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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 23 October 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL amending Regulation (EU) No 516/2014 of the
European Parliament and the Council, as regards the re-commitment of the
remaining amounts committed to support the implementation of the Council
Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation thereof to
other actions under the national programmes

Delegations will find attached document COM(2018) 719 final.

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Brussels, 22.10.2018
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 516/2014 of the European Parliament and the Council, as regards the re-commitment of the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation thereof to other actions under the national programmes

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

To support the implementation of the Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece¹ and of the Council Decision on legal admission from Turkey², funding was committed to Member States' national programmes under the Asylum, Migration and Integration Fund (AMIF). The two Council Decisions³ have enabled the effective relocation of 34,705 applicants in need of international protection from Greece and Italy and the legal admission of 5,345 persons in need of international protection from Turkey. The timeframe and the applicability of these decisions have now come to an end.

Out of the EUR 843 million committed in the course of 2016 to Member States' national programmes under AMIF, approximately EUR 567 million is still available. According to the decommitment rule set out in the Regulation laying down general provisions for the Asylum, Migration and Integration Fund⁴, payments should be made on these commitments by the end of 2018, after which the funding will no longer be available for Member States' use under their Asylum, Migration and Integration Fund national programmes.

In the light of discussions with the European Parliament and the Council in the course of 2018, the Commission proposes technical amendments to Article 18 of Regulation (EU) 516/2014⁵, to enable Member States to use the remaining committed funds to address Union priorities in the area of migration, including carrying out relocation after the end of the Council Decisions. The proposal would also enlarge the target group eligible for relocation under the current AMIF, namely the beneficiaries of international protection, in order to include also the transfer of applicants for international protection (as was the case in the aforementioned Council Decisions).

With this amendment, Member States will be in the position to continue showing solidarity when implementing transfer decisions in practice. Moreover, this proposal would provide Member States with the possibility to use this funding for other actions defined in the Asylum, Migration and Integration Fund Regulation, in addition to relocation and resettlement, when duly justified in the national programmes, which will need to be revised for that purpose⁶. The mid-term review of the Asylum, Migration and Integration Fund has confirmed that Member States are confronted with varied and significant needs in the areas of asylum, integration and return.

¹ Council Decision (EU) 2015/1523 and 2015/1601

² Council Decision (EU) 2016/1754 amending the Council Decision (EU) 2015/1601

³ Council Decision (EU) 2015/1523 and 2015/1601

⁴ Article 50 of Regulation (EU) No 514/2014.

⁵ 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 Decisions 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, p.168).

⁶ Other relevant actions could be Union key priorities in the areas of migration and asylum such as strengthening Member States' asylum systems, stepping up integration effort, increasing returns, enhancing legal pathways to the Union replacing unsafe and irregular ones as well as strengthening cooperation with third countries in these areas.

The proposal enables Member States to re-commit or transfer amounts within national programmes, by means of revisions of the national programme. The proposal also extends the deadline for decommitment of the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 by a maximum of six months, so as to ensure that Member States will have sufficient time to revise the national programmes in order to make the changes related to possible re-commitments or transfers of funding. To this effect, it is proposed to derogate from Article 50 of Regulation (EU) No 514/2014⁷. Furthermore, the proposal also contains a provision extending the deadline for the use of the funding concerned, by two additional years following the approval of the revisions of the national programmes by the Commission, to give Member States sufficient time to implement the actions to which the funding will be re-committed or transferred.

In order for the amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 to remain available in the Member States' national programmes to support relocation and other Union's priorities in the area of migration and asylum, and for these not to be decommitted, it is essential that the proposed technical amendments to Article 18 of Regulation (EU) No 516/2014 are adopted and enter into force before the end of 2018.

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

This proposal is consistent with the Union's policy priorities in the areas of migration and asylum, by enabling Member States to continue using the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 for Union priorities in the area of migration and asylum, through their national programmes.

- **Consistency with other Union policies**

The proposed technical amendment is consistent with other proposals and initiatives adopted by the European Commission. The Asylum, Migration and Integration Fund has been an important tool to complement the EU actions in the areas of borders and security, in particular by providing funding support to setting up and running hotspots. In particular, coordinated support from both the Asylum, Migration and Integration Fund and the Internal Security Fund has proven to be essential to ensure a smooth handling of cases in the hotspots, including their referral to the appropriate procedures. Alongside and in coordination with the European Social Fund, it has also provided support to the integration of third-country nationals, and has complemented the work of EU external funding instruments in implementing of EU policies on external migration. The proposed amendment of the Asylum, Migration and Integration Fund will allow further support for actions in these areas.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal amends Regulation (EU) No 516/2014 and is based on Articles 78(2) and 79(2) and (4) of the Treaty on the Functioning of the European Union which empowers the Union to take actions in area of asylum, immigration, management of migration flows, fair treatment of

⁷ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (OJ L 150, p. 112).

third-country nationals residing legally in Member States, combating illegal immigration and trafficking in human beings, including through co-operation with third countries.

These Articles constitute compatible legal bases in the light of the position of the United Kingdom, Ireland and Denmark with regard to the areas they cover, thus provide for compatible voting rules in the Council. The ordinary legislative procedure applies to each of them.

- **Subsidiarity**

This proposal complies with the subsidiarity principle. Enabling Member States to continue using the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 for relocation, as well as, in duly justified circumstances, for other actions within their national programmes will lead to a higher added value at Union level than Member States acting alone.

- **Proportionality**

The proposal is limited to the technical adjustments necessary.

- **Choice of the instrument**

Proposed instrument: amendment of the current Regulation.

Given the legal framework, it is necessary to propose amendments to Regulation (EU) No 516/2014 and to derogate from Regulation (EU) No 514/2014.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Informal consultations have taken place with the relevant Committee of the European Parliament and the relevant Council working group. This has indicated a consensus on the need for the technical adjustments set out in this proposal.

4. BUDGETARY IMPLICATIONS

The purpose of the proposed technical amendment is to ensure that the amounts committed in 2016 to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 remain available to the Member States in their national programmes for the financing of relocation, and, if duly justified in the framework of a revision of the national programme, other actions in the field of migration and asylum. No additional funding from the Union budget is therefore necessary for the implementation of the proposed amendments to Regulation (EU) No 516/2014.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

This proposal has no consequences for the existing monitoring, evaluation and reporting arrangements of the Asylum, Migration and Integration Fund Regulation, which will continue to apply.

- **Detailed explanation of the specific provisions of the proposal**

The first objective of this proposal is to enable the use of the remaining amounts, which have been committed under the Asylum, Migration and Integration Fund to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601, to promote EU priorities in the areas of migration and asylum, including relocation. This would be possible for an extended period of two years following the revision of the national programmes by the Commission, and would also allow the use of these funds for purposes other than relocation, through revisions of Member States' national programmes. At the same time, it would also extend the scope of the target group of persons eligible for relocation to provide Member States with more flexibility in implementing solidarity measures.

Therefore, the proposal amends Article 18 of Regulation (EU) No 516/2014 by inserting the words 'applicant for or' before the words 'beneficiary of international protection'.

Secondly, the proposal amends Article 18 of Regulation (EU) No 516/2014 by making it possible to re-commit the amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 for relocation or to transfer them to other actions defined in Asylum, Migration and Integration Regulation and based on the Member States' needs. This should be duly justified in a revision of the national programme, to be approved by the Commission. Such transfers or re-commitments should be done only once, in view of the principle of sound financial management and respect for the decommitment rule as set out in Article 50 of Regulation (EU) No 514/2014.

Thirdly, the proposal inserts a provision in Article 18 of Regulation (EU) No 516/2014 which revises the decommitment rule set out in Article 50 of Regulation (EU) No 514/2014 so that the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 can be used for an additional period of two years. For that purpose, the proposed provision states that the amounts concerned will be considered to have been committed in the year of the revision of the national programme that approves the re-commitment of these amounts or their transfer to other actions in the national programme.

Finally, the proposal extends the deadline for the automatic decommitment of amounts by a period of six months. This provision derogates from the first paragraph of Article 50 of Regulation (EU) No 514/2014 and is necessary in order for Member States and the Commission to complete the procedure for the revision of the national programmes, as referred to in Article 14 of Regulation (EU) No 514/2014.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 516/2014 of the European Parliament and the Council, as regards the re-commitment of the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation thereof to other actions under the national programmes

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 Article 78(2) and 79(2) and (4) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Regulation is to enable the re-commitment of the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 provided for under Regulation (EU) No 516/2014 of the European Parliament and the Council⁸ or the allocation of them to other actions under the national programmes in line with Union priorities and Member States' needs in the areas of migration and asylum.
- (2) The Commission committed funding to Member States' national programmes under the Asylum, Migration and Integration Fund to support the implementation of the Council Decisions (EU) 2015/1523⁹ and (EU) 2015/1601¹⁰. Decision (EU) 2015/1601 was amended by Council Decision (EU) 2016/1754¹¹. Those Decisions have now ceased to apply.
- (3) Part of the funding allocated under the Decisions (EU) 2015/1523 and (EU) 2015/1601 in 2016 remains available in the Member States' national programmes.
- (4) Member States should have the possibility to use the above-mentioned amounts to continue implementing relocation by re-committing the amounts to the same action in the national programmes. In addition, it should be possible, duly justified in the

⁸ 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 Decisions 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).

⁹ 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).

¹⁰ 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).

¹¹ Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 268, 1.10.2016, p. 82).

revision of Member States' national programmes, to use this funding also to address other challenges in the area of migration and asylum, in line with the Asylum, Migration and Integration Fund Regulation. Member States' needs in these areas remain significant. Re-commitments of the above-mentioned amounts to the same action, or their transfer to other actions under the national programme should be possible only once and with the approval of the Commission.

- (5) The target group eligible for relocation should be expanded to give more flexibility to Member States in carrying out relocations.
- (6) Member States and the Commission should have sufficient time to revise the national programmes to accommodate the relevant changes that this amending Regulation foresees. Therefore, a derogation from Article 50(1) of Regulation (EU) No 514/2014 of the European Parliament and of the Council¹² should be applied to the remaining amounts committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 prolonging the deadline for the decommitment by six months in view of completing the procedure for the revision of the national programmes, as referred to in Article 14 of Regulation (EU) No 514/2014.
- (7) Member States should also have sufficient time to use the amounts re-committed to the same action or transferred to other actions prior to the decommitment of these amounts. Therefore, when such re-commitments or transfers of amounts under the national programme are approved by the Commission, the amounts concerned should be considered to have been committed in the year of the revision of the national programme that approves the re-commitment or the transfer concerned.
- (8) This amending Regulation does not affect the funding available under Article 17 of Regulation (EU) No 516/2014.
- (9) [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

- (10) [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

- (10) [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

¹² Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (OJ L 150, 20.5.2014, p. 112).

taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (10a) 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

- (10) [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.
- (10a) 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.]
- (11) In accordance with Articles 1 and 2 of the 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 Regulation and is not bound by it or subject to its application.
- (12) In view of the need to avoid decommitment of the remaining funding committed to support the implementation of the Council Decisions (EU) 2015/1523 and (EU) 2015/1601 this Regulation should enter into force on the day of its publication in the Official Journal.
- (13) Regulation (EU) No 516/2014 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Article 18 of Regulation (EU) No 516/2014

Article 18 is amended as follows:

'Article 18

- (1) In paragraph 1, the words "beneficiary of international protection" are replaced by the words "applicant for international protection or beneficiary of international protection";
- (2) Paragraph 3 is replaced by the following:

"3. The additional amounts referred to in paragraph 1 of this Article shall be allocated to the Member States for the first time in the individual financing decisions approving their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014 and later in a financing decision to be annexed to the decision approving their national

programme. Re-commitments of those amounts to the same action under the national programme or transfers thereof to other actions under the national programme shall be possible where duly justified in the revision of the respective national programme. An amount may only be re-committed or transferred once. The Commission shall approve the re-commitment or transfer through the revision of the national programme.";

(3) The following paragraphs are inserted:

"3a. For the purpose of Article 50(1) of Regulation (EU) No 514/2014, where amounts stemming from the provisional measures established by Decisions (EU) No 2015/1523 and (EU) No 2015/1601 are re-committed to the same action under the national programme or transferred to other actions under the national programme in accordance with paragraph 3, the amounts concerned shall be considered to have been committed in the year of the revision of the national programme that approves the re-commitment or transfer in question.

3b. By way of derogation from Article 50(1) of Regulation (EU) No 514/2014, the deadline for the decommitment of the amounts referred to in paragraph 3a shall be prolonged by a period of six months.";

(4) In paragraph 4, the words "beneficiaries of international protection" are replaced by the words "applicants for international protection or beneficiaries of international protection".

Article 2

Entry into force

This Regulation shall enter into force on the day 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