



31.10.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0182/2018 by Olena Romanyuk (Polish) on alleged improper implementation of Asylum, Migration and Integration fund in Poland**

### 1. Summary of petition

The petitioner states that she and her family arrived to Poland in 2015 as part of the evacuation procedure from the warzone in Donetsk, Ukraine. The petitioner expresses concern at the alleged mismanagement by Poland of EU Asylum, Migration and Integration fund (AMIF). In particular, the petitioner expresses concern about inability to go through repatriation procedure and an integration program stipulated in Article 9 of Regulation 516/2014 of 16 April 2014 on establishing the AMIF. The petitioner also describes her employment dispute in Poland alleging that she was refused a position despite having proper professional qualifications.

### 2. Admissibility

Declared admissible on 22 June 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 31 October 2018

The Commission has already provided the petitioner with a response to correspondence addressed to it on the same issues as those outlined in the petition.

Relocation of a beneficiary of international protection from one Member State to another may take place if mutually agreed between the two Member States concerned. EU law does not, however, envisage a role for the Commission in such transfers.

The relocation scheme established in 2015 by two Council Decisions 1543 and 1601<sup>1</sup> was a

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<sup>1</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015, p. 146–156 Council

temporary extraordinary measure intended to relieve the significant asylum pressure on Italy and on Greece, in particular by relocating a significant number of applicants in clear need of international protection who have arrived in the territory of these two Member States. The Council Decisions did not contain any obligations for Member States to relocate applicants for international protection from Member States other than Italy and Greece, or recognised refugees from any Member State and would not apply in the petitioner's situation (i.e. a beneficiary of refugee status in Poland). As far as Poland's obligations regarding relocation of applicants from Italy and Greece under these Council Decisions are concerned, the Commission decided to launch infringement proceedings against Poland and, on 7 December 2017, it referred the case to the Court of Justice of the European Union.

Under Article 25 of the EU Qualification Directive<sup>1</sup> regulating, amongst others, the content of refugee and subsidiary protection statuses, a beneficiary of refugee status is entitled to travel to another Member State under certain conditions, but he or she does not have the right to settle in, or be "relocated" to, another Member State. A refugee may also apply as a third-country national for a residence permit for employment purposes in another EU Member State. After 5 years of residence in an EU country<sup>2</sup>, a third-country national may apply for a long-term residence permit under EU legislation. This entitlement gives notably the right to reside in another Member State, under certain conditions (Article 15 of the Directive on long-term residents<sup>3</sup>).

Under Article 34 of the Qualification Directive beneficiaries of international protection must have access to integration programmes which the Member State considers appropriate. However, the range of services offered in that context may differ in the Member States.

As regards AMIF<sup>4</sup> funding, since it is mainly implemented under shared management, the European Commission relies on the Member States to implement it. In Poland, AMIF management has been entrusted to the Ministry of Interior and Administration. As Responsible Authority, the Ministry chooses which projects to finance and takes responsibility for day-to-day management. In order to ensure that the funds are used in accordance with the principles of sound financial management and correspond to the Funds' objectives the Commission monitors the programmes' implementation through monitoring projects on the spot and meetings with the Member States' Responsible Authorities as well as carries out controls on the way the EU funds are spent.

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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. 80–94.

<sup>1</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26.

<sup>2</sup> Bound by the Directive on long-term residents, i.e. all EU Member States except the UK, Denmark and Ireland.

<sup>3</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 016, 23/01/2004 p. 44 – 53.

<sup>4</sup> 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. 112–142 and 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, of 20.5.2014, p. 168–194.

Beyond co-funding measures through AMIF and other EU funds, the European Union also support the various actors involved in the integration process through dissemination of policy relevant information, exchange of good practices notably in the frame of the European Integration network as well as consultation of civil society organisations (such as the European Migration Forum).

As regards the suspicions of a fraudulent practice in the implementation of the AMIF in Poland, the petitioner has been informed that the Commission is assessing them in line with its comprehensive anti-fraud strategy. The petitioner has also been informed about the Fraud Notification System (FNS), which may be used to submit to OLAF information that may be relevant in the fight against fraud, corruption and any other illegal activity affecting the financial and other interests of the European Union.

### Conclusion

EU law does not regulate the transfer of international protection to another Member State. The petitioner has been informed about EU rules on integration of beneficiaries of international protection and their mobility between Member States, and on the principles concerning the operation of the AMIF. Steps are being taken to address allegations of fraud in line with the Commission's anti-fraud strategy.