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## UNOFFICIAL TRANSLATION

### NOTE

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from: Presidency

to : Working Party on Asylum

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Subject: Draft Joint Action concerning temporary protection of displaced persons

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Delegations will find attached a text drawn up by the Presidency, based on the work undertaken during the Austrian Presidency and on the discussions held within the Working Party on Asylum on 13 January and 10 February 1999.

Draft Joint Action concerning temporary protection  
of displaced persons <sup>(1)</sup>

Article 1

*Definitions*

For the purposes of this joint action:

- (a) *'temporary protection regime'* means an arrangement offering protection of a temporary nature to displaced persons in the event of a mass flight of persons, such arrangement being without prejudice to recognition of refugee status in accordance with the Geneva Convention; <sup>(2)</sup>
- (b) *'displaced persons'* means any third country national or stateless person who has left his or her country of origin and whose safe return under dignified and humane conditions is impossible in view of the situation prevailing in that country, and in particular:
- persons who have fled from areas affected by armed conflict or persistent violence;
  - persons who have been under or who run a serious risk of being exposed to systematic or widespread human rights abuses, in particular any person belonging to a group compelled to leave their place of origin by campaigns of ethnic or religious persecution; <sup>(3)</sup>

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(1) General reservation : E, F, UK.  
(2) Reservation E.  
(3) Scrutiny reservation D and S.

- (c) *'mass flight'* means the sudden arrival within the Union of a significant number of **displaced** persons from a given country or geographical region who request international protection <sup>(1)</sup>, or a strong probability that such a situation may soon arise; <sup>(2)</sup>
- (d) *'Geneva Convention'* means the Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967;
- (e) *'recognised refugees'* means persons who have obtained refugee status under the Geneva Convention;
- (f) *"region of origin"* means the country of origin and at least the countries bordering on the region from which the persons in need of international protection come, except for Member States of the European Union. <sup>(3)</sup>

## Article 2

### *General provisions*

1. This joint action shall not apply to persons who were admitted by Member States in the context of temporary protection regimes set up before the adoption of this joint action.
2. Until such time as the Council adopts a decision as referred to in Article 3, or **in respect of a decision** on persons not covered by a decision as referred to in Article 3, each of the Member States shall remain free to adopt or to retain national temporary protection arrangements even after entry into force of this joint action.

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(1) Reservation E and F : deletion of "who request international protection".

(2) Reservation I : deletion of "or a strong probability that such a situation may soon arise".

(3) Scrutiny reservation S; proposal from the Commission to provide for a separate definition for "country of origin".

3. This joint action is without prejudice to Member States' power to adopt or to retain more favourable conditions for groups of persons covered by a decision as referred to in Article 3.
4. This joint action shall complement the Geneva Convention. <sup>(1)</sup>

### Article 3

#### *The establishment of temporary protection regimes*

1. In the event of a crisis which might require the introduction of a temporary protection regime, the Council shall, by a decision taken by the majority of its members <sup>(2)</sup>, request the Commission in preparation for the decision, to compile a situation report, as quickly as possible, but within no more than one month, covering in particular:
  - situation in the region of origin;
  - possibility of protection in the region of origin, including the adoption of measures on the spot; <sup>(3)</sup>
  - nature and extent of the population movements and the influx into the Union, in particular information from the Member States on the numbers of people already admitted and how many could still be admitted;
  - financial and social implications of any measures as regards the Union.

The report shall be compiled on the basis of information to be supplied by the Member States and by the Commission and any other relevant background material, for example from the United Nations High Commissioner for Refugees.

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<sup>(1)</sup> Reservation E, F : deletion.

<sup>(2)</sup> **Scrutiny reservation F; Commission proposal to refer to procedure of Council decision of 1996 on an early-warning-system.**

<sup>(3)</sup> **Reservation I: deletion; scrutiny reservation: Commission.**

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

2. In cases of mass flight, the Council, taking into consideration the report provided for in paragraph 1, and in particular whether adequate protection can be found in the region of origin <sup>(11)</sup>, shall decide <sup>(10)</sup> whether to establish a temporary protection regime in accordance with the procedure set out in Article 12(1).

The provisions for cases of emergency set out in the Council's rules of procedure may be applied in such cases.

In the event of a crisis requiring immediate introduction of a temporary protection regime, the Council may adopt a decision **in accordance with the procedure set out in Article 12 (1)** before the report has been submitted <sup>(12)</sup>. ~~This decision may be reviewed after the report referred to in paragraph 4 has been submitted.~~

3. The decision referred to in paragraph 2 shall determine at least:
- (a) the specific groups of persons to which the temporary protection regime applies;
  - (b) the duration of the regime, which shall not exceed three years;
  - (c) the ways in which the Member States guarantee access to their territory.

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(11) **Reservation I : deletion "and in particular whether adequate protection can be found in the region of origin".**

(10) Reservation UK.

(12) Scrutiny reservation : E.

## Article 4

### *Revision and/or phasing-out of temporary protection regimes*

1. Every year, and at least six months before the end of a temporary protection regime, or when the Council so requests, the Commission shall prepare a report on the situation in the country of origin and on the application of the temporary protection regime by the Member States, as well as on its financial and social implications. The report shall be based on the information sources referred to in Article 3(1).

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

2. After examining the report, but no later than three months before the end of a temporary protection regime, the Council shall, in accordance with the procedure set out in Article 12(1),
  - (a) decide to revise the decision taken in accordance with Article 3, in particular by amending its duration and/or the group of persons to whom it applies; or
  - (b) decide on the phasing out of the temporary protection regime **and to return the persons concerned where because the situation in the country region of origin allows safe return of the persons concerned under conditions respecting human dignity in conformity with Article 33 of the Geneva Convention and with the European Convention on Human Rights.**
3. If the Council has not adopted any decision as referred to in paragraph 2 before expiry of the temporary protection regime, the regime shall be extended for a further six months. If no decision to review or phase out the regime is taken within this period, the regime shall be regarded as ended. Article 12(2) and (3) shall apply mutatis mutandis.

In any event, the temporary protection regime shall end when a period of five years has elapsed since it was established. If, within this period, the Council has not adopted a decision to phase out the regime, Article 13 shall apply.

4. ~~The principles governing the return shall be coordinated by the Council, in close cooperation with the international organisations concerned, and in particular the United Nations High Commissioner for Refugees.~~ **In organising the return of the persons concerned fully respecting human dignity, priority shall be given to voluntary return operated in close cooperation with the competent international organisations and in particular with the United Nations High Commissioner for Refugees. The Member States shall ensure that national provisions regarding returns guarantee the respect of human rights.**

## Article 5

### *Solidarity in the application of the temporary protection regime*

The reports provided for by Article 3(1) and Article 4(1) shall also refer to all future means for implementing solidarity in the application of the temporary protection scheme.

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

## Article 6

### *Authorisation to remain*

1. ~~Member States shall authorise beneficiaries of a temporary protection regime to remain in their territory for the duration of the regime. A document to this effect shall be issued to the persons concerned, in accordance with national law.~~ **The continuation of the authorisation to remain shall be governed by national law.**

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

## Article 6a

### *Obligation to inform*

The Member States shall inform the beneficiaries of a temporary protection regime in writing, in their mother tongue and in the language of the host country, of their rights and obligations.

## Article 7

### *Family reunification*

1. Member States shall ensure that persons who hold an authorisation to remain on their territory in accordance with Article 6 have **in principle** the possibility of family reunification ~~with respect to their spouses and their minor and dependent children, in accordance with the requirements laid down in their national law.~~ **The detailed conditions therefor shall be governed by national law.**
2. When deciding on family reunification, the absence of documentary proof of the marriage or of the filiation of children should not in itself be considered an impediment. All the relevant facts and circumstances should be taken into account in order to assess the validity of any evidence and the credibility of the claimant's statements.

## Article 8

### *Employment and social security*

1. Member States shall ensure that beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 **have in principle the possibility of taking up a gainful activity.** ~~are granted permission to engage in employment in accordance with the provisions of their national law regarding legally resident aliens.~~ **The detailed conditions therefor shall be governed by national law.**

2. There shall be equality of treatment between beneficiaries of a temporary protection regime and ~~legally resident aliens~~ **recognised refugees** regarding remuneration, ~~social security~~ and other working conditions.
3. **Member States shall ensure that the persons referred to in paragraph 1 have access to social security. The detailed conditions therefor shall be governed by national law.**

## Article 9

### *Housing, welfare benefits and education*

1. Member States shall, where necessary, endeavour to offer suitable housing facilities, or adequate means to obtain such housing, to the beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6.
2. Member States shall ensure that the beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 receive all necessary support, in particular with regard to means of subsistence, where they do not have adequate means, and medical care ~~according to their immediate needs~~. **The detailed conditions therefor shall be governed by national law.** Where the beneficiaries exercise a gainful activity, whether employed or self-employed, their ability to provide for their own subsistence is to be taken into account in determining the level and nature of support arrangements.
3. **Member States shall ensure that special the necessary** medical and other assistance is provided for particularly vulnerable categories, such as unaccompanied minors or persons who have suffered torture, rape or any other serious physical or sexual violence, who are the beneficiaries of a temporary protection regime.
4. Minors of school age shall have access to general **public** education under the same conditions as nationals of the host Member State. (former second subparagraph)

**Furthermore**, Member States shall ensure that the beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 have access to general **public** education ~~under the same conditions as legally resident aliens.~~

## **Article 10**

### *Asylum*

1. Beneficiaries of a temporary protection regime shall have access in accordance with the national law of the Member States to an asylum procedure in accordance with the Geneva Convention.
2. The Member State which granted a beneficiary of a temporary protection regime leave to remain in accordance with the Decision under Article 3 (2) and (3) shall be responsible for examining an application for asylum under the Geneva Convention presented by the said beneficiary ~~of a temporary protection regime shall be examined in accordance with the national law of the Member State responsible pursuant to the Dublin Convention of 15 June 1990.~~ **Article 4 of the Dublin Convention of 15 June 1990<sup>(1)</sup> shall remain unaffected.**

Where national law allows examination of such an application to be suspended, examination may not be deferred for more than three years from adoption of the Council Decision establishing a temporary protection regime. That deferral may be extended by two years if the Council has adopted measures phasing out the regime in accordance with the decision provided for by Article 4(2), point b.

3. Rights under a temporary protection regime may not be enjoyed concurrently with the rights enjoyed by asylum-seekers while their application is under examination. **Member States may provide that beneficiaries of a temporary protection regime whose application for asylum is under examination shall lose the rights referred to in Articles 7 and 9 of this Joint Action.**

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<sup>(1)</sup> OJ C 254, 19.8.1997, p. 1.

4. Where, following the examination of an application for asylum, refugee status is not granted to a person eligible under a temporary protection regime, that person shall continue to enjoy that regime for the remaining duration of the decisions adopted pursuant to Articles 3 and 4.

## Article 10a

### *Taking back*

1. The Member State which accepts a beneficiary of a temporary protection regime on its territory in accordance with Article 6 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.
2. Article 13 (1) of the Dublin Convention shall apply *mutatis mutandis*.

## Article 11

### *Exclusion clauses*

The benefit of a temporary protection regime shall not apply to any person with respect to whom one of the grounds for exclusion listed in Article 1 F of the Geneva Convention applies.

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 judgment of a particularly serious crime, constitutes a danger to the community of that State.

## Article 12

### *Decision-making procedure*

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 **(2)** and **(3)** and 4, acting by a qualified majority.
2. The European Parliament shall be informed forthwith of the implementing measures adopted pursuant to this joint action.
3. The implementing measures adopted pursuant to this joint action shall be published in the Official Journal of the European Communities.

## Article 13

### *Long-term protection measures*

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 shall examine whether long-term measures should be introduced for beneficiaries of temporary protection.

## Article 14

### *Final provision*

This joint action shall be published in the Official Journal of the European Communities as soon as it is adopted by the Council.

It shall enter into force on the same date as the joint action [concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons].

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