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Subject : Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

I

The Working Party on Asylum began its second reading of the above proposal (Articles 1 and 2) at its meeting on 7 December 2000.

Delegations will find enclosed under II the complete text of the Commission's proposal, with the comments made by the delegations during the meetings on this dossier shown in the footnotes.

II

Proposal for a COUNCIL DIRECTIVE

on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

Chapter I *General provisions*

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin, and to promote a balance of efforts between Member States in receiving and bearing the consequences of receiving such persons ¹.

¹ **The D, NL, A, FIN and UK delegations** asked for the measures to be taken by the Member States in the event of organised evacuation to be clearly indicated in the Directive.

D suggested using the same wording as in Article 6(1) of Decision 596/2000/EC establishing a European Refugee Fund:

"in the event of a sudden mass influx of refugees or displaced persons, or if it was necessary to evacuate them from a third country, in particular in response to an appeal by international organisations."

NL also suggested having: *"in the event of a mass influx or threat of a massive influx"*. In this connection, **the F delegation** pointed out that all types of action by the Member States involved in the place of the conflict should be taken into account (cf 8510/00 ASILE 4, page 5). It believed that reference to organised evacuations should appear under Article 5 (establishment of mass influx).

The Commission representative stated that the purpose of the proposal was to cover all cases of mass influx and efforts by the Member States on the ground. He also pointed out that not all organised evacuations constitute mass influxes. He believed that it was unnecessary to weigh Article 1 down with a description of all the cases to be covered, and that it would be better to include this exercise in other parts of the instrument (such as the definitions in Article 2).

Article 2

For the purposes of this Directive:

- (a) "temporary protection in the event of a mass influx" means exceptional measures to provide, in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, [where there is a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;] ¹ hereinafter referred to as "temporary protection" ²;
- (b) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

¹ **The D, F, I, A and UK delegations** asked for the words between square brackets to be deleted. In their opinion, the risk of malfunctioning of the asylum system must not be a prerequisite for implementing temporary protection.

A pointed out that any possible shortcomings of the asylum system could simply be mentioned in the recitals.

² **The EL, E, F and P delegations** pointed out that the text should clearly state that the purpose here was only to establish an emergency procedure, not to create a new status. They also pointed out that the objective sought is to recognise certain collective situations and not to grant any statuses of an individual nature.

The Commission representative recalled the terms of the mandate in Article 63(2) TEC and stated that the mechanism envisaged is also intended for supporting the asylum system. He also pointed out that the Commission would submit a proposal for a directive on the forms of subsidiary protection offering an appropriate status (envisaged for the second half of 2001).

- (c) "displaced persons" ¹ from third countries who are unable to return to their country of origin" means third-country nationals or stateless persons who have had to leave their country of origin and are unable to return in safe and humane conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving protection, in particular:
- persons who have fled areas of armed conflict or endemic violence;
 - persons at serious risk of or who have been the victims of systematic or generalised violations of their human rights ²;
- (d) "mass influx" means arrival in the Community of a large number of displaced persons from third countries who are unable to return to their country of origin, who come from a specific country or geographical area ³;
- (e) "refugees" means third-country nationals or stateless persons ⁴ within the meaning of Article 1A of the Geneva Convention;

¹ **The I delegation** suggested saying "*displaced or evacuated persons...*" (rest unchanged).

² **The FIN delegation** wanted to add the case of persons who have had to flee as a result of natural disasters.

The B and E delegations opposed this request and pointed out that such situations were not mentioned in any international instrument on refugees.

³ (See comments on Article 2(a)).

The I delegation asked for the term "specific country or geographical area" to be clarified.

The FIN delegation suggested a reference to the case of "*persons who in the near or immediate future will need to be taken into care*".

The D delegation asked to include the case of evacuations of persons who are held up unable to leave the area.

⁴ **The F delegation** wondered whether the term "stateless persons" was appropriate within the meaning of the Geneva Convention.

- (f) "unaccompanied minors" means third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person ¹;
- (g) "residence permit" means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third-country national to reside on its territory;
- (h) "applicant for reunification" or "applicant" means a third-country national enjoying temporary protection in a Member State and applying to be joined by one or more members of his family ².

¹ **The D delegation** stated that provision also needed to be made for stateless persons (which also applied to Article 2(a)). **The Commission representative** agreed on this point.

The F delegation asked for the text to be clarified to stipulate that these were minors who were not accompanied by people on whom they were dependent whether by law or custom.

The I delegation asked for clarification of what was meant by the term "adult".

² **The A delegation** thought that this point introduced individual administrative procedures, which was thought to contradict the objective of the Directive, as it aimed to cover a "general category of persons" rather than specific individuals.

The Commission representative stressed that families could not be reunited by means other than individual procedures.

Article 3

1. Temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.
2. Member States shall apply temporary protection with due respect for human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ¹.

¹ **The B, D, EL and F delegations** wondered whether it was wise to refer to this Convention. In this respect:

- **B** recalled that other international law texts could also be cited (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984) and asked what the point was of citing this one only;
- **D** stated that the various international law texts on this subject ratified by the Member States could simply be cited in the preamble to the Directive (for example the International Covenant on Civil and Political Rights of 10 December 1966);
- **EL** recalled that the European Convention on Human Rights was already mentioned in Article 6 and asked whether there was any need for both references;
- **F** asked what the legal consequences were of referring to international law instruments in the body of the Directive;
- **The Commission representative** stated that the purpose was merely to recall the links and obligations to be met by the Member States in this area.

3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organisations concerned ¹.
4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force ².
5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

¹ **The F delegation** was of the opinion that consultations with the UNHCR should not be considered as a prerequisite for establishing temporary protection, but that a simple regular exchange of information should suffice.

The EL delegation asked what the "other organisations concerned" were referred to in this text.

In this respect, **the D delegation** reminded the meeting that Declaration 17 on Article 63 TEC refers to consultations with "other relevant international organisations".

The Chairman considered the possibility of referring more specifically to certain organisations.

² **The A delegation** asked whether, by virtue of this paragraph combined with Article 7 of the proposal, Community provisions or national law applied if a Member State voluntarily introduced a temporary protection scheme.

In this context **the D delegation** asked if the other provisions of the Directive (duration, etc.) were applicable in the framework of a national measure taken pursuant to Article 7.

The Chairman suggested dealing with these questions when Articles 5 and 7 were studied.

Chapter II

Duration and implementation of temporary protection

Article 4 ¹

The duration of temporary protection shall be one year.

Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six-monthly periods for a maximum of one year.

The maximum duration of temporary protection may not exceed two years in total.

¹ **The D, IRL, I, A and UK delegations** entered scrutiny reservations. They nevertheless asked whether some flexibility could not be built in, by providing for periods shorter than one year. In this connection, **the Chairman** suggested that the first paragraph might be worded as follows: "*Without prejudice to Article 6, the duration of temporary protection shall be one year.*" In fact, Article 6(1)(b) allows the Council, acting on a proposal from the Commission, to end temporary protection at any time. Furthermore, **the UK delegation** raised the question of how to deal with people who, at the end of temporary protection, did not seek asylum but could not return to their country of origin either. **The Chairman** said that this matter would be dealt with when Chapter V was studied (Articles 19 to 23: Return and measures after temporary protection).

Article 5

1. A mass influx of displaced persons shall be established by a Council decision adopted by a qualified majority ¹ on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. The Council Decision shall have the effect of introducing temporary protection, for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The decision shall include at least ²:
 - (a) a description of the specific groups of persons to whom the temporary protection applies ³;
 - (b) the date on which the temporary protection will take effect;
 - (c) the declarations by the Member States pursuant to Article 25 ⁴.

¹ **The F and P delegations** asked for decisions to be adopted by unanimity given their exceptional character, their consequences, and the fact that they may concern foreign policy aspects.

The E and FIN delegations expressed doubts over the possibility of adopting such decisions by a qualified majority given that the legal basis for this proposal is Article 62(2)(a) and (b). The FIN delegation asked for the opinion of the Council's Legal Service on this point.

The D and IRL delegations entered scrutiny reservations.

² **The D delegation** held that the decisions should also contain references to the forms of access to Member States for displaced persons.

³ **The UK delegation** stated that more details were needed on this point. It would be appropriate, for instance, to refer to groups of persons from certain countries or certain regions and from a certain date.

It also asked that it should be clearly laid down that Member States must be able to deny the benefit of temporary protection to persons who do not belong to the specific group in question but who nevertheless claim to belong to it.

The Commission representative thought that the issue should be addressed in the context of Article 29.

⁴ **The NL and A delegations** stated that prior estimates of the Member States' reception capacities should be established. Thus, the A delegation added that the principle of solidarity could not be applied if the capacity was insufficient to meet demand.

2. The Council decision shall be based on:
 - (a) an examination of the situation and the scale of the population movements;
 - (b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;
 - (c) information received from the Member States, the Commission, the UNHCR and other organisations concerned.
3. The relevant provisions of the Council's Rules of Procedure governing urgent cases may apply where appropriate.
4. The European Parliament shall be informed of the Council decision.

Article 6

1. Temporary protection shall come to an end:
 - (a) when the maximum duration has been reached ¹;or
 - (b) at any time, by Council decision adopted by a qualified majority ² on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

¹ As regards the maximum duration envisaged in Article 4:

- **the IRL delegation** felt that it should be less than one year;
- **the FIN delegation** suggested that the text could lay down one year or less depending on the circumstances;
- **the NL delegation** suggested allowing a maximum duration of one year with the possibility of a single six-month extension.

² **The P delegation** asked for such decisions to be adopted also by unanimity.

2. The Council decision shall be based on the establishment of the fact that the situation in the country of origin ¹ is such as to permit the long-term, safe and dignified return ², in accordance with Article 33 of the Geneva Convention and the European Convention on Human Rights ³. The European Parliament shall be informed of the decision ⁴.

Article 7

Member States may extend temporary protection to additional categories of person who are displaced for the same reasons and from the same country of origin in cases where these categories are not included in the Council decision provided for in Article 5. They shall notify the Council and the Commission immediately ⁵.

¹ **The UK delegation** contended that reference should be made to the "region of origin" rather than the "country of origin".

² **The UK delegation** pointed out that reference should be made to "rehousing" and not only to "return".

³ **Some delegations (D, E, F, NL and UK)** believed that reference to Article 33 of the Geneva Convention could lead to confusion, since it applies to refugees, and they pointed out that judicial authorities could become involved.

- The D and NL delegations also pointed out that the reference to the long-term and dignified return could give rise to different interpretations.

In this regard, the NL delegation suggested the following wording: "in compliance with the principle of non-refoulement as defined for refugees in Article 33 of the Geneva Convention".

- The UK delegation preferred to refer only to Article 3 of the European Convention on Human Rights.

⁴ **The S delegation** wanted to include consultation of the UNHCR.

⁵ **The D and NL delegations**, as well as **the Chairman**, wondered whether such a provision was necessary. They believed that the text opened up the possibility of diverging interpretations. Should a Member State use that provision, the consequences from the point of view of social protection, residence permits, the European Refugee Fund, etc. should be clarified. The likelihood that the lack of harmonisation would make certain Member States more attractive than others was also pointed out.

The IRL delegation stated that the following should be added: "national law provisions shall apply under such circumstances".

The B delegation and the Commission representative believed that it would be sufficient to add that this only meant temporary protection "within the meaning of this Directive".

Chapter III

Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents shall be issued for that purpose ¹.
2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 15.
3. The Member States shall, if necessary, provide persons admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas ², including transit visas. These visas shall be free of charge ³. Formalities must be reduced to a minimum because of the urgency of the situation.

¹ **The A delegation** entered a scrutiny reservation. It asked for the following amendment: "... persons enjoying temporary protection without travel documents shall be issued with residence permits. Member States shall certify the right of residence of those with travel documents, if necessary, by means of a stamp".
The D delegation suggested, in order to resolve the difficulties encountered by the A delegation, to replace the word "documents" by "proof".
The F delegation pointed out the difficulty posed by the fact that, in certain Member States, the possession of a residence permit and its duration entail the acquisition of certain social rights.
The FIN delegation pointed out that Article 29 lays down cases where Member States may exclude certain persons from enjoying temporary protection. It believed that Article 8 should also lay down the cases where residence permits may be withdrawn.

² **The Commission representative** pointed out that that was subject to national law provisions.
The FIN delegation suggested the following wording: "residence permits and any visas". It pointed out that in certain Member States, visas are only issued for travelling.

³ **The F delegation** pointed out that in France, visas are only free in cases of poverty and not of urgency.

Article 9

The Member States shall issue ¹ to persons enjoying temporary protection a document, in the official language or languages of the country of origin and the host country ², in which the provisions relating to temporary protection are clearly set out ³.

Article 10

The Member States shall authorise persons enjoying temporary protection to engage in employed or self-employed activities under the same conditions as refugees. This principle of equal treatment of persons enjoying temporary protection and refugees shall also apply to remuneration, social security related to employed or self-employed activities, and other conditions of employment ⁴.

¹ **The P delegation** asked for the verb "issue" to be replaced by "provide", since the document is of an informative nature.

² **The F delegation** asked for the following wording: "in a language likely to be understood by the beneficiaries". It pointed out that the official language of the country of origin may be closely related to certain conflicts.

³ **The D delegation** asked for a provision to be added to ensure that Member States draw up a register of persons on their territory. Such a register must be entered in a database.

⁴ **Certain delegations (F, NL, P and FIN)** expressed some difficulties as regards the comparison with refugees. They considered it preferable to refer to the conditions of aliens residing legally in a Member State.

- In this regard, the NL delegation called for greater harmonisation of these working conditions, in order to prevent secondary movements.

- The P delegation also pointed out that remuneration, social security and other working conditions depended on the nature of the work carried out and not on the status of the worker (national, alien, refugee, etc.).

The B and D delegations entered scrutiny reservations.

The E delegation believed that, in the context of a mass influx of displaced persons, it was impractical to envisage working conditions in the Member State offering temporary protection limited in time.

The A delegation entered a reservation. It believed that a comparison could be established with asylum seekers but not with refugees, and that it would be more appropriate to examine the possibility of granting the right to work on a case-by-case basis.

Article 11 ¹

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation ² or, if necessary, receive the means to obtain housing.
2. The Member States shall make provision for persons enjoying temporary protection to receive the necessary assistance ² in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care ³. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and the treatment of illness.
3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs ⁴.
4. The Member States shall provide appropriate medical or other ⁵ assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

¹ **The NL delegation** believed that the wording of this Article should be more specific in order to avoid confusion between the conditions to be offered to displaced persons arriving in mass influxes and the conditions of reception of asylum seekers (to be settled in the context of the future proposal from the Commission).

The E delegation believed, on the other hand, that the wording of this Article should be more flexible, given that in the case of a mass influx of displaced persons, Member States would have to endeavour to provide the best aid available.

The D delegation entered a scrutiny reservation regarding the financial cost of this Article's provisions.

² **The NL delegation** asked for the notion of "suitable" accommodation and "necessary" assistance to be clarified.

For **the IRL delegation**, the term "suitable" should be left to the discretion of the national authorities.

³ **The FIN delegation** asked for the extent of medical care to be clarified.

⁴ **The FIN delegation** asked for a more flexible wording as regards meeting their needs.

⁵ **The FIN delegation** asked for the words "appropriate medical or other" to be deleted.

Article 12

1. The Member States shall grant minors enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may limit such access to the state education system. Minors shall be younger than the age of legal majority in the Member State concerned ^{1 2}.
2. The Member States shall allow adults enjoying temporary protection access to the general education system, as well as to vocational training, further training or retraining.

¹ **The B delegation** wanted a reference to persons under 18 years of age rather than minors. **The NL and FIN delegations** preferred a reference to persons of obligatory schoolgoing age. **The NL, FIN and UK delegations** wanted to clarify free access to the school system. **The UK delegation** believed that the second sentence of this paragraph was ambiguous, at least in the English version, and did not correspond to the explanations given in the explanatory memorandum.

² **The A delegation** wondered whether the education system also covered apprenticeship contracts. According to that delegation, apprenticeship constitutes a paid activity and should therefore come under the scope of Article 10.

Article 13¹

1. When the circumstances surrounding the mass influx have led to the separation of families which already existed in the country of origin, the Member States shall authorise the entry and residence of the following persons:
 - (a) the spouse or unmarried partner in a stable relationship, if the legislation of the Member State concerned treats unmarried couples in the same way as married couples;
 - (b) the children of the couple referred to in point (a) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted;
 - (c) other family members if they are dependent on the applicant or have undergone particularly traumatic experiences or require special medical treatment.
2. Families may be reunited at any time during the period of temporary protection until two months before the end of the maximum two-year period. Reunited family members shall be granted residence permits under the temporary protection scheme.

¹ **The B, D, E, F and A delegations** believed that the provisions proposed by the Commission were too detailed, which risked causing problems in relation to laws in force and the case law of various Member States.

- The E delegation stated that it would be sufficient to point out that Member States must respect the right of displaced persons to lead a normal family life.
- The A delegation also stressed that it should be limited to the nuclear family, i.e. spouses and unmarried children who are minors, and that other situations should be treated on a case-by-case basis by the Member States for humanitarian reasons.
- The F delegation suggested taking as a reference the principle of persecution. Thus, family members who are still persecuted in the region of origin should have the right to join those under protection in a Member State.

The IRL and UK delegations wanted clarification of family members covered by this provision. The UK delegation raised the issue of dependants who are not family members.

The EL delegation pointed out that problems had arisen in practice as a result of providing proof of a family relationship. It believed that the issue should be addressed in the context of the model pass to be adopted in accordance with Article 26(4).

3. The application for reunification shall be lodged by the applicant in the Member State where he resides. The Member States shall establish that the various members of the family agree to this reunification.
4. For the purposes of any decision under paragraph 1, the absence of documentary evidence of the family relationship shall not be regarded as an obstacle in itself. Member States shall take account of all the facts and specific circumstances in assessing the validity of the evidence submitted and the credibility of the statements by the interested parties.
5. If the members of a single family as described in paragraph 1 enjoy temporary protection in different Member States, the Member States shall authorise the family to be reunited in the host Member State of their choice under the same conditions as in paragraph 2. Transfer of the family to this Member State for the purposes of reunification shall result in the withdrawal of the residence permit issued in the Member State of departure and termination of the obligations towards the persons concerned relating to temporary protection in the Member State of departure.

The application for reunification shall be lodged in the host State in which the family wishes to be united. The Member States shall establish that the various members of the family agree to this reunification.
6. The Member State concerned shall examine the application for reunification as quickly as possible. Any decision rejecting the application shall be accompanied by a statement of reasons and be open to legal challenge in the Member State concerned. When examining applications, the Member States shall give priority to the interests of minors.
7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

Article 14

1. The Member States shall take the necessary measures as soon as possible ¹ to ensure the representation ² of unaccompanied minors enjoying temporary protection by legal guardianship, or representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation ³.
2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:
 - (a) with adult relatives;
 - (b) with a foster-family;
 - (c) in reception centres with special provisions for minors, or in other accommodation suitable for minors.
3. The Member States shall take the necessary steps to enable an unaccompanied minor whose family have not been located to be placed, where appropriate, with a person or persons who looked after the child when fleeing. The Member States shall establish that the unaccompanied minor and the person or persons concerned agree to this reunification ⁴.

¹ **The EL delegation** believed that the time limits should be specified.

² **The D delegation** wanted to add the word "necessary" before "representation".

³ **The A delegation** asked to add, in the preamble if necessary, a reference to Article 20 of the UN Convention on the Rights of the Child.

⁴ **The F delegation** pointed out that such a provision could pose problems in cases where representation of the minor is ensured by the court.

The I delegation wanted to add "after consulting the social services or NGOs".

Article 15

The Member States shall implement their obligations under Articles 8 to 14 without discriminating between persons enjoying temporary protection on grounds of sex, race, ethnic origin, nationality, religion or convictions, or of a handicap, age or sexual orientation ¹.

¹ **The D and F delegations** wondered why such a provision was necessary, since these principles have been invoked in other Articles and are well defined in the Geneva Convention, the European Convention on Human Rights and the EC Treaty.
The F delegation also pointed out the risk of anticipating future Community instruments on asylum matters.

Chapter IV

Access to the asylum procedure in the context of temporary protection

Article 16

1. Persons enjoying temporary protection shall be guaranteed access to the procedure for determining refugee status if they so wish.
2. Access shall be granted no later than the end of the temporary protection. Where an asylum application has been submitted before or during temporary protection and consideration of the application has been suspended, the suspension may not extend beyond the end of the temporary protection. The Member States may provide for mechanisms for confirming the asylum application, setting reasonable deadlines and ensuring that applicants are properly informed ¹.

¹ **The F delegation** entered a reservation. It objected to the possibility of suspending consideration of asylum applications, which would be a derogation from the Geneva Convention. It pointed to the legal problems this would pose and wondered how such a mechanism would apply if some Member States suspended consideration and others did not. It advocated a single solution.

The B, EL and P delegations entered scrutiny reservations and also expressed doubts as to the implications of suspending asylum applications. The EL delegation asked about persons submitting asylum applications at the end of the temporary protection with the new deadlines this would entail.

The D, NL, I, A, FIN, S and UK delegations and the Commission representative, on the other hand, contended that the arrangement suspending consideration of asylum applications and the introduction of a system of temporary protection were closely linked since a mass influx of persons was likely to hinder the smooth functioning of the asylum system. However:

- **the D delegation** entered a scrutiny reservation;
- **the FIN delegation** wanted the text of the last sentence of paragraph 2 clarified to avoid problems of legal certainty.

Article 17

The criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply ¹.

Article 18

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.
2. Where, after an asylum application has been examined, refugee status is not granted to a person eligible ² for temporary protection, the Member States shall, without prejudice to Article 29, provide for that person to continue to enjoy ³ temporary protection for the remainder of the period of protection.

¹ **The I delegation** entered a scrutiny reservation. It wanted to know which Member State was responsible for considering an asylum application following a redistribution of displaced persons among the Member States as a result of a spill-over at reception structures. **The D delegation**, supported by **the NL delegation** asked for the addition of a text similar to that provided for in the draft Joint Action on the subject discussed under the German Presidency (Article 10a, 5682/99 ASILE 3 MIGR 4):

"The Member State which accepts a beneficiary of a temporary protection regime on its territory or which has granted an authorisation to remain shall be obliged to take back the said beneficiary if he/she remains irregularly on the territory of another Member State."

Moreover **the NL delegation** mentioned the case of an individual benefiting from temporary protection in one Member State and applying for asylum in another Member State.

The Commission representative, supported by **the IRL and UK delegations**, pointed out that ordinary law should apply to the cases referred to by the D, I and NL delegations and contended that these were not situations for a directive on temporary protection .

² **The D, EL, IRL, I and A delegations** wanted reference made to "a person enjoying temporary protection" in order to avoid situations where the persons concerned were not eligible for any specific status.

³ **The D delegation** would have preferred the Member State concerned to decide whether these persons should continue to benefit from temporary protection.

The F and NL delegations, however, felt that a single solution was called for to prevent secondary movements. They pointed out that the purpose of temporary protection was to deal with the collective situations of categories of individuals not covered by the criteria determining refugee status as provided for in the Geneva Convention.

Chapter V

Return and measures after temporary protection

Article 19

When the temporary protection ends, the ordinary law on protection ¹ and entry and residence of aliens in the Member States shall apply.

Article 20

The Member States shall consider any compelling humanitarian reasons which may make return impossible or unrealistic in specific cases ².

¹ **The FIN delegation** would have preferred it made clear that this involved "ordinary law on international protection".

² **The B and FIN delegations** pointed out that the wording of this Article was too vague. They suggested replacing the word "unrealistic" by the word "unreasonable".

The A delegation also wanted the text clarified with specific reference made to cases of voluntary or forced return and to readmissions.

The D, F and NL delegations felt that the Article was superfluous as such cases were already covered by ordinary law .

Article 21

1. The Member States shall take the measures necessary to facilitate the voluntary return, in a secure and dignified manner, of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for the possibility of exploratory visits ¹.
2. For as long as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to voluntary return.
3. At the end of the temporary protection, the Member States may provide for the obligations laid down in Chapter III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return ².

¹ **The D delegation**, supported by **the NL delegation**, proposed the following text: "*Voluntary return shall take precedence over enforced expulsion. Member States shall ensure that the provisions governing the return of persons enjoying temporary protection or whose temporary protection is ending, facilitate their return with respect for human dignity. The Member States may provide for the possibility of exploratory visits.*

However, preferring a reference to operational measures only, **the F delegation** contended that this question could be resolved in the recitals.

² **The NL delegation** pointed out that such a provision could give rise to divergent practices in the Member States. It advocated a single solution.

Article 22 ¹

1. The Member States shall take the measures necessary concerning the conditions of residence of persons who have enjoyed temporary protection and have special needs such as medical or psychological treatment, in order to avoid interrupting such treatment to the detriment of their personal medical interests, even though the temporary protection has ended ².
2. The Member States shall ensure that families whose children are minors and attend school in a Member State can, if they so wish, benefit from residence conditions allowing the children concerned to complete the current school period ³.

Article 23

The Member States shall take appropriate measures ⁴, in agreement with the persons concerned and in cooperation with the international organisations responsible, to facilitate any resettlement programmes which may be necessary ⁵.

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- ¹ **Several delegations(D, E, F, IRL, I and UK)** pointed out that such a derogation seemed to contradict the content of Article 19. It could cause legal problems and give rise to disparities in treatment.
In this connection, **the F delegation** entered a reservation and **the E delegation** a scrutiny reservation.
The D delegation could accept a text to the effect that Member States would look favourably on such cases.
 - ² **The FIN and S delegations** wanted clarification of the medical or psychological treatment to be covered by this provision.
The NL delegation suggested it be made clear that medical or psychological treatment should not be interrupted prematurely because temporary protection had ended.
 - ³ **The NL delegation** entered a reservation and requested the deletion of this paragraph, which could give rise to legal problems.
The E and FIN delegations wanted the length of the "school period" clarified (three months, six months or school year). The **E** delegation said that in Spain such a provision would entail extensions of up to nine months.
 - ⁴ **The NL delegation** wanted to add the words "and as far as possible in agreement with the other Member States".
 - ⁵ **The D and A delegations** wanted this provision deleted and pointed out the financial constraints it could impose.

Chapter VI

Solidarity

Article 24 ¹

The measures provided for ² in this Directive shall be financed by the European Refugee Fund set up by Decision 596/2000 ³, under the conditions ⁴ laid down in that Decision.

¹ **The I and FIN delegations** pointed out that the funding planned for the European Refugee Fund (ERF) was very modest and that most of the financial burden would have to be borne by each of the Member States concerned.

The A delegation entered a reservation. It also pointed out that ERF resources were tight and suggested that provision be made for a Community financial reserve to be earmarked for cases of mass influx. In this connection, a method of allocating funds simpler than that planned for the ERF should be established taking into account individual Member States' efforts.

Opposed to the idea put forward by the A delegation, **the D delegation** entered a scrutiny reservation.

² **The F delegation** wanted it made clear what the "measures provided for" were and pointed out that this provision should be consistent with the Council Decision creating a European Refugee Fund.

The S delegation wanted to add the measures provided for by the UNHCR.

³ OJ L 252, 6.10.2000.

⁴ **The D delegation** wanted reference made to "provisions" of the ERF rather than to the "conditions" laid down in it.

Article 25¹

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall either indicate – in figures or in general terms – their capacity to receive such persons, or state the reasons for their incapacity to do so. This information shall be set out in a declaration by the Member States to be annexed to the decision provided for in Article 5. After that decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to the UNHCR.
2. The Member States, acting in cooperation with the competent international organisations, shall ensure that the beneficiaries defined in the decision provided for in Article 5, who are not yet on their territory, are willing to be received on their territory².

¹ **The F and P delegations** expressed reservations. They felt that this provision obliged Member States to justify their decision on the subject, which from a political point of view was very difficult. They pointed out that reasons of national security and public policy could come into play in some cases. Moreover, for these delegations, this was a reversal of the burden of proof.

The E delegation entered a scrutiny reservation for the same reasons.

In addition, **the F delegation** wanted account also to be taken of the spirit of solidarity among Member States in action taken prior to receiving persons on their territories, i.e Member States' intervention in the conflict on the ground which led to the crises.

The D delegation entered a scrutiny reservation. It pointed out that, in the event of an increase in the mass influx of individuals after the Council has taken a decision, a second pledging procedure for Member States should be followed by the Council.

The NL and A delegations wanted the breakdown of Member States' reception capacities clarified. It therefore proposed that each Member State give details of its capacities so that the Commission and/or the UNHCR might give a quantified estimate of the Community's overall reception capacity.

The I delegation pointed out that account would also have to be taken of the number of persons from the conflict region received by Member States prior to the reported mass influx.

² **The IRL delegation** pointed out that in its opinion Article 18(2) provides for freedom of choice solely for asylum seekers refused refugee status. The reference in Article 25 to dual freedom of choice therefore would appear to be inaccurate.

The FIN delegation suggested that, in order to ensure freedom of choice for displaced persons, a form could be drawn up for them to sign.

Article 26 ¹

1. For the duration of the temporary protection, the Member States shall cooperate with each other, where appropriate, with a view to transferring the residence of persons enjoying temporary protection from one Member State to another. The beneficiaries' consent shall be obtained.
2. A Member State shall communicate its requests for transfers to the other Member States and notify the Commission and the UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.
3. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.
4. The Member States shall use the model pass set out in the Annex for transfers between Member States of persons enjoying temporary protection.

Article 27 ²

The application of Article 25 and 26 shall be without prejudice to the Member States' obligations regarding non-refoulement.

¹ **The NL and A delegations** felt that this Article should come under the heading of Chapter VII on administrative cooperation.

² **The S delegation** entered a scrutiny reservation on the grounds that the principle of non-refoulement should be mentioned in this provision.

Chapter VII

Administrative cooperation

Article 28

1. With a view to the administrative cooperation required to implement the temporary protection scheme, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.
2. The Member States shall, regularly and as quickly as possible, communicate the data concerning the number of persons covered by temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.

Chapter VIII

Special provisions

Article 29

1. The Member States may exclude a person from temporary protection if they are regarded as a danger to their national security or if there are serious grounds for believing that they have committed a war crime or crimes or a crime or crimes against humanity or if, during consideration of the asylum application, it is found that the exclusion clauses in Article 1F of the Geneva Convention apply ¹.
2. These grounds for exclusion shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality. The persons concerned shall be entitled to seek redress in the courts of the Member State concerned ².

¹ **The D delegation** contended that the terminology of the Geneva Convention (Articles 1F and 33(2)) should be used.
The A delegation entered a reservation on the grounds that a reference to Articles 1F and 33(2) of the Geneva Convention would suffice.
The E delegation suggested including the text of the Council common position of 4 May 1996 (96/196/JHA) on the definition of the term "refugee":
"Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators".
The EL and F delegations wanted references to public policy added.
The FIN delegation wanted a reference made to the expulsion or return ("refoulement") of persons falling into a category covered by the exclusion clauses and already on the territory of a Member State.

² **The F and FIN delegations** wanted the principle of proportionality in this context clarified.

Chapter IX

Final provisions

Article 30 ¹

The Member States shall lay down the penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 32 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 31

1. No later than two years after the date specified in Article 32, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report.
2. After presenting the report referred to at paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

¹ **The D, I and FIN delegations** wanted to know what the penalties entailed. **The Commission representative** pointed out that this was a standard provision of Community law, which left it to Member States to determine these penalties.

Article 32

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2002] at the latest. They shall forthwith inform the Commission thereof.

When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 33

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 34

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

Model pass for the transfer of persons under temporary protection**PASS**

Reference number (*):

Issued under Article 26 of Directive EC No .../... of .../... on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer of(1) to(2). The person in question must present himself/herself at (3) by(4)

Issued at:

SURNAME:

.....

FORENAMES:

.....

PLACE AND DATE OF BIRTH:

NATIONALITY:

.....

Date issued:



SEAL

For the Home Secretary/Minister for the Interior

The pass-holder has been identified by the authorities (5)(6)

This document is issued only pursuant to Article 26 of Directive EC No .../... of .../... and in no way constitutes a document which can be assimilated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

- (*) The reference number is allocated by the country from which the transfer to another Member State is made.
- ⁽¹⁾ Member State from which the transfer is being made.
- ⁽²⁾ Member State to which the transfer is being made.
- ⁽³⁾ Place where the person must present himself/herself on arrival in the second Member State.
- ⁽⁴⁾ Deadline by which the person must present himself/herself on arrival in the second Member State.
- ⁽⁵⁾ On the basis of the following travel or identity documents, presented to the authorities.
- ⁽⁶⁾ On the basis of documents other than a travel or identity document.