



## HIGHLIGHT

# AGAIN IN THE HANDS OF STATES: A NEW EU UNFEASIBLE PLAN TO FACE REFUGEE CRISIS? COMMISSION RECOMMENDATION FOR A VOLUNTARY HUMANITARIAN ADMISSION SCHEME WITH TURKEY

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Among the efforts made by the European Commission to confront the refugee crisis, one of the last proposals has been to implement a humanitarian admission procedure to accelerate and guarantee regular admission of Syrian refugees from Turkey.

The Commission Recommendation for a voluntary humanitarian admission scheme<sup>1</sup> was adopted in December 2015, based on the EU-Turkey Joint Action Plan. According to this Recommendation, the humanitarian admission “should mean an expedited process whereby the participating States, based on a recommendation of the UNHCR following referral by Turkey, admit persons in need of international protection, displaced by the conflict in Syria, who have been registered by the Turkish authorities prior to 29 November 2015, in order to grant them subsidiary protection as defined in Directive 2011/95/EU or an equivalent temporary status, the validity of which should not be less than one year”.<sup>2</sup> It could be said that this definition is overly ambitious, given the difficulties in adopting the relocation plan<sup>3</sup> and its lack of results.<sup>4</sup> Further, it also

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<sup>1</sup> Recommendation C (2015) 9490 of the European Commission for a voluntary humanitarian admission scheme with Turkey.

<sup>2</sup> Recommendation C (2015) 9490, point 2.

<sup>3</sup> Decision (EU) 2015/1601 of the Council of the European Union establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>4</sup> According to the Communication COM(2016) 85 final, from the European Commission to the European Parliament and the Council of the European Union on the State of Play of Implementation of

constitutes a new way to *de-territorialize* protection to refugees processing asylum claims outside the given nation state.

The first issue which makes it difficult to implement this plan is that it works on a voluntary basis, leaving participation – and therefore effective implementation – to the political will of the States (either EU member States or associated States). States also decide on the number of persons to be admitted. For this, the Commission Recommendation establishes some criteria that are to be taken into account: absorption, reception and integration capacities, population size, total GDP, past asylum efforts and the unemployment rate; the same criteria that apply in the relocation plan.<sup>5</sup>

The main objective of this scheme is to reduce the number of persons irregularly crossing the border from Turkey, since the Recommendation establishes that the States could decide to suspend implementation if they conclude that the reduction in irregular crossings is not substantial after its implementation. However, if we consider the number of refugees hosted in Turkey – more than two million – and the number of people it would be necessary to admit in order to reduce the pressure from Turkey, allowing it to self-manage the hosted refugee situation, this objective would be difficult to be attained through this action alone. It would be therefore necessary to complement it with other measures to be taken according to the Joint Action Plan.

The Recommendation also plans the adoption of standardised procedures for admission that should be developed by the European Asylum Support Office (EASO), at the latest one month after the adoption of the Recommendation. At the time of writing they had not yet been developed. At any rate, together with the admission procedure steps set out in the Recommendation, such as gathering identity information, assessing reasons for fleeing Syria, and security or medical checks, it is necessary to state that the procedure should respect also, at least, the minimum guarantees applying to asylum procedures. Finally this admission procedure, according to the Recommendation, should not take more than six months.

Regarding the protection granted to these persons, the Recommendation offers the possibility of granting either subsidiary protection according to the Qualification Directive, applying in this case Art. 15, lett. c),<sup>6</sup> or a temporary status, that we consider should be the temporary protection according to Directive 2001/55/EC, for which a Council Decision establishing the existence of a mass influx of displaced persons is necessary. This has not yet been adopted.

the Priority Actions under the European Agenda on Migration of 10 February 2016, currently only 218 refugees from Greece and 279 from Italy have been relocated.

<sup>5</sup> Communication COM(2015) 240 final, of the European Commission on the European Agenda on Migration. Annex European schemes for relocation and resettlement.

<sup>6</sup> Court of Justice, judgment of 17 February 2009, case C-465/07, *Meki Elgafaji and Noor Elgafaji*, para. 43.

Lastly, in addition to the main objective, the Recommendation also aims to prevent secondary movements. For this, beneficiaries of this protection will be informed before departure that they will be only entitled to the rights attached to protection in the State of admission. And finally the Recommendation, according to Directive 2008/115/EC, establishes the possibility of returning persons entering the territory of another participating State without authorization; the return would be not only to the admission State, but also to third non-EU States (Turkey).

