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AEDH's response to EASO's call for inputs by civil society to the EASO Annual Report 2017

Name of the contributing stakeholder: AEDH

This report has been carried out thank to information taken by:

- LDH and CFDA (France)
- Liga Portuguesa Dos Direitos Humanos- Civitas
- Croatian Law Centre
- Latvian Human Rights Committee
- LIDU- ONLUS (Italy)
- Collectif Réfugiés Luxembourg (LFR)

AEDH wishes to note that the date of this consultation did not allow us to dispose of exhaustive data concerning the situation of asylum applications and of people in search of international protection in all Member States. Indeed, several Member States have not published yet their statistics for 2017 and the qualitative analysis of the situations met along the year is still ongoing. Therefore, this report is particularly based on two examples taken in France and Croatia.

Note: This report benefitted from information and research carried out in the framework of the Asylum Information Database (AIDA) project coordinated by the European Council on Refugees and Exiles.



1) Access to territory and to asylum procedure

• In France, there have been increasing reports¹ of people simply being refused entry at the border. The closure of the border has been maintained and police operations have been reinforced in 2017. Despite condemnation by humanitarian organisations², as well as court rulings condemning Prefectures for failing to register the asylum applications of people entering through Italy³, illegal police operations at the border have been extended from Menton and Nice areas in 2016 and 2017, to the Hautes-Alpes in 2017. Such practices of mass arrest have had an effect on shifting migratory routes, leading migrants to take increasingly dangerous routes on the mountains; over 1,500 reached Briançon since the beginning of the year. Media reports have documented incidents of unaccompanied children refused entry by police authorities and directed towards the Italian border⁴. Several of people helping migrants have been prosecuted and ultimately convicted by French courts.

Once he or she has entered the French territory in order to lodge an asylum application in France, a person first has to be registred as asylum seeker by the French authority responsible for the right of residence: the Prefecture. While the "single desk" system aimed at reducing delays relating to registration and avoid long lines of people presenting themselves in front of Prefectures, this additional step has led to more complexity and delays in accessing the procedure in practice. In some parts of France, namely in Paris, it takes several months to obtain an appointment at the PADA, followed by several weeks of delay for an appointment at the "single desk". In other areas, the average waiting time for appointments at the PADA was 28 days in Clermont-Ferrand, 24 days in Lyon and Nice, and 16 days in Toulouse at the end of 2017.

 In Croatia, NGO's Are You Syrious and Initiative "Welcome" reported about illegal expulsions (pushbacks) of refugees and violence against refugees on the border between Croatia and Serbia⁵. Also, NGO's organized public actions to raise public awareness about alleged police brutality against refugees.

¹ See for example http://www.anafe.org/spip.php?article452

² France: Obstacles to accessing the procedure on the Italian border, May 2017http://www.asylumineurope.org/news/31-05-2017/france-obstacles-accessing-procedure-italian-border

³ Administrative Court of Nice, Order No 1701211, 31 March 2017; Order No 1800195, 22 January 2018.

⁴ https://www.newsdeeply.com/refugees/articles/2018/01/25/dodging-death-along-the-alpine-migrant-passage

⁵ http://welcome.cms.hr/wp-content/uploads/2017/01/REPORT-ON-ILLEGAL-AND-FORCED-PUSH-BACKS-OF-REFUGEES-FROM-THE-REPUBLIC-OF-CROATIA.pdf http://welcome.cms.hr/wp-content/uploads/2017/05/REPORT-ON-THE-NEW-WAVE-OF-VIOLENCE-AGAINST-REFUGEES-ON-CROATIAN-BORDERS.pdf



• In Italy, 119.247 persons arrived by sea in 2017.

2) Access to information and legal assistance

- In France, the modalities and the degree of assistance provided to asylum seekers in the first instance (at OFPRA level) depend on the type of reception conditions they enjoy. Access to legal assistance is therefore uneven depending on the type of reception conditions provided. Asylum seekers in the most precarious situations, those without reception conditions are offered much fewer services than those accommodated in reception centre for asylum seekers (CADA). This situation leads to unequal treatment between asylum seekers accommodated in CADA, who receive support and in-depth assistance, and asylum seekers housed in emergency facilities, who are without direct support and are sometimes located far away from the regional orientation platforms. Since 1 December 2008, the law foresees the granting of legal aid ("aide juridictionelle") for lawyers to file an appeal to the CNDA in case of an OFPRA negative decision. Requests for legal aid were accepted in 96.6% of cases in 2017, compared to 96.2% of cases in 2016⁶. In any event, the current level of compensation is still deemed insufficient by many asylum stakeholders in France and this prevents lawyers from doing serious and quality work for each case.
- In Croatia, for the first instance procedure, the LITP stipulates that applicants should, at their request, be provided with legal and procedural information on the approval of international protection, taking into account the circumstances of the specific case, in a language which it may be reasonably be presumed that they understand and in which they are able to communicate. The right to counselling should be provided by organisations working to protect the rights of refugees or by attorneys with whom the Ministry shall conclude an agreement on the provision of legal counselling. Until now, the Ministry has not published public call for providing of the free legal aid in the first instance procedure so in practice, free legal aid is now provided by NGOs (Croatian Law Centre, Centre for Peace studies and JRS) on project basis.

Regarding the court procedure, the LITP stipulates that free legal aid before Administrative Court includes assistance in the preparation of a lawsuit and representation before the Administrative Court⁷ if requested by the applicant or foreigner under transfer, under the condition that they do not possess sufficient

https://www.cms.hr/system/article_document/doc/403/CPS and AYS -

Report on arbitrary and unlawful practices by the Ministry of Interior and the Security and Intelligence

Agency related to non approval of international protection or status of foreigners in Croatia.pdf

CNDA, 2017 Activity report, 13

⁷ Article 60 (2) LITP



financial resources or things of significant value.⁸ Legal assistance may be provided by attorneys at law and lawyers from organisations registered for providing legal assistance.⁹ CLC lawyer are on the list for Administrative Court in Zagreb.

3) Providing interpretation services

One of the difficulties met on this field come from the high number of languages needed, and especially dialects spoken in certain countries of Africa and Asia. Experts are rare and they use therefore "a language that we can reasonably think the applicant would understand", which breaks the principle of equal treatment among asylum seekers.

- In France, when interviews (in the Dublin procedure) are conducted, interpreters are not available in practice. In such cases, fellow asylum-seeking nationals as well can be asked for interpretation during the interview, violating then basic confidentiality rules. In the airport waiting zone, detained persons are not always informed that they can have an interpreter; several testimonies, collected during the last years, attest to the fact that they are sometimes presented with a pre-filled document by which they give up the delay of one day before the implementation of the procedure of return ¹⁰.
- In Croatia, it is important to emphasize that there is still no specific code of conduct for interpreters in the context of asylum procedures or prescribed standards regarding the qualifications of interpreters in the procedure for international protection. In most cases, interpreters are persons who simply possess the requested language skills. In addition, there is a lack of interpreters for some specific languages. The LITP stipulates that if it is for objective reasons not possible to provide a translator/interpreter for a specific language, the Ministry shall request assistance from another member state of the European Economic Area and that interpreting services may be provided by means of electronic telecommunications or audio-visual equipment¹¹.

4) Dublin procedure

Considering the date of realisation of this report, the availability of statistics on Dublin procedures is very incomplete. Indeed, these data have not been published yet by Eurostat.

 In France, provisional figures refer to an estimated 41 500 applications placed under the Dublin procedure, especially to Italy. This represents a substantial increase in

9 Article 60(4) LITP

http://observatoireenfermement.blogspot.fr/p/publications-2.html

⁸ Article 60(1) LITP

¹⁰ OEE (Detention of Foreigners Observatory), Website-

¹¹ Article 13 (5) and (7) LITP



Dublin procedures, compare to 2016 with 25,693 outgoing Dublin requests. In 2017, they represent 34% of applications. The Dublin procedure is implemented by Prefectures, therefore it can vary greatly from one Prefecture to another across France and, even within the same Prefecture, practice can vary over time and depending on the cases.

There is a specific interview in the Dublin procedure in France. Difficulties arise from the fact this interview is not always conducted in most cases in practice. In Lyon, Bourgogne and Marseille, the interviews are conducted in order to inform the asylum seekers about their rights. In Clermont-Ferrand, asylum seekers are not summoned to an interview at the prefecture, like in many other parts of the French territory, such as Paris and its surroundings for example.

In addition, the French government plans to fight against "the risk of absconding" by placing in detention people under Dublin procedure. Legislation is currently discussed in French Parliament.

• In Croatia, CLC lawyers noticed increase number of asylum seekers who were returned from other EU member states to Croatia under the Dublin III Regulation as a result of crossing the Croatian territory during the refugee crises (2015/2016). It is important to emphasize the problem of the separation of the family members who traveled and came together to the country of destination and were separated as a result of Dublin procedure (i.e. part of the family was returned to Croatia and part wasn't returned even though they traveled together). Also, the most of the returned asylum seekers do not understand Dublin procedure and the reasons why they are returned back to Croatia. All mentioned has significant, in the most of cases negative, effect on their mental and physical health.

5) Specific procedures (border, accelerated, admissibility)

In parallel to the « normal procedure », several Member States foresee an accelerated procedure in case of unfounded applications or safe countries of origin ((Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, United Kingdom), even "Dubliners".

In Croatia, a border procedure is foreseen by the LITP for those foreigners who express
the intention to lodge an application or make subsequent application at a border
crossing point or in a transit zone of an airport, seaport or internal water port.
However, this procedure is not being applied in practice due to the lack of centres and
capacity at border crossing points where foreigners could be accommodated while it is
carried out¹².

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¹² Article 42 LITP



According to the LITP, the Ministry shall render a decision in an accelerated procedure no later than 2 months from the day the application or an admissible subsequent application is lodged if, in conducting the procedure it is established that conditions for accelerated procedure exists. There are ten grounds for applying the accelerated procedure¹³.

 In France, according to CFDA report¹⁴, in 2017, number of accelerated procedure has increased to 33,500 people, almost 46% of applications are processed according to this procedure.

6) Reception of applicant for international protection:

Situations are very different from a country to another. We can note a general trend to a certain degradation of the quality of hosting services and livelihoods, officially explained by the increase of the number of people in search of international protection.

In Croatia, there are two reception centres for asylum seekers, one in Zagreb ("hotel Porin") and other in Kutina, small town app. 80 km from Zagreb. The Reception Centre in Zagreb is aimed for accommodation of single men, while the Reception Centre in Kutina is aimed for vulnerable asylum seekers such as families, single women etc. The Mol manages both centres. According to the LITP, applicants for international protection have right on (material reception conditions): accommodation in the Reception Centre, food and clothing provided in kind, remuneration of the cost of public transport for the purpose of the procedure for the approval international protection, and financial assistance. 15 The amount of financial support is HRK 100 per month for single person (approximately €13) and it is given in cash, which is very low in comparison with costs of living. During 2017, capacities in the Reception Centre in Zagreb ("hotel Porin") were full so the living conditions were difficult. Although the Reception Centre in Kutina is aimed for vulnerable groups of applicants, during 2017, they were also accommodated in the Reception Centre in Zagreb (e.g. families with small children). Also, there were problems with health care for asylum seekers because by the LITP asylum seekers have right on emergency medical assistance, and necessary treatment of illnesses and serious mental disorders 16 and a lot of asylum seekers had different kind of illness and health conditions which aren't cover by the proscribed definition.

¹³ Article 41 (1) LITP

Rapport « *D'une réforme à l'autre, l'asile en danger*», Coordination française pour le droit d'asile (CFDA), février 2018-

¹⁵ Article 55(1) LITP

¹⁶ Article 57(1) LITP



• In France, as of 31 December 2017, there were 40,450 places in CADA. For several years, the associations denounce the insufficiency of the dispositive, the number of places in reception centres being clearly not sufficient to provide access to housing to all the asylum seekers who should benefit from it in accordance with the recast Reception Conditions Directive. Asylum seekers who fall under the Dublin procedure in France can in theory benefit from emergency accommodation up until the notification of the decision of transfer. In practice, however, many persons subject to Dublin procedures live on the streets or in squats. Also, Dublin procedure persons under transfer decision or who are fugitives are deprived, without a reasoned decision, of the benefit of the reception conditions.

Despite the incease in reception capacity and creation of new forms of centres, a number of regions continue to face severe difficulties in terms of providing housing. In July 2017, the police dismantled the makeshift camp in Porte de la Chapelle, 2,700 people were evacuated. Similar operations took place almost every day at the end of 2017, such as on the night of 10 December. The police has been accused of lacerating migrants' tents during these operations. Such allegations against police officers is also reported in other French cities, *inter alia* in Caen, Normandy. As for the situation in the Calaisis, it has been well documented so that we do not have to add information.

On December 12, the French Interior Ministry, sent a circular asking to create "mobile teams" of agents specializing in the law of foreigners to go in accommodation centers and social hotels in order to identify people according to their administrative situation. Several associations have appealed to the Council of State to suspend urgently the government circular¹⁷, holding that it violates the principle of unconditional reception¹⁸ and that foreigners may renounce accommodation for fear of being "trapped"... The Defender of Rights, Jacques Toubon, also requested the withdrawal of the circular.

In practice, since the publication of this circular in late December, several mobile teams have already intervened in shelters in different regions of France, despite the strong opposition of the associations that refuse to see sorting among the persons sheltered according to their nationality and their status.

The Council of State examines their request this February 16th. It should be pronounced within eight days.

¹⁷ Recours des associations contre la circulaire du 12 décembre- https://www.ldh-france.org/recours-associations-contre-circulaire-du-12-decembre-audience-du-conseil-detat-demain-15h/

¹⁸ As defined by the Code of Social Action and Families, which states that "every homeless person in a situation of medical, psychological and social distress has access, at any time, to an emergency accommodation device" without condition of regularity of stay.



7) Detention of applicants for international protection:

Nowadays, detention of asylum seekers seems to be a common practice to all EU Member States...despite the provisions of the Geneva Convention. Nevertheless, European legislative reform provides strict circumstances authorising detention.

- In Croatia, reception Centre for Foreigners serves as detention and deportation centre. This is primarily centre for irregular migrants, but sometimes asylum seekers (applicants for international protection) can be accommodated there for a limited period of time, as prescribed by the LITP¹⁹. According to the Ministry official data, during 2017, 645 foreigners were accommodated in the Reception Centre for Foreigners²⁰. During 2017, CLC lawyers conducted monitoring of detention conditions through regular visits to the Reception Centre for Foreigners (detention centre). CLC lawyers did not notice significant changes in the practice regarding detention of asylum seekers during 2017.
- In Luxembourg, with the recent increase of up to 7 days in the detention period for families with minors, the best interests of the child are violated.

8) Procedures at First instance:

- In Croatia, the asylum procedure is an administrative procedure. The Ministry of Interior is the competent authority in the first instance procedures. ²¹ During 2017, CLC lawyers noticed trend of prolonged procedure for international protection, with no decision within the six months form the date of submission of an asylum application, which is deadline prescribed by the LITP²². It was also noticed that the Interior Ministry missed their obligation to inform applicants in writing about the reasons why they did not decide within six months deadline and in some cases, information was delivered in Croatian, without presence of the interpreters.
- In France, detailed statistics on asylum applications and first instance decisions are
 published annually by the Office of Protection of Refugees and Stateless Persons
 (OFPRA) in its activity reports. The next OFPRA Activity Report will be published in
 spring 2018. However, "SI Asile", an information system established by the Ministry of
 Interior in 2016, provides some provisional data. It should be noted that the number of

²⁰ CLC documentation

¹⁹ Article 54 LITP

²¹ Article 32 (1) LITP

²² Article 40 (1) LITP



asylum applicants only covers those whose claims are referred to OFPRA, thereby excluding asylum seekers whose cases are channelled under a Dublin procedure by the Prefectures. In 2017, 100 412 asylum applications were received and 89 307 decisions have been taken in the first instance by OFPRA, of which 24 005 were positive decisions (13 020 refugees status and 10 985 subsidiary protection) representing a recognition rate of 26,8%.

9) Procedure at Second Instance

- In France, the National Asylum Court (CNDA) faced, in 2017, a very significant increase in the number of appeals, in correlation with OFPRA activity: 53,581 appeals were filed against 39,986 in 2016, an increase of 34%. The foreseeable average time of judgment at the CNDA, which was decreasing in 2016, also increased: it reached 6 months and 12 days at the end of 2017 (against 5 months and 15 days at the end of 2016). The number of decisions rendered increased by 11.3% to 47,814 decisions. The coverage rate is therefore 82.2% (in particular because of the consequent increase in the number of appeals). ²³ In 2017, the Court (CNDA) granted international protection (refugees status or subsidiary protection) in 16,8% of cases (representing 8 006 protection claims).
- In Croatia, the Ministry of Interior's decision may be challenged before the Administrative Court.²⁴ There are four Administrative Courts: in Zagreb, Rijeka, Osijek and Split. The majority of cases are before the Administrative Court in Zagreb. Cases are examined by a single judge. There are no judges specialized in the field of asylum law at the Administrative Courts. Also, there is a lack of systematic training on asylum matters for judges, most of the trainings are organized by UNHCR and NGO's. It is necessary to start considering reconstruction of the systems at Administrative Courts (e.g. judges who are specialized in the asylum law).

10) Availability and use of Country of Origin Information

²³CNDA Rapport d'activité 2017http://www.asylumineurope.org/sites/default/files/resources/ra cnda 2017 20180123.pdf

²⁴ Article 32 (2) LITP



11) Vulnerable applicants

- In Croatia, according to the LITP, vulnerable groups include persons without legal capacity, children, unaccompanied children, elderly and infirm persons, seriously ill persons, disabled persons, pregnant women, single parents with minor children, persons with mental disorders and victims of trafficking, as well as victims of torture, rape or other forms of psychological, physical and sexual violence, such as victims of female genital mutilation. ²⁵ The LITP has introduced special procedural and reception guarantees.²⁶ CLC lawyers noticed problems with exercising of special procedural and reception guarantees in practice. For example, cases of asylum seekers who are identified as vulnerable need to have priority in deciding, but in some cases of identified victims of torture, Interior Ministry did not decide within the prescribed deadline of 6 months and missed to inform asylum seekers about the reasons (obligatory written notice). Regarding special medical/health care for vulnerable applicants, the LITP stipulates that applicants who need special reception and/or procedural guarantees, especially victims of torture, rape or other serious forms of psychological, physical or sexual violence, shall be provided with the appropriate health care related to their specific condition or the consequences of those offences²⁷. In practice there are significant problems regarding exercising of special medical care.
- In France, OFII is responsible for identifying vulnerabilities and special needs of asylum seekers. In order to do so, OFII has to proceed, within a "reasonable" timeframe, to an evaluation of vulnerability. This evaluation, that concerns all asylum seekers, takes the form of an interview based on a questionnaire. In practice, it has been reported on several occasions that such interviews are not always conducted by OFII. It may happen that OFII indeed receives the asylum seekers but does not interview them properly, or conducts short interviews lasting 10-15 minutes, thus not allowing for an in-depth assessment of special needs.

Regarding unaccompanied minors, the Ombudsman, in his 2017 report, pointed out that the difficulties persisted: bone examinations are maintained, some unaccompanied children are denied care and evaluation without justification, regardless of whether they have identity documents or not, as refusals are often based on racial profiling. As unaccompanied children do not have any legal capacity, they must be represented for any act under all asylum procedures. The Public Prosecutor, notified by the Prefecture, should appoint an *ad hoc* administrator (legal representative) who will represent them throughout the asylum procedure. In practice, still in 2017, the appointment of an *ad hoc* administrator can take between 1 to 3 months. The associations try to compensate the lack of public authorities by observing

²⁵ Article 4(1)(14) LITP

²⁶ Article 15 LITP

²⁷ Article 57 (2) LITP



that a growing number of minors are being, without rights and without protection, waiting to have their file examined.

According to a recent report by the Equality Council, OFPRA has marked notable improvements in terms of sensitivity and professionalism vis-à-vis claims by women. In addition, OFPRA granted protection to over 6,000 girls at risk of female genital mutilation (FGM) in 2017²⁸.

- In 2017, 15 731 unaccompanied minors arrived in Italia, according to the Domestic Affairs Ministry data as of 15 January 2018²⁹.
- In Luxembourg, legislation maintains the possibility to resort to bone tests to determine the age of minors, the reliability of which is known to be unreliable. These tests, intrusive and not always conclusive, are indeed obsolete and the minor remains presumed major during the period of determination. He cannot therefore claim any specific protective measures that he may need³⁰.

12) Content of protection – situation of beneficiaries of protection

- On April 20, 2017, amendments to the Latvian Asylum Law have been adopted. Based on the amendments to Section 53, on June 6, 2017, a new Cabinet Regulation No. 302 has been adopted. The changes are both for the better and for the worse for refugees. On one hand, a one-time payment is introduced. On the other hand, the term of paying the regular benefit gets shortened (from 12 months for refugees and 9 months for the alternative status holders to 10 and 7 months, respectively). The abovementioned changes balance each other, more or less. What is certainly unbalanced, is the repeal of a possibility to receive a benefit of 49 EUR/month for the purpose of learning Latvian language.
- In Croatia, according to LITP, beneficiaries of international protection (refugees and subsidiary protection) have the following rights: residence, family reunification, accommodation, work, health care, education, freedom of religion, free legal assistance, social welfare, assistance for integration into society, documents, ownership of real property pursuant to the 1951 Convention and acquisition of Croatian citizenship pursuant to the regulations governing the acquisition of citizenship.

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²⁸ OFPRA, 'Les données de l'asile 2017 à l'OFPRA, 8 January 2018, available at https://www.ofpra.gouv.fr/fr/l-ofpra/actualites/les-donnees-de-l-asile-2017-a-l

²⁹ Consiglio Italiano Per I Rifugiati (CIR ONLUS)

³⁰ Press Release, LFR/Collectif Réfugiés, December 2017 - https://www.lfr.lu/publications **European Association for the Defense of Human Rights (AEDH)**



However, in 2017 several problems were identified: no continuous Croatian language course; difficulties with the exercising of the right to health care; difficulties with the access to the labour market (also related to the knowledge of Croatian language); problems related to the family reunification process (e.g. obtaining necessary documents, difficulties to reach the competent embassies).

• In France, integration process of protected persons is hampered by many obstacles. The issuance of the residence permit is conditioned by the reconstitution of the civil status by Ofpra. Due to the increase number of protected persons, while the staff of the division responsible for this task have not increased, the average delivery time has been 145 days in 2017. Yet, these documents are essential for the opening of social rights, including access to RSA (financial aid). Even after obtaining the civil status certificate, the issue of a residence permit may take almost a year and a half.

By the end of 2017, 13,000 people beneficiaries of international protection were staying in the reception system (15% of total places). It appears that some are forced to leave this place without any other accommodation³¹.

On financial matters, time period for obtaining the RSA are very long and people meet regularly without resources after interruption of ADA (Asylum seekers financial aid) payment.

13) Return of former applicants for international protection

 In Croatia, CLC lawyers observed in practice that rejected asylum seekers are usually obliged to leave the EEA within the 15 or 30 days period. The problem is when rejected asylum seekers do not have valid travel documents so they cannot leave EEA and cannot ask for the assistance of the embassies of their countries of origin.

14) Resettlement and humanitarian admission programmes

 On 28 November 2017, 40 Syrian refugees were resettled from Turkey to Croatia. In addition, 36 Syrian refugees have been resettled from Turkey to Croatia on 25 and 26 January 2018.
 Croatia has not yet fulfilled the pledged quota for relocation and resettlement.

15) Relocation

 Since December 2016, 1525 refugees came to Portugal with the help of the national program for relocation. The CPR welcomes 314 referred refugees — through cooperation protocols with 14 town halls and with INATEL / Oeiras and Santa Maria da Feira.

• As of 12 February 2018, 82 people is relocated from Italy and Greece to Croatia³²

³¹ See CFDA Report, p.27, February 2018- https://www.ldh-france.org/dune-reforme-lautre-lasile-en-danger/



- On April 20, 2017, amendments to the Latvian Asylum Law have been adopted. They provide for issuing temporary travel documents for relocation (Section 70 of the law and Cabinet Regulation No. 320, issued on June 13, 2017).
- In France, since 22 September 2015, 4853 people have been relocated from Italy and Greece.

16) Other relevant developments

 On November 21, 2017, the Latvian Cabinet adopted a new Regulation No. 686, regulating health checks for asylum seekers, based on Section 12 of the Asylum Law, as amended on April 20.

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state of play - relocation en.pdf