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**REPORT**

I. On the amended proposal for a Joint Action concerning temporary protection of displaced persons (COM(98)0372 - C4-0505/98 - 97/0081(CNS)) (second consultation)



II. On the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (COM(98)0372 - C4-0506/98 - 98/0222(CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr Wiebenga

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PE 228.191/fin.

- Consultation procedure  
simple majority
- \*\*I Cooperation procedure (first reading)  
simple majority
- \*\*II Cooperation procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to reject or amend the common position
- \*\* Assent procedure  
majority of Parliament's component Members to give assent  
but simple majority under Articles 8a, 105, 106, 130d and 228 EC
- \*\*\*I Codecision procedure (first reading)  
simple majority
- \*\*\*II Codecision procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to adopt a declaration of intended  
rejection of the common position, and amend the common position or confirm its rejection
- \*\*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
majority of Parliament's component Members to reject the Council text

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On 23 October 1997 Parliament issued an opinion on the proposal for a Joint Action concerning temporary protection of displaced persons<sup>(1)</sup>.

By letter of 23 July 1998 the Council consulted Parliament once again, pursuant to Article 189a(2) of the EC Treaty, on

I. the amended proposal for a Joint Action concerning temporary protection of displaced persons

and on

II. the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons

At the sittings of 14 and 18 September 1998 the President of Parliament announced that he had referred the Commission proposals to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on Legal Affairs and Citizens' Rights and the Committee on Foreign Affairs, Security and Defence Policy for their opinions.

At its meeting of 23 July 1998 the Committee on Civil Liberties and Internal Affairs had appointed M Jan Wiebenga rapporteur.

It considered the Commission proposals and the draft report at its meetings of 23 September, 13 October and 27 October 1998.

At the latter/last meeting it adopted the draft legislative resolutions

I. by 13 votes to 5, with 4 abstentions.

II. by 15 votes to 2 with 2 abstentions.

The following were present for the vote: d'Ancona, chairman; Reding, vice-chairman; Buffetaut, (for Jean-Pierre), Colombo Svevo, Deprez, Elliott, Ford, Gröner (for Schmid), (pursuant to Rule 138(2)), Lindeperg, Matikainen-Kallström (for Cederschiöld), Mendes Bota, Nassauer, Oostlander (for Posselt), Palacio (for De Esteban Martin), Pirker, Pradier, Schaffner, Sturdy (for Stewart-Clark, pursuant to rule 138(2)), Terron I Cusi, Thors (for Wiebenga), Van Lancker (for Crawley), Wilson (for Bontempi) and Zimmerman.

The opinions of the Committee on Foreign Affairs, Security and Defence Policy on the amended proposal for a Joint Action concerning temporary protection of displaced persons (C4-0505/98) and of the Committee on Legal Affairs and Citizens' Rights on the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (C4-0506/98) are attached. The addition to the legal basis derives from an amendment also adopted by the Committee on Legal Affairs and Citizens' Rights in the attached opinion.

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(<sup>1</sup>) OJ C 339, 10.11.1997

The report was tabled on 3 November 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A.I**  
**LEGISLATIVE PROPOSAL**

Amended proposal for a Council Regulation on Joint Action concerning temporary protection of displaced persons (COM(98)0372 - C4-0505/98 - 97/0081(CNS) - Second consultation

The proposal is approved with the following amendments:

Text proposed by the Commission <sup>(1)</sup>	Amendments by Parliament
	(Amendment 1) First citation a (new)
	<u>Having regard to the 1951 Convention relating to the Status of Refugees and the 1967 New York Protocol,</u>
	(Amendment 2) Third recital a (new)
	<u>Whereas to date, within the framework of the CFSP, little progress has been made with regard to the prevention of conflicts leading to large flows of displaced persons,</u>
	(Amendment 3) Sixth recital a (new)
	<u>Whereas the EU, in order to contribute to the prevention of cases of sudden and mass influx of persons, should exploit all the instruments at its disposal to pursue effective development policies in the third countries most in need, including trade, economic cooperation and assistance in democratisation efforts;</u>

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<sup>(1)</sup> OJ C

(Amendment 4)  
Article 2 (4)(a) (new)

4a. This Joint Action supplements the Geneva Convention and shall be introduced in consultation with the relevant international bodies; it shall be invoked only in emergencies where there is a sudden mass influx into the European Union of refugees.

(Amendment 5)  
Article 3

1. In cases of mass flight of persons in need of international protection, the Council, taking into consideration whether adequate protection can be found in the region of origin, shall decide whether to establish a temporary protection regime in accordance with the procedure set out in Article 12(1).

1. In cases of mass flight of persons in need of international protection, the Council shall decide whether to establish a temporary protection regime in accordance with the procedure set out in Article 12(1) of a duration and extent which seems appropriate and after taking into account whether adequate protection can be found in the region of origin.

2. The decision referred to in paragraph 1 shall determine at least:)

2. The decision referred to in paragraph 1 shall determine at least:

- (a) the specific groups of persons to which the temporary protection regime applies; and
- (b) the duration of the regime, which shall not exceed five years on aggregate.

- (a) the specific groups of persons to which the temporary protection regime applies; and
- (b) the duration of the regime, which shall not exceed five years on aggregate;

- (c) the duration of the regime, which shall not exceed five years on aggregate and may be extended for no more than five years following a further decision.

(Amendment 6)  
Article 4 (1) second subparagraph

The Commission shall submit the report to the Council, and shall inform the European Parliament accordingly.

The Commission shall submit the report to the Council and the European Parliament.



(Amendment 7)  
Article 4(2)(b)

2. Decide on the phasing out of the temporary protection regime because the situation in the country of origin allows a safe return of the persons concerned under conditions respecting human dignity.

2. decide on the phasing out of the temporary protection regime and return the persons concerned if the situation in the country of origin allows a safe return while respecting Article 33 of the Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights.

(Amendment 8)  
Article 4(3)

3. The principles governing the return shall be coordinated by the Council, priority being given to the furtherance of voluntary repatriation, in close cooperation with the international organisations concerned, and in particular the United Nations High Commissioner for Refugees.

3. In organising the return of the persons concerned, in strict conformity with human dignity, priority shall be given to the furtherance of voluntary repatriation, in close cooperation with the international organisations concerned, and in particular the United Nations High Commissioner for Refugees. Member States shall ensure that the national provisions regarding repatriation procedures guarantee the respect of human rights and apply disciplinary measures in cases of their infringement.

(Amendment 9)  
Article 5 paragraphs 1 and 2

The report provided for by Article 4(1) shall also refer to all future means for implementing solidarity in the application of the temporary protection scheme.

The report provided for by Article 4(1) shall also refer to all future means for achieving a balance between the efforts of the Member States in the application of the temporary protection scheme.

Such solidarity shall be implemented in accordance with the provisions of the Joint Action on solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons.

Such balance shall be achieved in accordance with the provisions of the Joint Action on Community aid measures in the admission and residence of beneficiaries of the temporary protection of displaced persons.

(Amendment 10)  
Article 5, third paragraph (new)

The European Refugee Fund is the financial instrument of the Union's budget through which the solidarity between the Member States is given concrete expression.

(Amendment 11)  
Article 6, second paragraph

Such authorisation may be withheld on grounds of public policy or public security.

Deleted.

(Amendment 12)  
Article 6a (new)

The Member States shall provide persons benefiting from the temporary protection regime with a statement in their own language, and in the language of the host country, detailing their rights and obligations.

(Amendment 13)  
Article 10, (-1) (new)

-1. The principle is established that individuals who are given initial cover by a temporary protection regime shall not be deprived of the right of access to an eventual refugee determination procedure pursuant to the Geneva Convention.

(Amendment 14)  
Article 11, second paragraph

A Member State may refuse the benefit of a temporary protection regime to any person whom there are reasonable grounds for regarding as a danger to the security of that Member State, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the society of that Member State.

A Member State may, with due regard to its international commitments in the case of human rights, refuse the benefit of a temporary protection regime to any person whom there are reasonable grounds for regarding as a danger to the security of that Member State, or who, having been convicted by a final judgement of a particularly serious

crime, or being strongly suspected of such an offence,

constitutes a danger to the society of that Member State.

(Amendment 15)  
Article 11, last paragraph a (new)

No one, however, may be deported to a country in which there is a threat to that person of torture or other inhumane or cruel treatment.

(Amendment 16)  
Article 12(1)

1. On the initiative of any Member State or the Commission, which may ask the United Nations High Commissioner for Refugees for his opinion, the Council shall adopt the measures implementing this joint action, as referred to in Articles 3 and 4, acting by a qualified majority.

1. On the initiative of any Member State or the Commission, which shall ask the United Nations High Commissioner for Refugees for his opinion, the Council shall adopt the measures implementing this joint action, as referred to in Articles 3, 4 and 13, acting by a qualified majority.

(Amendment 17)  
Article 12(2)

2. The European Parliament shall be informed forthwith of the implementing measures adopted pursuant to this joint action.

2. The European Parliament shall be consulted forthwith about the implementing measures referred to in paragraph 1. In urgent cases, the Council may adopt these implementing measures in advance. After the consultation, the Council shall immediately adopt the measures definitively.

(Amendment 18)  
Article 13

If, five years after the introduction of a temporary protection regime the Council has not adopted a decision to phase out the regime in accordance with Article 4, Member States should examine whether long-term measures

should be introduced for beneficiaries of temporary protection.

1. Six months at the latest before the expiry of the period referred to in Article 3(2)(b), the Commission shall report to the Council and the European Parliament on the consequences of the automatic expiry of a temporary protection regime.

2. On the basis of this report, the Council shall decide, in accordance with the procedure laid down in Article 12(1) and no later than three months before a temporary protection regime is due to expire automatically, what long-term measures should be introduced for beneficiaries of temporary protection.

3. If the Council fails to adopt a decision as referred to in paragraph 2, the residence authorisation referred to in Article 6 shall automatically be converted into a residence permit corresponding to a residence permit for a refugee recognised pursuant to the Geneva Convention who has already been in the territory of Member State for five years, and Member States must give the persons concerned the chance to become integrated in the long term.

## DRAFT LEGISLATIVE RESOLUTION

### **I. Legislative resolution embodying Parliament's opinion on the Commission proposal for a Joint Action based on Article K.3(2)(b) of the Treaty on European Union concerning temporary protection of displaced persons [COM(98)0372 - C4-0505/98 - 98/0222(CNS)]**

**(Consultation procedure - second consultation)**

#### **The European Parliament,**

- having regard to the Commission proposal to the Council, (COM(97)0093 - 97/0081(CNS))<sup>(1)</sup>,
  - having regard to its opinion of 23 October 1997 on that proposal<sup>(2)</sup>,
  - having regard to the amended Commission proposal to the Council, (COM(98)0372) <sup>(3)</sup>,
  - having regard to Article K.3(2)(b) of the Treaty on European Union,
  - having been consulted again by the Council pursuant to Article K.6, second paragraph, of the Treaty on European Union,
  - having regard to Rule 58 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Foreign Affairs, Security and Defence Policy (A4-0399/98),
1. Approves the Commission proposal, subject to Parliament's amendments;
  2. Calls on the Commission to alter its proposal accordingly;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
  5. Instructs its President to forward this opinion to the Council and Commission.

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<sup>(1)</sup> OJ C 106, 4.4.1997

<sup>(2)</sup> OJ C 339, 10.11.1997, p. 92 and 151

<sup>(3)</sup> OJ C 268, 27.8.1998, p.13

**A.II**  
**LEGISLATIVE PROPOSAL**

**Proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (COM(98)0372 - C4-0506/98 - 98/0222(CNS))**

The proposal is approved with the following amendments:

Text proposed by the Commission <sup>(1)</sup>	Amendments by Parliament
<b>(Amendment 1)</b> Title	
Proposal for a Joint Action concerning <u>solidarity</u> in the admission and residence of beneficiaries of the temporary protection of displaced persons	Proposal for a Joint Action concerning <u>Community aid measures</u> for the admission and residence of beneficiaries of the temporary protection of displaced persons
<b>(Amendment 2)</b> First citation	
Having regard to the Treaty on European Union and in particular Article K.3(2)(b) thereof,	Having regard to the Treaty on European Union and in particular Article K.3(2)(b) thereof, <u>or after the entry into force of the Treaty of Amsterdam, Article 63,</u>

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<sup>(1)</sup> OJ C 268, 27.8.1998, p.22.

(Amendment 3)  
Second recital

Whereas, since its resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, the Council has recognised the importance of adopting measures of solidarity to allow a more equitable distribution of efforts;

Whereas, since its resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, the Council has recognised the importance of adopting measures of solidarity to allow a more equitable distribution of efforts and referred to various factors on which a distribution of efforts by way of solidarity should be based;

(Amendment 4)  
Second recital a (new)

Whereas the Treaty of Amsterdam states that the Council shall adopt measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

(Amendment 5)  
Second recital b (new)

Whereas the individual degree to which a Member State is affected should be ascertained using a basis for calculation laid down in advance including not only the number of displaced persons received but also the financially assessable contributions by the individual Member States to preventing or resolving the crisis, measures taken by the individual Member States for the on-the-spot protection and care of the population under threat, and economic and social factors, in particular population and per capita GDP;

(Amendment 6)  
Third recital a (new)

Whereas the European Parliament has also, in its opinion of 23 October 1997, ascribed particular importance to burden-sharing in the context of the joint action concerning temporary protection of displaced persons;

(Amendment 7)

Fifth recital

Whereas this solidarity should principally take the form of financial assistance, both to contribute to emergency measures and to promote reception projects, particularly those involving accommodation and social assistance;

Whereas this balance should inter alia take the form of financial assistance, both to contribute to emergency measures and to promote reception projects, particularly those involving accommodation and social assistance; considering the European Refugee Fund created by the European Parliament as a financial instrument for solidarity between the Member States with regard to the temporary protection of refugees;

(Amendment 8)

Sixth recital

Whereas, as a subsidiary point, equitable burden-sharing may also lead to a distribution between Member States of the beneficiaries of temporary protection; whereas, however, this distribution concerns people only before or on their arrival in a Member State of the Union;

Whereas equitable burden-sharing may also lead to a distribution between Member States of the beneficiaries of temporary protection; whereas, however, this distribution concerns people only before or on their arrival in a Member State of the Union;

(Amendment 9)

Seventh recital

Whereas decisions on the implementation of these solidarity measures must be adopted unanimously;

Deleted.

(Amendment 10)

Article 2(1)

1. When temporary protection regimes are adopted, or on the basis of the report referred to in Article 4 of the Joint Action [on temporary protection], the Council may, acting unanimously on the initiative of a Member State or of the Commission, adopt decisions implementing solidarity mechanisms providing for assistance to the Member States particularly affected by the admission of beneficiaries of temporary protection.

1. When temporary protection regimes are adopted, or on the basis of the report referred to in Article 4 of the Joint Action [on temporary protection], the Council may, acting by qualified majority on the initiative of a Member State or of the Commission, adopt decisions implementing Community aid measures providing for assistance to the Member States particularly affected by the admission of beneficiaries of temporary protection.

(Amendment 11)  
Article 2(1) a (new)

1a. The measures referred to in the previous paragraph shall take into account all the circumstances and proceedings affecting each Member State.

(Amendment 12)  
Article 3, title and new paragraph before opening clause

**Financial assistance**

**Community aid measures and reception of persons requiring protection**

The measure provided for by Article 2(1) principally involves in the first instance rules permitting a distribution amongst Member States after obtaining the consent of those affected, of beneficiaries of temporary protection before or on arrival in the territory of the Member States.

These distribution rules are without prejudice to the principle of the 'unity of the family' and the rights of unaccompanied refugee children.

This distribution shall also not affect the rules of the Dublin Convention of 15 June 1990, unless the Member States decide to suspend the examination of such applications for asylum under the conditions set out by the second subparagraph of Article 10(1), second indent of the joint action [on temporary protection].

(Amendment 13)  
Article 3, opening clause

The decision provided for by Article 2(1) of this joint action principally involves the granting of financial assistance from the Community budget designed to cover certain costs generated by the admission of beneficiaries of temporary protection. The financial assistance may assume the following forms:

If the measure provided for by Article 2(1) of this joint action involves the granting of financial assistance from the Community budget designed to cover certain costs generated by the admission of beneficiaries of temporary protection, the financial assistance may assume the following forms:

(Amendment 14)  
Article 3, new paragraph after the existing text

The European Refugee Fund is the financial instrument of the Union's budget through which the solidarity between the Member States is given concrete expression.

(Amendment 15)  
Article 4

The decision provided for in Article 2(1) may also, as a secondary measure, define the rules allowing the beneficiaries of temporary protection to be distributed between Member States, before or on arrival in the territory of the Member States.

Delete

This potential distribution shall not affect the rules of the Dublin Convention of 15 June 1990, unless the Member States decided to suspend the examination of such applications for asylum under the conditions set out by the second subparagraph of Article 10(1) of the joint action [on temporary protection].

(Amendment 16)  
Article 5(1)

(1) The European Parliament shall be informed forthwith of the implementing measures adopted pursuant to this Joint Action.

(1) The European Parliament shall be consulted forthwith on the implementing measures adopted pursuant to this joint action. In urgent cases, the Council may lay down such measures in advance. After the consultation, the Council shall immediately specify the details of the measures.

(Amendment 17)  
Statement in the Council minute

For the purposes of the decisions provided for by Articles 3 and 4, account shall be taken of the Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis<sup>(1)</sup>.

Deleted

<sup>(1)</sup> OJ C 262, 7.10.1995, p. 7.

## DRAFT LEGISLATIVE RESOLUTION

### **II. Legislative resolution embodying Parliament's opinion on the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (COM(98)0372 - C4-0506/98 - COM(98)0372 - 98/0222(CNS))**

#### **(Consultation procedure)**

#### The European Parliament,

- having regard to the Commission proposal to the Council(COM(98)0372) - 98/0222 (CNS)<sup>(1)</sup>,
  - having regard to Article K3,(2)(b), of the Treaty on European Union,
  - having been consulted by the Council pursuant to Article K..6, second subparagraph, of the Treaty on European Union (C4-0506/98),
  - having regard to Rule 58 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0399/98),
1. Approves the Commission proposal, subject to Parliament's amendments;
  2. Calls on the Commission to alter its proposal accordingly,
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
  5. Instructs its President to forward this opinion to the Council and Commission.

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<sup>(1)</sup> OJ C 268, 27.8.1998, p.22

## **B**

### **EXPLANATORY STATEMENT**

#### **Introduction**

In March 1997 the Commission submitted to the Council and the European Parliament a proposal for a Joint Action concerning temporary protection of displaced persons (COM(97)0093 final, OJ C 106, 4.4.1997, p. 13). The Council consulted the European Parliament on it.

This consultation was an important step towards systematic consultation of the European Parliament by the Council on all measures adopted in the framework of the third pillar of the Treaty on European Union (hereafter referred to as the TEU) (see also my report A4-0284/97).

The Commission now gives two grounds for its amended proposal: discussions within the Council and the European Parliament's opinion of 23 October 1997. In the case of the part of the proposal concerning solidarity, moreover, stalemate has been reached within the Council, according to the Commission. In delivering its opinion, Parliament had asked the Commission, in accordance with the procedures laid down by the EC Treaty, to amend its proposal formally. This is the first occasion on which the Commission has done this in the context of the third pillar of the TEU. The rapporteur and the whole Committee on Civil Liberties and Internal Affairs welcomes this good example of improved cooperation between the institutions.

The fact that the Commission accepted no fewer than 10 of Parliament's amendments may be regarded as a great success for Parliament.

According to the customary procedures, Parliament would no longer need to deliver an opinion if the amendments made by the Commission merely entailed acceptance of Parliament's amendments. In the present case, however, the amendments are not only derived from Parliament's opinion. The Commission states that the amendments also (and to a very significant extent) derive from discussions within the Council. Moreover, the Commission has divided the proposal into two parts: one concerning temporary protection (97/0081(CNS)) and one concerning burden-sharing (98/0222(CNS)). These fields will be considered below. First, however, it is necessary to take a brief look at the entry into force of the provisions agreed in the Amsterdam Treaty and at whether it is wise to divide the proposals.

#### **The Amsterdam Treaty**

In the consolidated Treaties, the subject-matter dealt with in the Commission document is referred to in Article 63(2). This makes it clear that the measure concerning temporary protection must be adopted within five years of the entry into force of the Amsterdam Treaty. However, under the terms of the last sentence of Article 63, there is no time limit for the adoption of provisions concerning burden-sharing (solidarity). However, nor is there anything to prevent the measures being adopted earlier. At first sight, a Directive seems appropriate to the proposal on temporary protection, since it is minimum standards which are to be adopted. However, this first impression needs to be qualified, as the Commission proposal is not genuinely an instrument vesting rights in individual third-country nationals or stateless persons but rather a working agreement between the Member States. The fact that national provisions are to remain in existence (Article 2(4) new) and the case-by-case decisions by Member States on whether to grant displaced persons extra rights (Article 2(3)) make the situation so unclear that it would be better to formulate the decision so as to render a

number of rights and obligations directly applicable. My preference therefore is for temporary protection to be governed by a Regulation. This would have the further advantage that in the crises concerned it will immediately be clear what action needs to be taken. As I advocate the adoption of a Regulation on temporary protection and as the provisions concerning solidarity also depend on the adoption of a specific measure conferring temporary protection, it likewise strikes me as preferable to adopt the instrument concerning burden-sharing in the form of a Regulation. If, however, the instrument were to be adopted before the Amsterdam Treaty enters into force, no particularly suitable legal instrument would be available (see my report A4-0284/97, p. 13, the point being that it is not a specific joint action which is to be decided on but rather framework provisions enabling such decisions to be taken subsequently). In both cases, unanimous adoption is required in the Council, so there is no difference in this respect.

In our view, it would be best to adopt the measures as soon as possible, particularly as current events in Kosovo make it not unlikely that an influx of displaced persons may occur. However, the Commission, Council and Parliament could undertake to convert a joint action into a Regulation, without otherwise altering it, as soon as the Amsterdam Treaty enters into force.

A further important problem, both formal and substantive, arises from the formulation of the Amsterdam Treaty. Article 63(2)(b) refers to 'promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons'. The rapporteur believes that it would make sense to follow the phraseology of the Amsterdam Treaty as closely as possible. The question which then needs to be considered is whether one should accept the limited proposal on temporary protection or whether one should comply with the whole obligation to adopt a measure pursuant to Article 63(2)(b) of the EC Treaty relating not only to massive influxes of refugees but also to the regular reception of individual refugees and displaced persons.

Since serious problems already exist within the Council now, we can accept that the more limited problem should be solved first.

The Commission's argument that Parliament cannot be consulted about specific measures because decisions need to be taken urgently is not valid. The measure now being proposed merely creates a framework of rules and does not deal with a specific instance of temporary protection. Particularly in view of the new powers which Parliament will assume under the EC Treaty as revised by the Amsterdam Treaty, the European Parliament cannot give the Council *carte blanche* to adopt specific temporary protection measures without any provision for Parliament's opinion to be taken into account. In his report the rapporteur had proposed that urgent decisions could be taken by the Council without consultation on a provisional basis but that Parliament should then be consulted and the provisional measure replaced as soon as possible by a definitive one taking account of Parliament's opinion. In this way decisions could be taken quickly without endangering Parliament's position as laid down by the Treaties. In the hope that this time there will be fewer problems of translation and comprehension with regard to this proposal, the rapporteur is putting it forward again, in a slightly altered formulation.

## **The division of the proposals**

When differences of opinion within the Council are such that it proves impossible to reach agreement on a particular part of a problem it is sometimes - but not always - a good idea to concentrate on the part concerning which agreement can be reached. In general it may be acceptable for a problem to be held over if the alternative would be a complete stalemate on the wider issue at stake and no compromise at all is possible.

Thus it is possible to find arguments in favour of dividing the original proposal on temporary protection of displaced persons into two proposals. According to the Commission, the proposal on temporary protection should be adopted by the Council as soon as possible, while the proposal on burden-sharing would encounter difficulties there. Another argument in favour of the division lies in the Amsterdam Treaty, as indicated above.

On the other hand, the fact that the two proposals are unquestionably linked is an argument against division. Your rapporteur has therefore concluded that the Commission's approach is the best. It entails two joint actions, but in order to preserve the political link with greater solidarity in providing temporary protection, they are to enter into force simultaneously.

### **Joint action concerning temporary protection**

Amendment 8, which is important to Parliament (the fact that the protection afforded by the Geneva Convention is unaffected), has been accepted, albeit in a different position.

Also worthy of mention is the incorporation into Article 3 of the important Amendment 10 (limiting a temporary protection measure to five years). Article 7 incorporates Amendment 27 on minor children, supplemented with a reference to the vulnerable position of women.

The Commission's proposal to refer to compliance only with Articles 3 and 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms constitutes a direct violation of the general legal principles of the Community and the Union.

The relationship between the instrument and the rules on asylum and the temporary protection provisions of the individual Member States has been greatly improved, partly thanks to amendments by Parliament.

The Commission's proposal in Article 4(1) that a report on the instrument should be submitted to the Council while Parliament is merely informed will give rise to misunderstandings, as it is not clear whether the report is to be forwarded to Parliament for its information or whether Parliament is simply to be told that the Council has received a report. Moreover, the Commission manifestly fails to recognise Parliament's due role in the adoption of measures.

No attention at all is paid to the provisions proposed in Amendment 22 for cases in which a temporary measure automatically expires.

### **Joint action concerning solidarity**

The most important change concerns the placing of the provisions on burden-sharing in a separate proposal. This division of the proposals has been discussed above.

It is desirable to adhere to the terminology of the Treaties wherever possible in this joint action. The Amsterdam Treaty refers not to 'solidarity' but to 'balance' between the efforts of the Member States in receiving displaced persons.

Article K.3 lays down that measures to implement a joint action may be adopted by a qualified majority. Here too, this is preferable.

The Commission's argument in connection with the proposal on temporary protection that Parliament cannot be consulted because decisions need to be taken urgently certainly does not apply here. In view of the powers which are to be conferred on Parliament by the EC Treaty as revised by the Amsterdam Treaty, the European Parliament cannot give the Council carte blanche. The European Parliament is one arm of the Budgetary Authority, and the consequences will have to be borne by the Community budget.

The rapporteur considers a declaration in the Council's minutes to be undesirable from the point of view of transparency.

The Commission's proposal in Article 4(1) that a report on the instrument should be submitted to the Council while Parliament is merely informed will give rise to misunderstandings, as it is not clear whether the report is to be forwarded to Parliament for its information or whether Parliament is simply to be told that the Council has received a report. Moreover, the Commission manifestly fails to recognise Parliament's due role in the adoption of measures.

## OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the Amended proposal for a Joint Action concerning Temporary Protection of displaced persons (presented by the Commission pursuant to Art. K.3(2) of the Treaty on European Union) (COM(98)0372 - C4-0505/98 - (Wiebenga report))

Committee on Foreign Affairs, Security and Defence Policy

Letter from the Committee Chairman to Mrs d'Ancona, Chairman of the Committee on Civil Liberties and Internal Affairs

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Brussels, 29 October 1998

Dear Mrs d'Ancona,

The Committee on Foreign Affairs, Security and Defence Policy considered the above subject at its meeting of 28 October 1998<sup>(1)</sup> and adopted the following conclusions:

With its amended proposal for a Joint Action Concerning the Temporary Protection of Displaced Persons the Commission has taken into account several of the Parliament's amendments (PE 262.699) to the first proposal (COM(97)0093). Still, a few remarks need to be made about both substance and procedures of this Joint Action.

First, the motivation for this Joint Action needs to be questioned. One should be aware of the fact that in several cases, it is the EU's impotence to perform an effective and preventive common foreign policy that leads to the need to react with this kind of symptom-fighting policy. Moreover, such a reaction seems not due to compassion for refugees, but rather to fears for huge migration flows.

As put forward in Art. 3 (1), the first aim of immigration policies should be to provide adequate relief and protection in the region of origin. Clearly, this implies that the Common Foreign and Security Policy (CFSP) is involved in aspects of migrants' and asylum policies. The question arises, what means and resources the Council considers to have at its disposal in order to get in contact with the countries in which relief could be provided. Evidently, the EU should establish agreements with third countries and country organisations in order to pursue effectively the purposes of the present Joint Action.

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<sup>(1)</sup> The following were present for the vote: Cushnahan, 3rd vice-chairman and acting chairman; Oostlander, draftsman; Bernard-Reymond, Bertens, Bianco, van Bladel, Burenstam Linder, Cars, La Malfa, Lenz, Lindqvist (for Väyrynen), Manisco, Poettering, Schroedter, Spaak (for André-Léonard), Stenzel, Theorin, Tindemans and Titley.

Contrary to Art. 12, which outlines the decision-making procedure for implementing urgent measures in crisis situations, the alleged necessity for speedy decisions cannot be invoked in order to bluntly rule out Parliament's role in Art. 4 (1), second paragraph. Obviously, drafting regular reports "on the situation in the country of origin and on the application of the temporary protection regime by the Member States" does not constitute a matter of urgency. These reports are basically a matter of annually returning routine, regardless upcoming crises and migrants' flows. According to Art. K.6 TEU, Parliament's opinion should at least be taken into account. Accordingly, simply informing the Parliament is not sufficient.

The significance of Art. 5 of the Joint Action cannot be underestimated. Its origins are found in the solidarity-related clauses in the pre-ambls of the Treaties of Rome, Maastricht and Amsterdam. It is therefore regrettable that the original formulation was slightly weakened by replacing 'assistance to member states, which are particularly affected' into 'solidarity in the application of the temporary protection regime'. The sharing of burdens becomes even more essential where an EU Member State is itself located in a region where a serious crisis originates. In this case, the priority goal of providing relief and protection *within the region of origin* would highlight the importance of the principle of burden sharing even more.

According to Articles 8 and 9 of the Joint Action, beneficiaries of temporary protection "holding an authorisation to remain on their territory in accordance with Art. 6" will enjoy the same rights with regard to gainful activities (Art. 8) and temporary housing (Art. 9) as they are granted to recognised refugees, both according to national law. Regarding gainful activities, it is your rapporteur's opinion that beneficiaries of temporary protection should enjoy the same rights as nationals, not according to national law, but according to harmonised European regulation. On the other hand, from Art. 9 (1), it seems odd why temporary refugees should enjoy the same rights, with regard to *temporary* housing, as recognised refugees. They are *non-temporary* refugees by definition, and therefore eligible for *permanent* housing. In this respect, harmonisation would pose a fairer and more effective solution as well.

A similar remark can be made about Art. 10 (Asylum). Again, repeated references to national law stress the inconvenience of the absence of a harmonised European immigration and asylum policy. The Commission should be encouraged to develop follow-up proposals in order to remove the paradoxes of combining the absence of border controls with different national asylum and immigration policies.

## **AMENDMENTS**

### **PROPOSAL FOR A JOINT ACTION**

Amended proposal for a joint action concerning temporary protection of displaced persons (COM(98)0372 – 97/0081(CNS))

(Amendment 1)  
Third recital a(new)

Whereas to date, within the framework of the CFSP, little progress was made with regard to the prevention of large flows of displaced persons,

(Amendment 2)  
Article 4 – second paragraph

The Commission shall submit the report to the Council, and shall inform the European Parliament accordingly.

The Commission shall submit the report to the Council and the European Parliament.

Yours sincerely,

John Walls CUSHNAHAN  
3rd vice-chairman  
of the Committee on Foreign Affairs,  
Security and Defence Policy

Arie OOSTLANDER  
Draftsman

14 October 1998

**OPINION**  
(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (COM(1998)0372 - C4-0506/98 - 98/0222 CNS - (Wiebenga report))

Committee on Legal Affairs and Citizens' Rights

Draftsman of opinion: Mrs Wilmya Zimmermann

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**PROCEDURE**

At its meeting of 2 September 1998 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Zimmermann draftsman.

At its meeting of 12-13 October 1998 the committee considered the draft opinion.

At that meeting it adopted the conclusions unanimously.

The following were present for the vote: De Clercq, chairman; Zimmermann, draftsman; Buffetaut, C. Casini, Cassidy, Ferri, Gebhardt, Mosiek-Urbahn, Nassauer and Sierra Gonzalez.

**Introduction**

In 1997, with its proposal for a Joint Action based on Article K.3(2)(b) of the Treaty on European Union concerning temporary protection of displaced persons (COM(97)0093-CNS 97/081), the Commission took a first initiative in creating a Community legal basis for the admission of refugees in the event of a mass influx. The EP delivered its opinion on that document on 23 October 1997<sup>(1)</sup>.

On 24 June 1998 the Commission adopted an amended proposal on the Joint Action (hereinafter 'Proposal 1') and a proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (hereinafter 'Proposal 2').

It must be expressly welcomed that the Commission incorporated the overwhelming majority of Parliament's amendments into Proposal 1.

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<sup>(1)</sup> OJ C 339, 10.11.1997, p. 92 and 151.

For procedural reasons (*the Council consulted the EP only on the latter proposal* - see minutes of EP for 14 September 1998, PE 272.002, p.10) this opinion will be concerned primarily with Proposal 2.

## **2. Legal basis and competence of the Court of Justice of the European Communities**

The legal basis for both proposals is Article K.3(2)(b) of the EC Treaty; this is, in other words, a third-pillar instrument.

With entry into force of the Amsterdam Treaty however, the relevant areas will migrate to the first pillar and Article 63 of the EC Treaty (new numbering) will then become applicable:

- the Council shall continue to decide unanimously for a period of five years, and thereafter, provided that the Council has unanimously adopted a decision to that effect, on the basis of Article 251 of the EC Treaty (Article 67 of the EC Treaty);
- it will then be essentially the responsibility of the Court of Justice to monitor the conformity to law of legislation adopted on the strength of this new legal basis. The competence of the Court of Justice in that connection will however be impeded by the barely comprehensible provisions of Article 67 (new)(2), second indent, and Article 68 (new) of the EC Treaty.

At all events, the legal status of any provision still adopted on the basis of Article K.3 of the TEU after Article 63 (new) of the EC Treaty enters into force remains unclear. It is therefore appropriate in order to consolidate the competence of the Court of Justice, to ask for the Joint Action not to be adopted until the Amsterdam Treaty enters into force, and to do so on the legal basis of Article 63, or for the Joint Actions to contain a clause specifying that they continue to apply as legal enactments on the basis of Article 63.

## **3. Assessment**

### **a. Need for the proposal**

It is to be regretted that Proposal 1 in its original form has still not been adopted by the Council. The problems faced by substantial numbers of refugees - in particular Kurds from Turkey and Northern Iraq, refugees from Kosovo and North Africa - large numbers of whom entered the Union at a particular time, could have been resolved more pragmatically and more authoritatively on the basis of such a Community instrument.

### **b. Relationship to right of asylum**

Your draftsman reiterates her view that Proposal 1 becomes applicable only in the event of a *mass influx* into the EU, since it is then that the number of refugees makes it harder to apply the individual procedure of the Geneva Convention on Refugees. Proposal 1 empowers the Council, in the event of mass influxes, to introduce, by qualified majority, rules governing temporary protection. The Geneva Convention remains unaffected in principle. The interpretation of the, in principle very broad, scope of the Geneva Convention can, however, be narrowed down by the Member States in practice when it comes to applying specific protection measures. It is therefore appropriate expressly to leave open to displaced persons enjoying protection in accordance with a decision to implement

Proposal 1, the option of having their grounds for seeking refugee status examined in accordance with the Geneva Convention.

It was for that reason that the EP sought, in its opinion on the original Proposal 1, to amend<sup>(1)</sup> Article 10 so as to restrict the right to postpone examination of asylum applications under the Geneva Convention and to make consultation of the UNHCR compulsory before any decision is taken to implement the Joint Action.

*c. Burden sharing*

In its opinion<sup>(2)</sup> on the original Proposal 1, Parliament placed greater emphasis on burden sharing than the Commission had done. The Commission accepted that change of emphasis and incorporated it into the present Proposal 2.

It is regrettable that, as the Commission, points out, some Member States will not accept shared responsibility. It is even said to be doubtful whether the provisions applying specifically to temporary protection will **ever** be adopted, which also accounts for the removal of burden sharing from Proposal 1. Yet both measures are still expected to enter into force jointly so that in principle they would continue to constitute an indivisible unit.

The term '**burden sharing**' can mean sharing of the financial burden and/or allocation of displaced persons to different Member States.

Your draftsman however, has *strong reservations concerning any arbitrary separation of human beings*. Ultimately, the Council will not decide until immediately before any mass influx on whether or not to introduce rules on temporary protection, which will then apply to all Member States. But no one can forecast what Member States displaced persons will in fact apply to. In your draftsman's opinion, account should be taken of the decisions made by displaced persons themselves, on the strength of family, linguistic, cultural or religious criteria, on which Member State they wish to be admitted to.

If imbalances in the financial demands on different Member States were to arise from the distribution actually occurring, these should be offset by way of financial transfers. The distribution of persons between Member States provided for in Article 4 should therefor only ever come into play as a last resort.

*(d) Humanitarian aspects of distribution of refugees*

Proposal 1, Article 7 specifies arrangements to be applied to family reunification, in particular where there are unaccompanied refugee minors. Where refugees are to be distributed between different Member States priority, should be given to safeguarding the need to protect family members and minors. In particular where displaced persons are to be distributed across a number of countries, families should only be placed as complete units in a single member country; where this cannot be done family reunification must be possible through non-bureaucratic channels.

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<sup>(1)</sup> Amendment 18.

<sup>(2)</sup> Amendments 12 and 13.

#### **4. Budgetary implications of the measures**

The implications of Proposal 2 for the Community budget will have a decisive impact on the budget of the EU. Your draftsman therefore urges that the Committee on Budgets should also be consulted, since the expenditure has been classified by the Commission in the financial statement (p.34) as *non-compulsory*, which would enable Parliament to exercise decisive powers under the budget procedure.

Your draftsman also urges that it be more clearly specified under what conditions Community budget funds should be released to the Member States under the terms of Proposal 2.

Proposal 2, Article 3 in fact contains provisions on what *form* EU financial support for one or more Member States should assume. As against that, however, there are no indications as to the *conditions* under which these solidarity actions should in fact be implemented, i.e. there are no definitions of the terms 'particularly affected'<sup>(1)</sup>, 'greater solidarity' or 'fair distribution'.

Thus, far from any legal security having been created with a view to ensuring solidarity in a system refugee protection, all that has happened is that the solution to this problem has once again been *postponed* to the time of implementation of the Joint Action.

Each Member State apparently believes that it has afforded asylum to refugees to a sufficient extent, and at the same time 'suspects' other Member States of having failed to live up to the same standard of humanitarian commitment. Germany, for example, claims to have admitted the greatest number of refugees from former Yugoslavia. But Austria, the Netherlands and Sweden have been prepared to admit above-average numbers by comparison with their respective populations. What is lacking is any formula that would leave each Member State in no doubt that, in the event of a mass influx of displaced persons into the EU, it would be asked to cope with a fair share of the burden.

The fact that solidarity measures are to be financed from the Community budget (Article 3) will in particular make it difficult for EU 'net-payer countries' to accept the Council proposal. It is true that Article K.8(2), second indent, of the TEU provides for operative expenditure in the area of justice and home affairs to be charged to the budget of the Member States, in accordance with a scale to be decided. But when the Amsterdam Treaty enters into force, the relevant area of competence will migrate to the first pillar. When that happens financing from outside the EC budget will no longer be possible. Article 268(new) of the EC Treaty in fact stipulates only that *operative* expenditure incurred on the basis of the provisions of the *Treaty on European Union may*, - not *must* - be charged to the Community budget. That provision is an exceptional one, since fundamentally the principle of the *comprehensiveness* of the budget applies. Consequently, in the case of operative expenditure incurred on the basis of the *Treaty establishing the European Union*, the principle must apply that it can *only* be provided for within the EC budget.

As noted in the above remarks on the legal basis and the competence of the Court of Justice, it would be advisable, in particular for reasons of legal security, to call for the Joint Action not to be adopted until the Amsterdam Treaty enters into force.

If, these considerations notwithstanding, a scale of expenditure to be charged to the Member States pursuant to Article K.8(2), second indent, were nevertheless to be adopted before the Amsterdam

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<sup>(1)</sup> Article 2.

Treaty came into force, your rapporteur takes the view that this should be done on the basis not only of the number of displaced persons a Member State admits, but also of the factors set out in the Council Decision of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis.

Your rapporteur also wishes to draw attention to two other major defects in aspects of the Council proposal relevant to the budget:

- (a) Short term support is to be provided for only three months. That is too short a period.
- (b) Long term support (Article 4), covered by Budget Line B5-803, had an allocation in 1998 of only ECU 3.75 m. If it is to amount to anything more than a drop in the bucket, it will have to be massively increased.

### **Conclusions:**

1. In the event of mass influxes into the EU, the effort must be made to ensure that the distribution of the resultant burden is made between the Member States on the basis of an allocation scale drawn up in advance in accordance with the principles of solidarity and fairness.
2. The competence of the Court of Justice to interpret and monitor the implementation of both Joint Actions must be guaranteed.
3. The Committee on Budgets should also be consulted on the Council's proposal on account of its considerable budgetary relevance.
4. The Committee on Legal Affairs and Citizens' Rights requests the Committee on Civil Liberties and Internal Affairs to incorporate into its report the following amendments to the proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of temporary protection of displaced persons:

## (Amendment 1)

## Legal basis

Having regard to the Treaty on European Union and in particular Article K.3(2)(b) thereof,

Having regard to the Treaty on European Union, in particular Article K.3(2)(b) thereof, and, after entry into force of the Treaty of Amsterdam, Article 63 thereof,

## (Amendment 2)

## Recital 2

Whereas, since its resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, the Council has recognised the importance of adopting measures of solidarity to allow a more equal distribution of efforts.

Whereas, since its resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, the Council has recognised the importance of adopting measures of solidarity to allow a more equal distribution of efforts, and has drawn attention to various factors on which solidarity in burden-sharing should be based;

## (Amendment 3)

## Recital 2a (new)

Whereas, the particular extent to which a Member State is affected shall be determined in accordance with a basis of assessment fixed in advance and taking into account not only the number of displaced persons admitted but also the financially assessable contributions of particular Member States to the prevention or resolution of the crisis, the actions of particular Member States in protecting and assisting threatened populations on the spot, together with economic and social factors, in particular population size and per capita GNP;

(Amendment 4)  
Recital 3a (new)

Whereas, in its opinion of 23 October 1997, the European Parliament also attached particular importance to burden-sharing in relation to the Joint Action concerning temporary protection of displaced persons;