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of : Working Party on Asylum

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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 continued its second reading of the above proposal (Articles 3 to 17) at its meeting on 8 and 9 January 2001.

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

II

Draft

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.

The NL delegation was opposed to such a deletion.

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

² **The GR, 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 **in particular by the Geneva Convention and** by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ¹.

¹ **The F delegation** 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 **relevant international** organisations.¹
4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force².
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 UNHCR should not be considered as a prerequisite for establishing temporary protection, but that a simple regular exchange of information should suffice.

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 Chair suggested dealing with these questions when Article 7 was studied.

Chapter II

Duration and implementation of temporary protection

Article 4

Without prejudice to Article 6, the duration of temporary protection shall be one year.¹

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.²

¹ **The IRL, I and FIN delegations** asked whether some flexibility could not be built in, by providing for periods shorter than one year.

² **The D delegation** maintained a scrutiny reservation. It wanted a maximum duration exceeding two years.
In this connection, **the I delegation** queried the possibility for the Council of extending the duration after two years.
The NL and A delegations, on the other hand, wanted to limit the maximum duration to 18 months.

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;
 - (b) the date on which the temporary protection will take effect;
 - (c) the declarations by the Member States pursuant to Article 25 ³.

¹ **The E, 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. They also recalled that the legal basis for this proposal is Article 63(2)(a) and (b). **The D and IRL delegations** maintained 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. **The Chair** said that it would endeavour, in consultation with the D delegation, to produce a text for discussion at a future meeting.

³ **The NL and A delegations** stated that prior estimates of the Member States' reception capacities should be established either here or in Article 25 when dealing with solidarity.

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, UNHCR and other **relevant international** organisations.
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** wanted 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 is such as to permit the long-term, safe and dignified return,¹ in accordance with Article 33 of the Geneva Convention and the European Convention on Human Rights.² The European Parliament shall be informed of the decision.³

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.]⁴

¹ **The D delegation** pointed out that the reference to "dignified" return could give rise to different interpretations and wanted therefore to delete this word.

² **The D, E, and F delegations** 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.

In this regard, **the NL and UK delegations** suggested the following alternative text :

"The Council decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection, in accordance with the European Convention on Human Rights. The European Parliament shall be informed of the Decision."

³ **The S delegation** wanted to include consultation of UNHCR as it is to be provided for in the Decision confirming the existence of mass influx.

⁴ **The D, F and NL delegations** stated that if a Member State wished to provide protection to a further group of persons not covered by the scope of the Council Decision, this unilateral move should not bind other Member States, especially concerning solidarity aspects.

The IRL delegation wanted the following to be added: "National law provisions shall apply under such circumstances".

The Chair announced that a new text will be produced for discussion at a future meeting.

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 **or other equivalent evidence** shall be issued for that purpose.
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 **to be** admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas ¹, including transit visas. [These visas shall be free of charge]². Formalities must be reduced to a minimum because of the urgency of the situation.

¹ **The FIN delegation** suggested the following wording: "residence permits and any visas".

² **The F delegation** favoured the deletion of the words between brackets. It pointed out that visas should be free only in cases of poverty and not of urgency.
The B delegation entered a scrutiny reservation for the same reasons.

Article 9

The Member States shall **provide** persons enjoying temporary protection **with** a document, **in a language likely to be understood by the beneficiaries**, in which the provisions relating to temporary protection are clearly set out ¹.

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 ².

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- ¹ **The D delegation** asked for the following to be added :
"Member States shall draw up a register of persons enjoying temporary protection on their territory. Such a register must be entered in a database."
- ² Such a provision would be needed for administrative cooperation purposes (see Article 28(2)).
The B and D delegations maintained scrutiny reservations.
The B, GR, L, NL and A delegations expressed some difficulties as regards the comparison with refugees. They favoured a reference to the conditions of asylum seekers.
In this regard, the L and NL delegations considered that access to work could be allowed after a first period of (e.g.) 6 months.
The E delegation asked for a distinction between mass influx and organised evacuations. It considered that in the second case, access to work could be envisaged.
The A delegation entered a reservation. It wanted a written opinion by the Council Legal Service on the question of whether working conditions of persons enjoying temporary protection may be dealt with in this Directive and if Article 137(3) CE should not be added to the legal basis. It believed also 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.
The Chair announced that a revised version of this provision will be produced for discussion at a future meeting.

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. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and the treatment of illness.³
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. The Member States shall provide appropriate medical or other 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 reception conditions 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. On the other hand, organised evacuations could be dealt with in a more detailed way. It announced that it would present a text aimed at excluding some of these conditions during the initial period when the mass influx occurs.

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

² **The NL delegation** asked for the notion of "necessary" assistance to be clarified. For **the IRL delegation**, the term "suitable" should be left to the discretion of the national authorities, given the difficulties caused by mass influxes of displaced persons.

³ **The D delegation** wanted to limit the reference to the treatment of illness to "necessary treatment of illness" or "treatment of acute, sudden or chronic illness".

Article 12¹

1. The Member States shall **grant persons under 18 years of age**² enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may **stipulate that** such access **must be confined** to the state education system.³ [...]
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.⁴

¹ **The I delegation** wanted to specify that these benefits are of a temporary character.

² **The NL delegation** entered a scrutiny reservation.

³ **The A delegation** recalled that in its country apprenticeship constitutes a paid activity and should therefore come under the scope of Article 10.

The FIN delegation raised the question of education not paid by the State.

⁴ **The NL delegation** queried the financial implications for the Member States of such a provision.

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;

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

- The D delegation entered a reservation.
- 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 without granting better conditions than the ones offered to refugees.
- The F delegation also recalled the discussions concerning the proposal for a Directive on the right to family reunification, where the notion of durable stay was crucial. It added that if family members enjoying temporary protection were located in different Member States, it is clear that the greatest efforts should be made in order to reunite them.
- The A delegation also wanted to specify the duration of the right to stay of the reunited family members shall be the same as that of the applicant.
- The A and UK delegations 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 GR delegation entered a reservation considering that these provisions were not appropriate in the context of temporary measures. It 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).

The L delegation stated that family reunification could lead to exceeding the capacities declared by Member States under Article 25. It suggested fixing such capacities as the maximum limit of persons which can be accepted by Member States.

In view of the above :

- **the GR, F, E, I delegations** suggested limiting family reunification to family members already present in different Member States. **The Commission representative** was opposed to this suggestion.
- **the NL delegation** suggested producing a draft based on Article 2 of Decision n° 1/2000 of the Committee set up by Article 18 of the Dublin Convention (OJ L 281, 7.11.00, p.1).

(c) other family members if they are dependent on the applicant or have undergone particularly traumatic experiences or require special medical treatment.¹

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.
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.²
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 2.³ 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.

¹ **The FIN delegation** feared this goes further than rules on family reunification for permanent stay. It wanted to refer to "relatives" instead of "family members".

² **The A delegation** suggested providing either that it should be the family member who should lodge the application or for the application to be lodged either by the applicant or by the family member as envisaged in the draft Directive on family reunification.

³ **The A delegation** opposed such a choice in cases where a Member State has reached its maximum reception capacity.

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.¹ 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 possible² to ensure the representation³ 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 representation⁴.
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.

¹ **The A delegation** asked to delete any reference to legal challenge. It suggested leaving this possibility to national legislation and recalled the risks of administrative congestion in cases of mass influxes.

² **The GR delegation** believed that the time limits should be specified.

³ **The D and FIN delegations** wanted to add the words "where necessary" before "representation".

The representative of the Commission supported by **NL and S delegations** opposed such an amendment.

⁴ **The Working Party** agreed to add in the preamble a reference to Article 20 of the UN Convention on the Rights of the Child.

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 ¹.

[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] ².

¹ **The F delegation** entered a scrutiny reservation.

The I delegation wanted to add "after consulting the social services or an organisation which is responsible for the care and well-being of minors". **The B, D, IRL and P delegations** felt that the term "necessary" in the first sentence sufficiently covered the worries of the I delegation.

The E delegation recalled existing recommendations aimed at avoiding adoption of children until two years after the conflict has ended and the obligation to deploy all efforts in order to find the parents of these children.

² **The B, D, GR, E, F, IRL, I, L, NL and UK 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. They suggested to delete it or to insert a reference in the recitals.

The Commission representative insisted on maintaining this provision.

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 E and F delegations** entered reservations. They objected to the possibility of suspending consideration of asylum applications, which would be a derogation from the Geneva Convention. They pointed to the legal problems this would pose in national Courts of Law and wondered how such a mechanism would apply if some Member States suspended consideration and others did not. The E delegation also recalled the terms of the Tampere conclusions on the absolute right to seek for asylum.

The B, GR and P delegations maintained scrutiny reservations.

The GR and P delegations also expressed doubts as to the implications of suspending asylum applications.

The GR delegation asked about persons submitting asylum applications at the end of the temporary protection with the new deadlines this would entail.

The D, IRL, I, L, NL, 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 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** maintained a scrutiny reservation.
The E and I delegations wanted to specify in the Directive 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. A text to that end could be based on the Dublin Convention.

The Chair asked for a text from the I delegation.

The D delegation, supported by **the IRL, NL and UK delegations** 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."
Nevertheless, **NL and UK delegations** stated that such a text must be modified in order to introduce a time-limit to the take back obligation and to clarify the meaning of the expression "or which has granted an authorisation...".

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 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, GR, 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.

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 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 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 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 26¹

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 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 27²

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 GR 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 30¹

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:

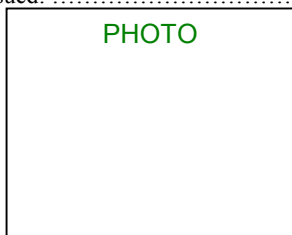
.....

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.

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