rate in the country X: 11,3%, inverted value:  $\frac{1}{11,3} = 0,0884955$

The sum of all unemployment rates in the EU+ (inverted value): 4,345698

$$\text{Unemployment rate effect}_x = \frac{0,0884955}{4,345698} = \underline{2,04\%}$$

$$30\% \text{ Cap}_x = \underline{0,64\%}$$

The actual effect of the unemployment rate criterion for the country X is 2,04%, but the value of the cap (0,64%) is applied for the calculation of the key.

(e) Capped allocation of 120 000 applicants to the country X

**Example:**

Allocation<sub>x</sub> = 120 000 \* (40% population effect (0,89%) + 40% GDP effect (1,25%) + 10% asylum applications effect (capped) – 0,64% + 10% unemployment rate effect (capped) – 0,64%) = 1178

Capped allocation for the country X: 1178

(f) Allocation of remaining places

Due to the cap, there will be a certain number of remaining places that needs to be allocated. The distribution of those places will be based on the population and GDP effect (50%-50%) for a given country. The numbers of remaining places are then added to the capped allocation.

**Example:**

Capped allocation for the country X: 1178;

The sum of capped allocations for all EU+: 102.801;

Remaining places that still need to be allocated: 17.199

Residual places<sub>x</sub> = 17.199 \* (50% population effect + 50% GDP effect) = 17.199\* 1,07% = 184

**The final allocation of applicants for the country X is 1362, and the key is 1,13%**

## **Proposal for a**

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**establishing a crisis relocation mechanism and amending 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**

#### **THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 604/2013 of the European Parliament and of the Council establishes 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, based on objective criteria set in its Chapter III.
- (2) In accordance with Article 80 of the Treaty, the policies of the Union in the area of border checks, asylum and immigration and their implementation should be governed by the principles of solidarity and fair sharing of responsibility between Member States and Union acts adopted in this area must contain appropriate measures to give effect to this principle.
- (3) Situations of extreme pressure being placed on a Member State's asylum system may jeopardize the application of Regulation (EU) No 604/2013. While this Regulation provides for a process for early warning, preparedness and management of asylum crisis, it does not enable in such situations to derogate from the set responsibility criteria. In order to promote a balance of efforts between Member States in dealing with these crisis situations and to ensure a swift access to the procedures for granting international protection, a crisis mechanism for the relocation of applicants in clear need of international protection should therefore be put in place. The application of relocation measures in respect of a particular Member State should be without prejudice to the possibility to apply in parallel Article 33(3) of this Regulation to the same Member States. Article 33(3) of this Regulation is not a precondition for the application of relocation measures.

- (4) The application of relocation measures in respect of a particular Member State should be without prejudice to the possibility for the Council to adopt provisional measures on a proposal from the Commission pursuant to Article 78(3) in the event of an emergency situation in a Member State characterised by a sudden inflow of nationals of third country nationals.
- (5) The crisis relocation mechanism should be seen in the context of a wider set of measures that Member States may need to take to ensure effective migration policies, including in the area of first reception and return of third country nationals not having the right to remain on the territory of the Member States in accordance with provisions of Directive 2008/115/EC ('hotspots').
- (6) A comprehensive evaluation of the Dublin Regulation is currently being conducted by the Commission that could lead to a wider revision of the Dublin system.
- (7) A clear and workable relocation 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 asylum applications for international protection taken at first instance, based on the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would prevent, to the maximum extent possible, applicants who are likely to receive a negative decision to their application from being relocated to another Member State and therefore prolong unduly their stay in the Union. A threshold of 75%, based on the latest available updated Eurostat quarterly data for first instance decisions, should be used.
- (8) Relocation of applicants in clear need of international protection should take place on the basis of the formula for a distribution key set out in Annex III. The proposed distribution key should be based on a) the size of the population (40 % weighting), b) the total of the GDP (40 % weighting), c) the average number of asylum applications per one million inhabitants over the period 2010-2014 (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution) and d) the unemployment rate (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution).
- (9) Where, in exceptional circumstances, a Member State notifies to the Commission, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, that it is temporarily unable to take part, in full or in part, in the relocation of applicants, for a period of one year, it should instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP to cover assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State to the relocation. In case of partial participation in the relocation, this amount should be reduced in proportion. This amount should be allocated to the Asylum, Migration and Integration Fund as assigned revenue.
- (10) It must be ensured that the level of solidarity with the Member State confronted with a crisis situation, in terms of the number of persons to be relocated, remains unaffected. Therefore, the allocations under the distribution key that were foreseen

for any Member State which has made a notification accepted by the Commission, should be redistributed to the remaining Member States.

- (11) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the relocation procedure by a close administrative cooperation between Member States and operational support provided by EASO.
- (12) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect to the fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof.
- (13) When deciding which applicants in clear need of international protection should be relocated from the Member State benefiting from relocation, priority should be given to vulnerable applicants within the meaning of Article 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council<sup>12</sup>. In this respect, special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration.
- (14) Integration of applicants in clear need of international protection in the host society is the cornerstone of a well-functioning Common European Asylum System. Therefore, in 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 of the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which the Member State benefiting from relocation, in consultation with EASO and, where applicable, liaison officers may compile lists of possible applicants identified for relocation to that Member State.
- (15) The appointment by Member States of liaison officers in the Member State benefiting from relocation should facilitate the effective implementation of the relocation procedure, including the appropriate identification of the applicants who could be relocated, taking into account in particular their vulnerability and qualifications. As regards both the appointment of liaison officers in the Member State benefiting from relocation and the fulfilment of their tasks, the Member State of relocation and the Member State benefiting from relocation should exchange all relevant information and continue cooperating closely throughout the relocation procedure.
- (16) Measures should be taken in order to avoid secondary movements of relocated persons from the Member State of relocation to other Member States. In particular, applicants should be informed of the consequences of onward irregular movement

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<sup>12</sup> 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).



within the Member States and of the fact that, if the Member State responsible grants them international protection, in principle, they are only entitled to the rights attached to international protection in that Member State.

- (17) In order to avoid secondary movements of beneficiaries of international protection, Member States should also inform the beneficiaries about the conditions under which they may legally enter and stay in another Member State and could impose reporting obligations. In addition, in order to ensure that beneficiaries of international protection who entered the territory of another Member State than the Member State of relocation without fulfilling the conditions of stay in that other Member State are taken back by the Member State of relocation, it is necessary to encompass beneficiaries of international protection who have been relocated in the scope of this Regulation.
- (18) 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 in the asylum and Schengen acquis, except for serious humanitarian reasons, Member States should neither provide applicants with national travel documents, nor give them other incentives, such as financial ones, which could facilitate their irregular movements to other Member States. In case of irregular movements to other Member States, applicants should be sent back to the Member State of relocation.
- (19) In order to promptly handle crisis situations resulting from the extreme migratory pressure on the asylum system of specific Member States, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission also in respect of establishing the application of relocation measures in respect of a particular Member State as well on the suspension of the application of such measures.
- (20) In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of ascertaining the fulfilment of the relocation conditions as well as the other elements provided for under Article 33(a)4 and 33(d)2 of this Regulation. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (21) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]*

OR

- (21) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

- (21) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

- (22) *In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

- (21) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.*

- (22) *In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

- (22) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (23) Regulation (EU) No 604/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

2015/0208 (COD)

Proposal for a

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a crisis relocation mechanism and amending 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**

*Article 1*

Regulation (EU) No 604/2013 is amended as follows:

(1) In Article 2 the following points are added:

"o) 'relocation' means the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of this Regulation indicate as responsible for examining his or her application for international protection ('Member State benefiting from relocation') to the territory of the Member State of relocation;

p) 'Member State of relocation' means the Member States which becomes responsible for examining the application for international protection pursuant to this Regulation of an applicant following his or her relocation to the territory of that Member State."

(2) In Article 4(1) the following point is added:

"(g) where applicable, the relocation procedure set out in Section VII of Chapter VI."

(3) In Article 18(1) the following point is added:

" e) take back, under the conditions laid down in Articles 23, 24, 25 and 29 a beneficiary of international protection, who after having been relocated, made an application in another Member State than the Member State of relocation or who is on the territory of another Member State than the Member State of relocation without a residence document ."

(4) In Chapter VI, the following Section VII is added:

**"SECTION VII**

*Crisis relocation mechanism*

**Article 33a**

**Crisis relocation mechanism**

1. Where, on the basis of substantiated information, in particular the information gathered by EASO pursuant to Regulation (EU) No 439/2010 and by the European Agency for the Management of Operational Cooperation at the External Borders established by Council Regulation (EC) No 2007/2004\*, the Commission establishes that a Member State is confronted with a crisis situation jeopardizing the application of this Regulation due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons, which places significant demands on its asylum system, the crisis relocation mechanism referred to in paragraph 2 shall be applied for the benefit of that Member State.

2. Under the crisis relocation mechanism, a number of applications for international protection shall be examined by the Member State of relocation in derogation from the principle set out in Article 3(1) according to which an application shall be examined by the Member State which the criteria set out in Chapter III indicate as being responsible. In addition, the detailed procedural rules set out in Annex IV shall apply, in derogation from Articles 21, 22 and 29.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 on the application of the crisis relocation mechanism for the benefit of a Member State.

4. In the delegated acts referred to in paragraph 3 the Commission shall:

- (a) ascertain that there is a crisis situation referred to in paragraph 1 in the Member State benefiting from relocation,
- (b) determine the number of persons to be relocated from that Member State,
- (c) determine the distribution of those persons between Member States by applying the formula for a distribution key referred to in Article 33b, and
- (d) set the period of application of the crisis relocation mechanism.

5. When ascertaining whether there is a crisis situation referred to in point (a) of paragraph 4, the Commission shall establish that the crisis is of such a magnitude as to place extreme pressure even on a well prepared asylum system which is functioning in line with all relevant aspects of the EU asylum acquis, also taking account of the size of the Member State concerned.

In making this assessment, the Commission shall, inter alia, take into account the total number of applicants for international protection and of irregular entries of third country nationals and stateless persons in the six months preceding the adoption of the delegated act, the increase in such numbers compared to the same period in the previous year as well as the number of applications per capita in the Member State benefiting from relocation over the previous 18 months compared to the Union average.

6. For determining the number of persons to be relocated referred to in point (b) of paragraph 4, the Commission shall take into account the following, in particular:

- (a) the number of applicants for international protection per capita in the Member State benefiting from relocation in the 18 months, and in particular in the six months, preceding the adoption of the delegated act compared to the Union average,
- (b) the capacity of the asylum system of that Member State, and

- (c) the participation of the Member State in previous solidarity initiatives as well as the extent to which the Member State has benefited from previous EU solidarity measures.

The number of persons to be relocated shall not exceed 40% of the number of applications lodged with that Member State in the six months preceding the adoption of the delegated act.

## Article 33b

### Distribution key

1. Relocation shall take place pursuant to the formula for a distribution key as set out in Annex III.
2. A Member State may, in exceptional circumstances, within one month of the entry into force of the delegated act referred to in Article 33a(3), notify to the Commission that it is temporarily unable to take part, in full or in part, in the relocation of applicants from the Member State benefiting from relocation, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union. The Commission shall assess the reasons given and address a decision to such Member State. Where the Commission finds that the notification is duly justified, the Member State shall be freed, for a period of one year, from its obligation to take part in the relocation of applicants, and shall instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP; in case of partial participation in the relocation, this amount shall be reduced in proportion. This contribution shall be used to finance assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State to the relocation, pursuant to the provisions of Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decision No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC<sup>13</sup>. It shall constitute assigned revenue within the meaning of Article 21(4) of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>14</sup>.

The Commission shall amend the delegated act referred to in Article 33a(3) in order to redistribute the allocations under the distribution key that were foreseen for any Member State which has made a notification accepted by the Commission pursuant to the first sentence of this paragraph to the remaining Member States, in line with the formula for a distribution key set out in Annex III.

3. The participation of a Member State to relocation pursuant to the distribution key is suspended where that Member State is a Member State benefiting from relocation.

## Article 33c

### Scope of the crisis relocation mechanism

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<sup>13</sup> OJ L 150, 20.5.2014, p. 168.

<sup>14</sup> OJ L 298, 26.10.2012, p. 1.

1. Relocation shall only take place in respect of applicants who have lodged their application for international protection in a Member State confronted with a crisis situation referred to in Article 33a(1) and where that Member State would have otherwise been responsible pursuant to the criteria for determining the Member State responsible set out in Chapter III.
2. Relocation shall only be applied in respect of applicants belonging to nationalities for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/32/EU 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 only be taken into account in respect of applicants who have not already been identified as applicants who could be relocated in accordance with point 3 of annex IV.

### **Article 33d**

#### **Complementary measures to be taken by the Member State benefiting from relocation**

1. Member State benefiting from relocation shall, on the date of entry into force of the delegated act referred to in Article 33a(3), present a roadmap to the Commission with measures to ensure the appropriate implementation of the crisis relocation mechanism. Where applicable, these measures shall be presented as part of a crisis management action plan pursuant to Article 33(3). The Member State benefiting from relocation shall fully implement these measures.
2. The Commission shall be empowered to adopt a delegated act in accordance with Article 45 to suspend the application of the crisis relocation mechanism for the benefit of a Member State where the Member State benefiting from relocation does not comply with the obligations referred to in paragraph 1. The Commission shall first give the Member State concerned the opportunity to present its views. Such suspension shall not affect the transfers of applicants that are pending following approval of the Member State of relocation pursuant to point 4 of annex IV."

(5) In Article 45, the following paragraphs are added:

"6. The power to adopt delegated acts referred to in Article 33a and 33d shall be conferred on the Commission for a period of 5 years from [*the date of entry into force of this Regulation – OPOCE should replace with exact date*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

7. The delegation of power referred to in Article 33a and 33d may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

8. A delegated act adopted pursuant to Article 33a and 33d shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a

period of two weeks of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two weeks at the initiative of the European Parliament or of the Council. The delegated act shall be applicable for a maximum of two years."

(6) New annexes III and IV as set out in the annex to this Regulation are added.

#### *Article 2*

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*



Brussels, 9.9.2015  
COM(2015) 450 final

ANNEX 1

**ANNEX**

*to the*

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a crisis relocation mechanism and amending 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**



## ANNEX III – Formula for a distribution key

$$\text{Population effect}_{\text{MS/AS}} = \frac{\text{Population}_{\text{MS/AS}}}{\text{Population}_{\text{EU+(32)}}}$$

$$\text{GDP effect}_{\text{MS/AS}} = \frac{\text{GDP}_{\text{MS/AS}}}{\text{GDP}_{\text{EU+(32)}}}$$

$$\text{Asylum effect}_{\text{MS/AS}} = \min \left\{ \frac{\frac{1}{\text{Average(5 preceding years) applicants per Million inhabitants}_{\text{MS/AS}}}}{\sum_{i=1}^{32} \frac{1}{\text{Average(5 preceding years) applicants per Million inhabitants}_{\text{MS/AS}_i}}}, 30\%(\text{Population effect}_{\text{MS/AS}} + \text{GDP effect}_{\text{MS/AS}}) \right\}$$

$$\text{Unemployment effect}_{\text{MS/AS}} = \min \left\{ \frac{\frac{1}{\text{Unemployment rate}_{\text{MS/AS}}}}{\sum_{i=1}^{32} \frac{1}{\text{Unemployment rate}_{\text{MS/AS}_i}}}, 30\%(\text{Population effect}_{\text{MS/AS}} + \text{GDP effect}_{\text{MS/AS}}) \right\}$$

$$\text{Capped Quota}_{\text{MS/AS}} = \text{Allocation} * (40\% \text{ Population effect}_{\text{MS/AS}} + 40\% \text{ GDP effect}_{\text{MS/AS}} + 10\% \text{ Asylum effect}_{\text{MS/AS}} + 10\% \text{ Unemployment effect}_{\text{MS/AS}})$$

$$\text{Residual Quota}_{\text{MS/AS}} = (\text{Allocation} - \sum_{i=1}^{32} \text{Capped Quota}_{\text{MS/AS}_i}) * (50\% \text{ Population effect}_{\text{MS/AS}} + 50\% \text{ GDP effect}_{\text{MS/AS}})$$

$$\text{Final Allocation Quota}_{\text{MS/AS}} = \text{Capped Quota}_{\text{MS/AS}} + \text{Residual Quota}_{\text{MS/AS}}$$

$$\text{Final share}_{\text{MS/AS}} (\text{de facto key}) = \frac{\text{Final Allocation Quota}_{\text{MS/AS}}}{\text{Allocation}} * 100\%$$

## ANNEX IV

### Detailed procedural rules to apply the crisis relocation mechanism

1. 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 8.
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 information referred to in paragraph 2, the Member State benefiting from relocation shall with the assistance of EASO and, where applicable, Member States' liaison officers referred to in paragraph 9, 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, the Member State benefiting from relocation 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 in writing the applicant of the decision to relocate him or her to a specific Member State of relocation.
5. Member States shall ensure that family members to whom the relocation applies are relocated to the territory of the same Member State.
6. Applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 may only be proposed for relocation if their fingerprints have been taken and transmitted to the Central System of Eurodac, pursuant to that Regulation.
7. The relocation 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 relocation decision referred to in Article 33d. The Member State

benefiting from relocation shall transmit to the Member State of relocation the date and time of the relocation as well as any other relevant information.

8. Member States shall have the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Article 12 and 17 of Directive 2011/95/EU.
9. For the implementation of all aspects of the relocation procedure described in this Article, Member States may decide to appoint in the Member State benefiting from relocation liaison officers after exchanging all relevant information.
10. Identification, registration and fingerprinting for the relocation procedure shall be guaranteed by the Member State benefiting from relocation and the necessary facilities shall be in place. Applicants that elude the relocation procedure shall be excluded from relocation.
11. The relocation procedure provided for in this Annex 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 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 this two months period. In such case, the time limit for completing the relocation procedure may be extended by no more than two weeks. In addition, this time limit may also be extended, with a further four weeks period, as appropriate, where the Member State benefiting from relocation justify objective practical obstacles preventing the transfer from taking place.

Where the relocation procedure is not completed within this time limit and unless the Member State benefiting from relocation agree with the Member State of relocation to a reasonable extension of the time limit, the Member State benefiting from relocation remain responsible for examining the application for international protection.

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