



30.11.2018

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

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 (COM(2018)0719 – C8-0448/2018 – 2018/0371(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Civil Liberties, Justice and Home Affairs for decision by way of a single vote.

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 Council¹ or the allocation of them to other actions under the national programmes in line with Union priorities and Member States' needs in specific areas of migration and asylum. It is also to ensure that such re-commitment or allocation occurs in a transparent manner.
- (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) 2015/1523² and (EU) 2015/1601³. Decision (EU) 2015/1601 was amended by Council Decision (EU) 2016/1754⁴. 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 and in some cases 2017 remains available in the Member States' national programmes.

¹ 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)

² 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).

³ 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).

⁴ 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).

- (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. Member States should re-commit or transfer at least 20% of those amounts to actions in national programmes, for the transfer of applicants for or beneficiaries of international protection, for resettlement or other ad-hoc humanitarian admissions, as well as for preparatory measures for the transfer of applicants following their arrival in the Union, including arrival by sea, or for the transfer of beneficiaries. Such measures should comprise only those measures referred to in points (a), (b), (e) and (f) of the second subparagraph of Article 5(1).
- (4a) Where a Member State re-commits or transfers less than 20%, it should not be possible to transfer the difference between the amounts re-committed or transferred and this minimum percentage to other actions in the national programme. Where duly justified in the revision of Member States' national programmes, Member States may use up to 80% of those amounts 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. Member States should ensure that the allocation of funds takes place in full respect of the principles set out in the Financial Regulation, in particular efficiency and transparency.

- (5) The target group eligible for transfers of applicants for or beneficiaries of international protection as well as the Member States from where transfers take place should be expanded to give more flexibility to Member States in carrying out transfers taking into account the specific needs of unaccompanied minors, or other vulnerable applicants and the specific situation of family members of beneficiaries of international protection. The specific provisions concerning lump sums for resettlement and transfer of beneficiaries of international protection from one Member State to another should reflect this expansion.
- (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 Council¹ 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.

¹ 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).

- (7a) The Commission should report annually to the European Parliament and to the Council as regards the implementation of resources for the transfer of applicants for international protection and of beneficiaries of international protection, in particular as regards transfers of amounts to other actions under the national programme as provided for in this amending Regulation.
- (8) This amending Regulation does not affect the funding available under Article 17 of Regulation (EU) No 516/2014.
- (8a) The objectives of this amending Regulation are pursued without prejudice to the ongoing negotiations on the reform of the Regulation (EU) No 604/2013 of the European Parliament and of the Council 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.
- (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

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.

(12a) Without amendment of Regulation (EU) No 516/2014 before the end of 2018, the relevant funding will no longer be available for Member States' use under the national programmes supported by the Asylum, Migration and Integration Fund. Given the urgency of amending Regulation (EU) No 516/2014, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(13) Regulation (EU) No 516/2014 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 516/2014

(1) Article 18 is amended as follows:

(-1) The title is replaced by the following:

"Resources for the transfer of applicants for international protection or of beneficiaries of international protection";

(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.";

In respect of amounts stemming from the provisional measures established by Decisions (EU) No 2015/1523 and (EU) No 2015/1601, with a view to enhancing solidarity and in accordance with Article 80 TFEU, Member States shall allocate at least 20% of those amounts to actions under the national programmes for the transfer of applicants for or beneficiaries of international protection, for resettlement or other ad-hoc humanitarian admissions, as well as preparatory measures for the transfer of applicants following their arrival in the Union, including arrival by sea, or for the transfer of beneficiaries. Such measures shall not include any measures related to detention. Where a Member State re-commits or transfers resources below that minimum percentage, it shall not be possible to transfer the difference between the re-committed or transferred amount and the minimum percentage to other actions in 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.;
- 3c. The Commission shall report annually to the European Parliament and to the Council on the application of this Article.

(4a) Paragraph 4 is replaced by the following:

"4. To effectively pursue the objectives of solidarity and responsibility sharing between the Member States referred to in Article 80 TFEU, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 of this Regulation to adjust the lump sum referred to in paragraph 1 of this Article, in particular taking into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and beneficiaries of international protection from one Member State to another and in the field of resettlement and other ad-hoc humanitarian admission, as well as factors which can optimise the use of the financial incentive brought by the lump sums."

(2) In the heading and the introductory wording of Article 25, 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