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COMMISSION OF THE EUROPEAN COMMUNITIES

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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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. A TOOL IN THE SERVICE OF A COMMON EUROPEAN ASYLUM SYSTEM AND OF THE FULL OPERATION OF THE GENEVA CONVENTION: TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS BASED ON SOLIDARITY BETWEEN THE MEMBER STATES

1.1. As envisaged by the conclusions of the Presidency at the Tampere European Council in October 1999, a common European asylum system must be based on the full and inclusive application of the Geneva Convention, maintaining the principle of non-refoulement. It is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission was asked to prepare a communication on this matter in 2000. An agreement on the issue of temporary protection in situations of mass influx of displaced persons on the basis of solidarity between Member States is to be reached rapidly.

1.2. The Commission is now, in the spring of 2000, proposing a draft Council Directive on temporary protection in the event of a mass influx, based on solidarity between the Member States, as indicated in the scoreboard for the evaluation of progress in the establishment of an area of freedom, security and justice in the European Union, approved by the Council on 27 March 2000.

The Commission is aware of the difficulties of the temporary protection project. It has drawn the conclusions from three consecutive years of failed negotiations in the Council. Even so, acting on the basis of the mandate given by the Tampere European Council and of the Treaty, it has not abandoned its ambitions. It hopes that the Council, which gave an undertaking in Tampere and approved the scoreboard, will assume its responsibilities and welcome the Commission's offer in the proposed legislative instrument. The Commission's new proposal is more than a mere formal "Amsterdamisation" of its old proposals for joint actions. It reflects all the consequences of the entry into force of the Amsterdam Treaty, discussions in the Council, notably during the German and Finnish Presidencies, and the Member States' response to the Kosovo refugee crisis.

1.3. The proposal is part of a series of recent and forthcoming Commission initiatives on asylum policy under the new Treaty establishing the European Community. In March 1999, it began work on asylum procedures with its working paper "Towards common standards for asylum procedures". In May 1999, it proposed a draft Council Regulation concerning the Eurodac system for comparing the fingerprints of asylum-seekers and certain other foreign nationals, the objective of which is to improve the effectiveness of the Dublin Convention. In December 1999, it presented a

proposal for a Council Decision establishing a European Refugee Fund. It is proposing a comprehensive financial approach based on solidarity to support the Member States' efforts in asylum matters. Still in December 1999, the Commission presented a proposal for a Council Directive on family reunification, which includes the situation of refugees and persons enjoying subsidiary protection. In March 2000, a document to facilitate strategic discussion on the replacement of the Dublin Convention by Community legislation was tabled. In the next few months, a legislative proposal concerning asylum procedures will also be presented.

1.4. The consequences of a mass influx of displaced persons in the Union impose such pressures on the asylum system that special arrangements are necessary to give immediate protection to the persons who need it and avoid blocking up the asylum system, which would be against the interests not only of States but also of other persons seeking protection outside the mass influx. Temporary protection in the event of a mass influx as proposed by the Commission is not a third form of protection, alongside refugee status on the basis of the Geneva Convention and subsidiary protection, the consequence of which would be to undermine the Member States' international obligations or to prejudice efforts to harmonise and consolidate forms of subsidiary protection in Europe. On the contrary, minimum standards for giving temporary protection in the event of a mass influx and measures promoting a balance of efforts between the Member States on a basis of solidarity are a component of the system, and more specifically a tool enabling the system to operate smoothly and not collapse under a mass influx. It is accordingly a tool in the service of a common European asylum system and of the full operation of the Geneva Convention.

1.5. The definition of minimum standards for the grant of temporary protection in the event of a mass influx of displaced persons does not exhaust the scope of Article 63(2)(a) of the EC Treaty, and the Community will subsequently take the initiatives needed to adopt minimum standards for the grant of other forms of protection to which that provision applies.

2. TEMPORARY PROTECTION AND THE NATIONAL AND INTERNATIONAL SITUATION

2.1. In the context of the large-scale movement of people fleeing the conflict in the former Yugoslavia and the dangers that it caused, Europe was, for the first time since the second world war, directly involved in forced movements of people which are not comparable to previous waves of refugees in either quantitative or qualitative terms.

2.2. Temporary protection has been developed by several Member States as a response to the challenge raised by the mass influx to the asylum system. Special provisions on an autonomous basis have been adopted to speed up decision-making as regards temporary admission so as to avoid or delay the application of the lengthy procedures laid down for asylum requests. These provisions allow the grant of immediate protection and well-defined rights. They also seek to avoid destabilising the relevant administrative and/or judicial authorities with powers in matters of asylum and, consequently, penalising applicants for refugee status under the Geneva Convention or for subsidiary protection, outside the context of the specific influx, to whom the system is no longer equipped to pay the same attention. Temporary protection is by definition confined to a specified limited period during which the situation in the

country of origin is such that the persons concerned cannot return there in adequate conditions of safety and dignity.

Although the Geneva Convention does not automatically exclude the grant of refugee status to entire groups of persons (*prima facie*), most Member States are reluctant to make use of this possibility. Moreover, Article 1C of the Convention, which makes an explicit reference to the possibility of withdrawing refugee status, is rarely applied by the Member States.

2.3. Temporary protection is sometimes criticised by those who consider that in certain Member States it is implemented as an instrument that can be used to circumvent or even evade the obligations flowing from the Geneva Convention. There is indeed a real risk that the situation could get out of control. The European Union's responsibility is crucial, and it must manifest its intention to ensure, by means of its legislative instruments, that that is not its objective.

2.4. The concept and legal framework for temporary protection in the event of a mass has been developed in recent history and varies between the European Union Member States. Most have provided in their ~~récente~~ legislation for the possibility of establishing temporary protection schemes either by statute or by subordinate instruments, circulars or ad hoc decisions. Certain of them do not have the expression "temporary protection" as such, but in reality the residence documents that are issued and the link with the asylum system have the same practical effect. Systems also vary in terms of the maximum duration of temporary protection (ranging from 6six months to ~~1~~one, ~~2~~two, ~~3~~three, ~~4~~four or even ~~5~~five years maximum). Certain Member States provide for the possibility of suspending the examination of asylum requests during the temporary protection period; others do not. The chief differences lie in the welfare rights and benefits granted to persons enjoying temporary protection. Certain Member States allow the right to employment and family reunification; others do not. Certain Member States provide that the benefit of temporary protection may not be enjoyed at the same time by an asylum-seeker: applicants must opt for one or the other. Other Member States make no provision for such an incompatibility.

2.5. ~~Cela a pu être observé~~This situation was observed recently on the occasion of the Kosovo conflict in spring 1999. There are variations between national measures relating to Kosovars evacuated on humanitarian grounds, asylum-seekers, Kosovars already on the territory before the evacuations began, and the benefits granted, but there are also many common elements. It was also observed that national legal frameworks for temporary protection were imperfect, incomplete and sometimes put in place rather hastily on a purely ad hoc basis.

2.6. At international level, the UNHCR Programme Executive Committee adopted a number of instruments as references for the international community: EXCOM No 19 (XXXI) of 1980 on Temporary Refuge, No 22 (XXXII) of 1981 on Protection of Asylum-Seekers in Situations of Large-Scale Influx, No 71 (XLIV) of 1993, No 74 (XLV) of 1994 and No 85 (XLIX) of 1998 on international protection. In 1994, the Office of the High Commissioner presented the Executive Committee with a note on international protection, which is still a point of reference. The Council of Europe also began work at the beginning of 1999 on a Recommendation on temporary protection; it was adopted by the Committee of Ministers on 3 May 2000.

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3. THE UNION *ACQUIS* REGARDING TEMPORARY PROTECTION

3.1. In the context of the Maastricht Treaty, the European Union Member States adopted two instruments – a Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, based on Article K.1 of the Union Treaty, and a Council Decision of 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, based on Article K.3(2)(a). The ground for these instruments was the influx of displaced persons from former Yugoslavia in the early 1990s, many of them from Bosnia-Herzegovina. They were never implemented, not even in the context of the Kosovo crisis in spring 1999. Before that, at Copenhagen on 2 June 1993, the Council had paid brief attention to the question of displaced persons from Yugoslavia (6712/93, Press 90).

3.2. The Kosovo conflict in 1999 prompted the Member States to take additional national measures and to engage in what was a difficult coordination progress.

In April 1999, in response to the influx of Kosovars and the need, acknowledged by the UNHCR in Geneva on 6 April to undertake humanitarian evacuations beyond the region of first reception, the Member States, at a special Council meeting (Justice and Home Affairs) in Luxembourg on 7 April 1999, had difficulties reaching agreement on the coordination of the reception of the persons concerned. But the Presidency conclusions recognised that, for humanitarian reasons and to avoid destabilising individual host countries in the region of origin, it could be necessary to give protection and assistance on a temporary basis to displaced persons outside the region of origin. Humanitarian evacuations were to be based on the voluntary reception of displaced persons. The principle of family unity was to be applied.

On 27 May 1999, the Council adopted conclusions on displaced persons in Kosovo, addressing protection questions in greater detail. The Council acknowledged the ongoing, indeed the intensified, need to give these people temporary protection and welcomed the Member States' offers. It gives a general indication as to the level of protection and social rights. It envisages the possibility of meeting, if necessary, to study needs in terms of responses to the crisis itself and of reception, having regard to the evaluation made by the UNHCR. The temporary protection scheme was brought to an end by the Member States without coordination.

3.3. At the beginning of April 1999 the Commission rapidly amended a proposal for a joint action on the reception and voluntary repatriation of refugees, displaced persons and asylum-seekers, presented in February 1998. On 26 April 1999 this enabled the Council, acting on the basis of Article K.3 of the Union Treaty, to adopt a joint action "establishing projects and measures to provide practical support in relation to the reception and voluntary repatriation of refugees, displaced persons and asylum seekers, including emergency assistance to persons who have fled as a result of recent events in Kosovo". On this basis, the EU provided financing up to approximately EUR 17 million for projects relating to the reception and voluntary return of Kosovars.

4. WORK IN THE EUROPEAN UNION CONTEXT

4.1. On 5 March 1997 the Commission sent the Council a proposal for a joint action based on Article K.3(2)(b) of the Union Treaty concerning temporary protection of displaced persons. The proposal contained definitions, general provisions, the establishment of temporary protection regimes, the revision and/or phasing out of temporary protection regimes, assistance to Member States which are particularly affected, residence permits, family reunification, employment and social security, housing, welfare benefits and education, asylum, exclusion clauses, implementing measures, and long-term protection measures. The draft received a favourable opinion in the European Parliament on 23 October 1997, with requests for amendments.

4.2. On 24 June 1998, to reflect the Council's discussions, in particular on the question of solidarity and certain amendments put forward by the European Parliament, the Commission presented an amended proposal for a joint action with a second proposal for a joint action, separate from but parallel to the first, concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons. The two joint actions were intended to come into force at the same time. The new proposal incorporated many of the comments of the Member States and certain of the amendments put forward by the European Parliament so as to improve the proposal and speed up the process of reaching a consensus for the adoption of the joint actions on temporary protection. It set a maximum duration for temporary protection schemes. On 25 November 1998, Parliament again gave a favourable opinion on the Commission proposals, with requests for amendments.

4.3. The UNHCR described the 1997 proposal as balanced and as providing a constructive basis for action. It expressed a preference for a maximum duration of temporary protection of ~~3~~three to ~~5~~five years, in order to clarify the link with the Geneva Convention and welcomed the level of rights granted to persons enjoying temporary protection. The 1998 revised proposal was welcomed by the UNHCR, which observed that there had been many improvements over the 1997 proposal.

4.4. At the beginning of 1999, the Commission and the Council observed that discussions were in deadlock, in particular on the solidarity question. The German Presidency presented the informal Council meeting (JHA) in Berlin with a paper on burden-sharing in matters of the admission and residence of displaced persons and the idea of double voluntary action by host states and the persons received. This principle was well received and the Member States and the Commission agreed to continue working on it. On 1 May 1999, the Commission proposal lapsed on legal grounds when the new Treaty came into force. To implement items 10 to 12 of the Council conclusions of 27 May ~~2000~~1999 on displaced persons in Kosovo, the Member States and the Commission pursued the discussion under the Finnish Presidency on all questions relating to temporary protection and solidarity in the light of the experience of the Member States in response to the Kosovo crisis.

5. THE OBJECTIVE OF THE COMMISSION PROPOSAL

5.1. With this proposal for a Directive, the Commission is pursuing the following aims:

(1) implementing the Treaty, the Vienna Action Plan, the Presidency conclusions of the Tampere special European Council and the scoreboard presented to the Council and Parliament in March ~~to 22~~2000;

(2) avoiding a total bottleneck in national asylum systems in the event of a mass influx, which would have negative effects on the Member States, the persons concerned and other persons seeking protection outside the context of the mass influx, and thereby supporting the viability of the common European asylum system;

(3) making immediate protection and fair rights available to the persons concerned;

(4) clarifying the link between temporary protection and the Geneva Convention, safeguarding the full application of the Convention;

(5) contributing to achieving balance between the efforts made by the Member States to receive the persons ~~offir~~concerned by offering coordination facilities in the event of a mass influx in the European Union and in implementing temporary protection;

(6) to give practical expression to solidarity in the reception of the persons concerned by means of financial solidarity and the double voluntary action in the reception of them.

5.2. To achieve these aims, the Commission is presenting a "package" in a single Directive, based on Article 63(2)(a) and (b) of the Treaty, containing definitions corresponding to the Treaty's objectives and minimum standards for temporary protection in the event of a mass influx, which should promote a balance between the efforts made by the Member States to receive the persons concerned and to bear the consequences. Transposal of the Directive will require either the adoption or the maintenance of national provisions of primary or secondary legislation making it possible to apply temporary protection in the event of a mass influx of displaced persons in accordance with the Directive from the time when the mass influx is declared. Solidarity mechanisms will be activated automatically (fuller explanation at point 6).

5.3. The Directive provides expressly that temporary protection is without prejudice to recognition of refugee status under the Geneva Convention, to make it clear from the outset that the aim is not to derogate from or circumvent the Member States' international obligations. It also makes clear that it is in the very nature of minimum standards that the Member States may introduce or maintain more favourable conditions for persons enjoying temporary protection. Lastly, as the Kosovo crisis revealed, the link with the United Nations High Commissioner for Refugees is a vital element in assessing the situation and questions of protection. Moreover the persons concerned by temporary protection in the event of a mass influx may be within the UNHCR's mandate. The Directive recognises this fact and provides for regular consultations for the establishment, implementation and termination of temporary protection.

5.4. The maximum duration of temporary protection in the event of a mass influx is a crucial component of the system, especially if access to the asylum procedure is temporarily postponed. In 1998 the Commission proposed a maximum period of three years, possibly to be extended to five years. But there seems to be some reluctance to accept this period in several Member States. The Commission is accordingly making a new proposal for a maximum period of two years, which is a reasonable and workable period. If there is no prospect of a qualified majority in favour of terminating temporary protection as explained at point 5.6, it should automatically lapse after two years. In any event, temporary protection could be terminated at any time.

5.5. The core provisions of the Directive concern the method for activating and terminating temporary protection. First, since there can be no pre-determined quantitative criteria for declaring that there is a mass influx, there will have to be a joint decision making the declaration. But this decision will have to be taken on the basis of an examination of specified questions, including those related to the solidarity issue. This decision on a matter of implementation is reserved for the Council on account of the special nature of temporary protection and of the fact that it is impossible to pre-determine the quantitative criteria to define a mass influx of displaced persons. The decision will require a qualified majority, in view of its importance and of the need to ensure that a sufficient number of Member States agree to activating the mechanism. The same applies to termination, which must also be based on an examination of specified questions. The Directive defines the content of the decision and its effects. As soon as the Member States have agreed to activate the mechanism, they must all implement temporary protection in accordance with the Directive.

The Commission has also sought to simplify the decision-making procedure in relation to its 1998 proposals and to make the mechanism easier to understand. Within the maximum period of the temporary protection scheme, renewals are automatic.

5.6. The level of the Member States' obligations towards beneficiaries has to meet a number of constraints. First, they must be fair – they must reflect Europe's humanitarian traditions -, and the persons concerned may well include many refugees within the meaning of the Geneva Convention. Second, they must be attractive enough to ensure that there is no excess of asylum applications. The level proposed by the Commission in this proposal for a Directive retains the ambitions of the original proposals of 1997 and 1998, though it reflects discussions that have taken place in the Council and Parliament. It also reflects its careful review of the measures taken by the Member States in relation to the Kosovars who were given temporary protection.

The Member States' first obligation towards beneficiaries of temporary protection must be to issue a residence document in good and due form, valid for the entire temporary protection. Following the discussions of the last three years and the experience of Kosovo, the Directive does not determine the precise period of validity of residence documents. But the treatment given to persons enjoying temporary protection must be that set by the minimum standards, irrespective of the duration of the residence document or documents. If persons came from countries subject to a visa requirement, the Directive provides for simplification of formalities and for visas to be issued free of charge.

The Commission has incorporated an amendment from Parliament concerning information for beneficiaries: it is important that they should be familiar with the different rights given to them, the provisions governing access to the asylum procedure and the provisions governing the expiry of the temporary protection.

The Commission confirms the importance it attaches to persons enjoying temporary protection being given access to employment on the same terms as recognised refugees. This is an obligation that will reduce their dependence on assistance schemes and facilitate voluntary return programmes. Access to employment can also be a valuable way of making temporary protection more attractive than the asylum procedure.

The Directive also imposes obligations regarding housing and accommodation, welfare or subsistence assistance, medical or other assistance, education and training.

In its proposal on family reunification the Commission stated that the question of preserving family unity in the context of temporary protection would be addressed by a specific proposal rather than the general proposal. Given the limited pre-defined duration of temporary protection, the Commission feels it is necessary to concentrate on the family as already constituted in the country of origin but separated by the circumstances of the mass influx. A broad concept of the family can be posited. This corresponds to the Member States' practice in relation to the Kosovars. But the right provided for here is more limited than the right provided for by the family reunification Directive. Moreover the Commission cannot deny that the political conditions for proposing a broader approach to family reunification for persons enjoying temporary protection than proposed here do not seem to be met. It would like to link recognition of a specific situation and the right to lead a normal family life that is secured by the European Human Rights Convention and is therefore available also to persons enjoying temporary protection, as indicated in the Council of Europe Recommendation adopted by the Committee of Ministers on 15 December 1999 on family reunion for refugees and other persons in need of international protection (R(99)23).

Special attention has been paid in this Directive to the situation of children, unaccompanied minors and persons with special needs, particularly those suffering severe traumas. The Directive provides for the non-discriminatory application of obligations towards persons enjoying temporary protection.

The Directive does not address the question of free movement of persons enjoying temporary protection and accordingly does not specifically regulate the taking back of a person enjoying temporary protection in an initial Member State and residing unlawfully in a second. For one thing, the existing rules governing the taking back of a person residing unlawfully in a Member State and holding a residence document in another must be simply applicable. For another, the Commission will in due course present proposals for measures concerning the free movement of third-country nationals in the Member States and the conditions governing them.

5.7. The provisions relating to access to the asylum procedure must be taken as an opportunity to clarify once and for all the link between temporary protection in the event of a mass influx and the Geneva Convention. The Commission considers that these provisions must be short but establish strong principles. Access to the procedure must be explicitly guaranteed. But it is necessary to respect the way in which the Member States choose to confront the mass influx in their management of the system. The Directive imposes no obligation on Member States as to whether or not to introduce mechanisms for suspending the examination of applications, whether or not to prohibit the combined status of asylum-seeker and beneficiary of temporary

protection and so on. Suspension may be an unavoidable procedure for the Member States most affected by the influx. Non-combination of statuses may be a further factor making temporary protection more attractive and lightening the burden of asylum applications. But the Directive must determine the conditions that absolutely secure access to the procedure for those who so wish. The national provisions transposing the Directive will presumably differ while being constructed on a strong common principle.

5.8. As in the case of access to the asylum procedure, the question of returns and of measures after temporary protection must be governed by simple principles and minimum standards within the scope of Article 63 of the Treaty. After the end of the temporary protection, the ordinary law on protection and the entry and residence of foreign nationals must apply. A variety of scenarios are conceivable:

- Member States must examine asylum applications from those who wish to lodge them;
- if they are rejected, subsidiary protection or an order to leave the territory may be available, depending on the personal situation of the applicant or the situation of his country of origin;
- in the absence of an asylum application, the ordinary law governing the residence of foreign nationals applies;
- in the event of new entries in the Member States' territory, the ordinary law of asylum and the entry and residence of foreign nationals will apply;
- resettlement programmes may be adopted by the Member States.

The Directive provides for standards for the implementation of this basic principle, the response to specific situations and the establishment of voluntary return programmes.

5.9. The implementation of temporary protection in the European Union requires tools to facilitate coordination between Member States. The Directive accordingly provides for administrative cooperation between the Member States in liaison with the Commission. The Commission's intention is to call regular meetings, following any decision to activate temporary protection, of a coordination group to which each Member State would send a representative. If necessary the group will be called to meetings up to a year after the end of the temporary protection. It will consider any question concerning the application of the temporary protection that may be raised by the chair or the representatives of the Member States. The group may consult any relevant organisation whenever it feels the need.

5.10. The Directive specifies the grounds for exclusion from temporary protection of persons who do not deserve it and the conditions for their application.

~~5.11.~~ La Commission est consciente du fait qu'il peut arriver qu'un Etat membre puisse ~~décider unilatéralement d'accueillir un nombre important de personnes déplacées en provenance d'un pays d'origine, en raison de liens avec ce pays d'origine qu'il lui appartient de définir et qu'il doive appliquer dans ce cas une protection temporaire pour cause d'afflux massif, sans forcément demander le déclenchement commun. La directive prévoit ce cas et~~

~~permet à l'Etat membre d'en appliquer les normes minimales ainsi que de bénéficier du dispositif de solidarité financière.~~

~~5.12.~~5.11. Before going into greater detail about the solidarity mechanism, the Commission would recall that the causes of a mass influx of displaced persons lie in event affecting the Union's external relations, its common foreign and security policy and its security and defence identity. Community humanitarian aid is also involved. Upstream of any crisis the European Union has early-warning capacities and participates in measures to prevent and manage crises. In relation to Justice and Home Affairs in particular, the point is to boost the Union's external action by incorporating these questions into the definition and implementation of other policies and actions. Temporary protection in the event of a mass influx thus becomes a component of a coherent and more and more efficient set of Union capacities for action, offering the greatest possible ability to tackle the causes of a mass influx and take crisis action through local measures or post-crisis action, notably in terms of returns. This does not release the Member States from their obligations to protect (point 4 of the Tampere conclusions). But the Member States can rely on a whole range of instruments in the implementation of which the Commission is ready to play its full role, within the areas in which it has power. Its proposal for a Rapid Reaction Facility is conceived in this spirit.

6. SOLIDARITY

6.1. As with its revised proposals for joint action of 1998, the Commission acknowledges the link between temporary protection in the event of a mass influx of displaced persons and solidarity. This solidarity must be capable of being expressed through a clear, transparent and predictable financial mechanism. The Commission also considers, given the background, that the question of physical distribution must be settled by the Community legislation. This is something that the Member States have called for, mainly those most affected by mass influxes in recent years. But only a physical distribution based on the voluntary action of the Member States and the displaced persons themselves will found a consensus in the European Union.

6.2. Financial solidarity

The draft Directive provides expressly for a financial solidarity mechanism in the simple form of a reference to the Council Decision establishing a European Refugee Fund. The Commission, acting under Article 63(2) of the Treaty, adopted this proposal for a Council Decision on 14 December 1999. Apart from structural measures to support reception, integration and voluntary return, the Fund is to finance emergency measures in the event of a mass influx of displaced persons in the European Union. The proposal has been well received, and negotiations are approaching the final stages in the Council. Parliament approved it on 11 April 2000. The reference to the ERF is adequate since it creates a direct link without unnecessary repetitions and has no effect on the Fund's operating rules. Under these rules it will be possible to finance the eligible structural and emergency measures provided for by the Directive. The Fund is to be given €EUR 216 million over five years (36 for 2000, 45 each year thereafter, €EUR 10 million of that for emergency measures).

6.3. Solidarity in physical reception

~~Ses principes s'inscrivent dans deux cercles.~~

~~Dans un premier cercle, l'accueil~~Physical reception must be secured, without prejudice to the Member States' international obligations as to non-refoulement, of course, and must express the will of the States and the consent to be received by a Member State of beneficiaries who are not yet in that State. States indicate their reception availabilities, but voluntary action cannot have the effect of generating an obligation to make offers on a scale that must be determined in detail. Voluntary action here can take place in two stages: at the time the mass influx is declared and subsequently, during the temporary protection period, if a Member State still needs to call in the solidarity of other Member States. In this case, there is provision for cooperation between Member States and for a few operational principles for its implementation.

~~Dans un deuxième cercle, qui boucle le dispositif, le~~The normal Community principle is reception in a spirit of Community solidarity. Consequently, discussions and offers must be incorporated into the preparation of the Council Decision activating temporary protection, and the offers must then be annexed to the actual Decision in the form of Statements by the Member States. But if the flexibility of these principles was still inadequate, an exceptional possibility of not applying physical distribution must be provided for. Reasons must then be given.

~~relations internationales ou du système d'accueil.~~

This complies scrupulously with the voluntary action of the Member States and their international obligations and allows a flexible reaction to the different types of mass influx that might occur (humanitarian evacuations are not the only situation, for example), while setting it within a Community regulatory framework.

7. THE CHOICE OF LEGAL BASIS

7.1. The choice of legal basis is consistent with the amendments made to the Treaty establishing the European Community by the Amsterdam Treaty, which entered into force on 1 May 1999. Article 63(2) provides that the Council is to adopt measures relating to refugees and displaced persons, notably in the following areas: minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin (a) and promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (b). Article 63 is accordingly the proper legal basis for a proposal for minimum standards regarding temporary protection based on solidarity between Member States and accompanied by measures to balance the efforts of the Member States.

7.2. The proposed Directive is to be adopted by the procedure of Article 67 of the Treaty, whereby "During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament". Title IV of the EC Treaty is not applicable in the United Kingdom and Ireland, unless those Member States decide otherwise in accordance with the procedure laid down in the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Title IV of the EC Treaty is likewise not applicable in Denmark, by virtue of the Protocol on the position of Denmark annexed to the Treaties.

8. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND VALUE ADDED

8.1. The insertion of the new Title IV (Visas, asylum, immigration and other policies related to free movement of persons) in the Treaty establishing the European Community, demonstrates the will of the High Contracting Parties to confer powers in these matters on the European Community. But the European Community does not have exclusive powers here, and consequently, even with the political will to implement a common policy on asylum and immigration, it must act in accordance with Article 5 of the EC Treaty, that is to say if and to the extent that the objectives of the proposed action cannot be sufficiently achieved by the Member States and can

therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive satisfies these criteria.

8.2. Subsidiarity

The establishment of an area of freedom, security and justice entails the adoption of measures relating to asylum and to refugees and displaced persons. The specific objective of this initiative is to lay down minimum standards for giving temporary protection in the event of a mass influx of displaced persons and promoting a balance of efforts between the Member States in receiving such persons and bearing the consequences thereof. These standards and measures must be capable of being applied through minimum mechanisms and principles in all the Member States. The situation regarding the grant of temporary protection varies from one Member State to another. Minimum Community standards have to be laid down by the kind of action proposed here. They will help to limit the possibility that third-country nationals will decide on their country of destination merely on the basis of the more generous conditions available there. Moreover, solidarity can best be organised at European level. Lastly, the durable absence of European rules on temporary protection would have a negative effect on the effectiveness of other instruments relating to asylum.

8.3. Proportionality

The form taken by Community action must be the simplest form allowing the proposal to attain its objective and be implemented as efficiently as possible. In this spirit, the legal instrument chosen is a Directive, which allows minimum standards to be laid down while leaving to the national authorities the choice of the most appropriate form and methods for implementing it in their national legal order and general context. Moreover, the proposed Directive does not set out to lay down standards relating, for example, to the interpretation of the Geneva Convention, subsidiary protection or other aspects of the right of residence of foreign nationals, on which there will be other proposals. It concentrates on a set of minimum standards that are strictly necessary for the coherence of the planned action.

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COMMENTS ON ARTICLES

Chapter I: General provisions

Article 1

This Article defines the purpose of the Directive, which is to lay down 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 the Member States in receiving such persons and bearing the consequences this entails. The granting of temporary protection in the case of a mass influx of displaced persons is subject to minimum material and procedural standards and to measures to ensure a balance in the efforts made by the Member States to receive displaced persons and the consequences this entails, as laid down in the proposal for a Directive.

Article 2

This Article contains the definition of the various concepts used in the provisions of the proposal for a Directive.

(a) the concept of "temporary protection in the case of a mass influx" is defined in detail in order to make clear the scope of the Directive. It applies to the exceptional arrangements to be made in the event of a particularly large influx of displaced persons and intended to provide appropriate protection of limited duration while at the same time protecting the asylum system from damaging dysfunctions. To make the Directive more readable, the expression "temporary protection" is used in the rest of the text.

(b) "Geneva Convention" refers to the Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

(c) "displaced persons from third countries who are unable to return to their country of origin" covers nationals of third countries or stateless persons who have been forced to leave their own country and for whom return is impossible for reasons such as those given as examples. Such persons may possibly include refugees or persons who could be covered by subsidiary forms of protection.

(d) the concept of mass influx implies the combination of three phenomena. First, the influx must be from the same country or geographical area. Thus the cyclical and cumulative influx of asylum-seekers from different countries does not constitute the mass influx triggering the temporary protection regime to which this Directive applies. Secondly, the gradual arrival of asylum-seekers, refugees or displaced persons from a single country or region of origin cannot in itself justify the introduction of such temporary protection. However, a point may come at which the movement of people, gradual at the outset, intensifies in such a way that it becomes massive and the normal asylum system is unable to absorb the flow. Finally, except that the number of people must be substantial, it is impossible to quantify in advance precisely what constitutes a mass influx. The decision establishing the existence of a mass influx will rest with the Council.

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(e) The concept of refugee covers third country nationals or stateless persons who meet the definition contained in the Geneva Convention relating to the Status of Refugees.

(f) The concept of unaccompanied minors is defined on the basis of the definition set out in the Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries.

(g) Residence permit is defined in the broadest sense and includes all types of residence permits issued by the Member States, without distinction as to the reason for their issue or the form they take. They must, however, be clear authorisations to reside and not merely documents tolerating the holder's presence on the country's territory.

Article 3

This Article sets out the general obligations essential for the application of temporary protection by reason of international undertakings entered into by the Member States.

1. This paragraph states clearly that temporary protection does not constitute a derogation from the application of the Geneva Convention. It is an exceptional measure only.

2. This paragraph states that the European Convention on Human Rights will also serve as a reference for the granting of temporary protection.

3. This paragraph provides for regular consultations with the UNHCR and other organisations for the application of the various stages of temporary protection for several reasons. First, the UNHCR has a mandate in respect of refugees and other persons who are in need of international protection. It also has a central role as partner of the international community during crises affecting displaced persons. It is important to obtain its assessment of the situation. Finally, Declaration No 17 on Article 73k of the Treaty establishing the European Community, annexed to the Treaty of Amsterdam, stipulates that consultations must be established with the UN High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

4. This clause excludes from the scope of the Directive persons who were received under temporary protection regimes prior to the entry into force of the Directive.

5. Since the Directive lays down minimum standards, the Member States have the power to adopt or retain more favourable provisions for persons covered by temporary protection.

Chapter II: Duration and implementation of temporary protection

Article 4

This Article lays down the normal duration and maximum duration of temporary protection. Normal duration is one year. It may be extended by six-month periods for a further year. The maximum duration of temporary protection may not exceed two years in total. Article 4 also stipulates the procedure for extending protection: this is automatic in order to simplify the decision-making process.

Article 5

This Article lays down the conditions for and effects of granting temporary protection, the procedure for adopting the relevant decision, its content and basis.

1. This paragraph states that temporary protection will be implemented from the point at which the decision triggering the process, confirming the existence of a mass influx, is adopted by the Council. The Council acts by qualified majority on a proposal from the Commission, which will also examine any request by a Member State that it submit a proposal to the Council. This paragraph contains the minimum information to be included in the text of the decision triggering the process, namely the definition of target groups and persons concerned, the date on which the decision will take effect, declarations containing the voluntary offers of physical reception made by the Member States within the framework of Article 25, and, if necessary, declaration(s) on the impossibility for one or more Member States to implement the voluntary offer.

2. This paragraph defines the three elements on which the Council decision is based. Temporary protection can be introduced where justified by the circumstances, the scale of population movements, the advisability of doing so given the facilities for emergency aid and action on the spot or their inadequacy, or information from the Member States, the Commission, the UNHCR and other organisations involved.

3. This paragraph provides for the application, if required, of the urgency procedures included in the Council's Rules of Procedure.

4. This paragraph creates the obligation to inform Parliament of the Council's decision.

Article 6

This Article sets out the conditions governing expiry of temporary protection, the procedure for adopting the decision terminating the protection, the basis for the decision and its content.

1. This paragraph describes the two ways in which temporary protection may be terminated. First, temporary protection terminates at the end of the maximum period of two years provided for in Article 4. Secondly, the Council may adopt a decision terminating the temporary protection at any time during this two-year period. This decision is adopted by qualified majority on a proposal from the Commission, which will also examine any request by a Member State that it submit a proposal to the Council. In any event, if the Council is unable to adopt a decision, the temporary protection terminates at the end of the maximum two-year period.

2. This paragraph defines the elements on which the Council decision must be based. It must be established that the persons receiving temporary protection must be able to return in safety and dignity in a stable context and in conditions where their life or freedom would not be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion and where they would not be subjected to torture or to inhumane or degrading treatment or punishment. The concepts of safety and dignity in the case of returns imply the cessation of the causes which led to the mass influx, possibly a peace and reconstruction process, conditions guaranteeing respect for human rights and the rule of law. This paragraph also imposes the obligation to inform the European Parliament of this decision.

Article 7

Although the Council will have agreed, within the framework of Article 5(1), on the groups of persons to whom the temporary protection will apply, a Member State might wish to provide protection to a further group of people not covered by the scope of the Council decision. This Article permits it to do so. It requires the Member State to notify the Council and the Commission immediately of its decision. The persons concerned must be displaced for the same reasons and from the same country of origin as the group specified in the Council decision. For example, they might have arrived in a Member State slightly before the reference date included in the decision, or have arrived spontaneously where the decision does not cover this situation.

Chapter III: Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. This paragraph is concerned with the first obligation of the Member States towards persons enjoying temporary protection: such people must be given residence permits on one or more occasions for the entire duration of the temporary protection. This obligation implies the issue of documents.

2. This paragraph allows the Member States to decide on the period of validity of the residence permits; the persons concerned may not, however, be treated less favourably than provided for in the Directive.

3. This paragraph deals with the situation of persons in the target group who would normally require a visa. In this case, in view of the urgency of the situation, formalities must be kept to a minimum and the visas issued free of charge.

Article 9

This Article imposes the obligation to keep persons enjoying temporary protection informed of the rules governing such protection. This had been requested by the European Parliament in its resolution on temporary protection of November 1998.

Article 10

The Member States must provide persons enjoying temporary protection with access to employment (employed or self-employed work) on equal terms with refugees. As a result, they also enjoy equal treatment with refugees as regards remuneration, employment-related social security, and other terms of employment. Access to employment encourages independence and enables those concerned to provide for themselves and no longer require assistance. It could also prove useful in reintegrating persons enjoying temporary protection on their return to their country of origin.

Article 11

1. This paragraph is concerned with the principle of shelter or accommodation. The minimum standards laid down in this paragraph enable the Member States to provide accommodation or housing for persons enjoying temporary protection as part of their national reception scheme. These provisions may in some cases allow for temporary accommodation centres for refugees. They may also take the form of collective structures or separate flats.

2. As with anyone covered by a form of protection and lacking the necessary resources, the Member States must grant those covered by the temporary protection scheme the social welfare support and means of subsistence necessary for a normal and decent life for the duration of this protection. The Member States may choose the form this assistance and means of subsistence will take, to ensure that they are consistent with the social welfare arrangements of the individual Member States. The same applies to medical assistance. However, such assistance must at least cover emergency care and the treatment of illness.

3. Where a person enjoying temporary protection is engaged in employed or self-employed work, the Member State may adjust the level of social welfare support and means of subsistence and medical assistance in the light of his ability to meet his own needs.

4. Some people under temporary protection, such as unaccompanied minors, the disabled, certain completely isolated adults or persons who have undergone torture, rape or other serious forms of physical or sexual violence, may have special needs. These may be for medical, paediatric, or psychiatric treatment, supportive therapy or psychological care, or help with their motor skills. The Member States must introduce measures to meet these needs as far as possible.

Article 12

1. Consistent with the Convention on the Rights of the Child, minors covered by the temporary protection regime shall be granted access to the education system on 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. The concept of minority is defined.

2. Adults enjoying temporary protection may have been forced to abandon their studies or vocational training when they fled their country of origin. They should therefore be allowed access to the general education system and to vocational training, further training, or retraining during the period of temporary protection. In addition, the knowledge they acquire in this way could be useful in reintegrating them on their return to their country of origin.

Article 13

This Article lays down the conditions for maintaining the family unit for the duration of the temporary protection. It does not provide for a right to family reunification as defined in the Proposal for a Council Directive on the right to family reunification of 1 December 1999 (COM(1999) 638 final), as it is felt that the temporary nature of the situation does not allow for the exercise of this right in the same form. It is based on a humanitarian concept linked to

the causes of the flight. The family circle is broader than in the Directive on family reunification but it covers the case of families already established in the country of origin and excludes the setting up of a family. Nor does it cover the reunification of a family member lawfully resident in a third country (where this country is not the country of origin) with members of the family enjoying temporary protection in one of the Member States. The individuals reunited are entitled to residence permits issued under the temporary protection regime. The Article applies, within the context of temporary protection, the right to respect for family life embodied in international law and in particular in the European Convention for protection of human rights and fundamental freedoms while taking account of the special circumstances of temporary protection.

1. The family members who are eligible for reunification under the temporary protection regime are specified.

   (a) This subparagraph concerns spouses or unmarried partners (who may be of the same sex). The provision on unmarried partners is applicable only in Member States where unmarried couples are treated for legal purposes in the same way as married couples. This provision generates no actual harmonisation of national rules on the recognition of unmarried couples; it merely allows the principle of equal treatment to operate. To prevent possible abuse, unmarried partners must be in a stable relationship, backed up by evidence of cohabitation or by reliable testimony.

   (b) This subparagraph concerns the children of a married or unmarried couple, who are themselves unmarried and dependent, whether or not they are minors. No distinction is made in the treatment of children born outside marriage, of a previous marriage or who are adopted. Unmarried children who are not minors are therefore covered if they are dependent, either because they are objectively unable to meet their own needs or because of their state of health.

   (c) This subparagraph concerns family members not already covered if they are dependent on the other members of the family. They must therefore be objectively unable to meet their own needs or may have serious health problems or have undergone particularly traumatic experiences. They can be grandchildren, grandparents, great-grandparents or other adults dependent on the other members of the family.

2. This paragraph sets out the period during which members of the family may be reunited and appropriate status granted. This reunification under the temporary protection regime may take place until a point two months before the end of the maximum two-year period. The reunited family members are given residence permits under the temporary protection regime. While it might be desirable for persons enjoying temporary protection to be able to join a member of their family already resident on a long-term basis in a Member State, this situation will tend to be a *de facto* situation which is covered neither by this paragraph nor by the proposal for a Directive on the right to family reunification, since such is not its objective.

3. This paragraph determines who should submit the request for reunification under the temporary protection regime. To avoid forcing reunification against the will of one of the family members, the Member State will establish that they all agree. The decision on what means are appropriate for this investigation will be left to the Member State.

4. This paragraph lays down the conditions of proof of the family relationship.

5. This paragraph deals with the reunification of members of the same family who have been separated by the circumstances of their flight and who are covered by temporary protection in different Member States. It allows the family to be reunited in accordance with their wishes and provides for the termination of the residence permit and the obligations associated with the temporary protection regime in the Member State they have left.

6. This paragraph imposes an obligation of care in the processing of requests for reunification; in the event of a refusal reasons must be given and access to legal redress provided; the interests of any minors must be given priority.

7. The meeting of these obligations may require cooperation between the Member States authorities and the international organisations concerned. This paragraph makes such cooperation possible.

Article 14

This Article creates particular obligations towards unaccompanied minors under the temporary protection arrangements.

1. An unaccompanied minor covered by the temporary protection regime must be represented. This paragraph sets out appropriate provisions contained in the Resolution of June 1997 on unaccompanied minors who are nationals of third countries.

2. An unaccompanied minor covered by the temporary protection scheme must be placed in conditions which are in keeping with childhood or adolescence. This paragraph sets out the appropriate provisions of the abovementioned Resolution.

3. It may be in the best interests of an unaccompanied minor whose family have not been located to be placed with a member of another family who have looked after the child on the flight from the country of origin. This other family may be related to the minor's family in the country of origin. This paragraph allows this type of reunification and provides for the agreement of both parties to be obtained. It does not prevent the Member States from applying regulations to combat trafficking in human beings.

Article 15

Within the target group specified in the decision introducing temporary protection, there may be persons of different race, ethnic origin, nationality, religion and believes. This paragraph emphasises that the granting of temporary protection must be free of all discrimination based on these factors, as well as sex, age, sexual orientation or handicap and that the Member States must ensure that this principle is respected.

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Chapter IV: Access to the asylum procedure in the context of temporary protection

Article 16

This Article illustrates the fact that the temporary protection scheme does not release the Member States from their international obligations. It lays down their obligations regarding access to the asylum procedure in the context of temporary protection.

1. This paragraph lays down the general and absolute requirement that access to the asylum procedure must be granted to any beneficiaries of temporary protection who so wish.

2. This paragraph stipulates that access must be granted at least at the end of the temporary protection and lays down obligations relating to cases where access to the procedure has already been granted before or during temporary protection and consideration of the application has been suspended. It also allows each Member State to choose during this period the system which suits it best. In any event, access must be granted after two years, the maximum period of temporary protection. If, for example, a Council Decision within the meaning of Article 6(1)(b) is adopted after nine months, access should be granted at least at the end of this nine-month period. Where consideration of an application is suspended, the Member States are authorised to lay down passive or active confirmation mechanisms, provided they set reasonable deadlines and inform applicants properly.

Article 17

This Article states that implementation of temporary protection does not exempt the Member State responsible for considering the asylum application from applying the existing criteria and mechanisms for deciding on such cases. For the moment, these criteria and mechanisms are set out in the Dublin Convention. They will soon be revised in a Community instrument.

Article 18

1. Under this paragraph, Member States may choose whether or not the status of asylum seeker can be enjoyed concurrently with temporary protection.

2. Under this paragraph, Member States are required, whatever happens, to grant temporary protection to a person included in the target group, following an asylum procedure where refugee status is not granted, for the remaining duration of the temporary protection scheme. This requirement is without prejudice to the application of the grounds for exclusion laid down in Article 29.

Chapter V: Return and measures after temporary protection

Article 19

This Article sets out the general principle governing the situation at the end of temporary protection. The Member States then have the power to apply normal law on asylum and on the entry and residence of foreign nationals.

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Article 20

This Article guarantees that, after the temporary protection and on the occasion of decisions to return or expel an asylum seeker whose application has been rejected or a person having benefited from temporary protection, the Member State must examine whether there are compelling humanitarian reasons for applying a subsidiary form of protection, a degree of tolerance pending expulsion or a lasting solution such as resettlement or a permanent or long-term residence permit. This may be the case, for example, where there is persistent armed conflict or persistent serious infringements of human rights, where the prospects of return are unrealistic because the individual or group of individuals belongs to a particular ethnic or other grouping, or where return is impossible as the persons concerned face the risk of torture or cruel or inhuman treatment.

Article 21

1. The voluntary return of persons benefiting or having benefited from temporary protection is the most preferable solution and is regarded as a priority. Accordingly, the Member States must facilitate such returns. Candidates for voluntary return must be fully informed of the conditions in which they will return. The Member States may use exploratory visits as a way of helping candidates. Exploratory visits enable some candidates to visit their country of origin for a short time to see for themselves the security situation and the circumstances of reintegration, before voluntary return is fully completed.

2. Some beneficiaries of temporary protection may have decided to return voluntarily long before the end of the temporary protection. However, special circumstances in the country of origin may give them reason them to leave once again. The Directive provides that, after examining the circumstances in the country of origin, the Member States may allow them to return as long as the temporary protection has not ended.

3. Voluntary return, on the basis of a programme organised with the host Member State and/or an international organisation, may take some time to implement. The Directive allows Member States to extend personally to the individuals concerned the rights provided for under the terms of temporary protection until the actual date of return.

Article 22

1. It may be that, after the end of the temporary protection, some persons who have benefited from such protection will still need to follow a course of medical or psychological treatment. The Member States must provide for measures relating to the residence conditions of such persons, taking into account their personal medical interests, which allow them to continue that treatment if they so wish. The Member States retain the power to choose the appropriate forms of residence. This provision does not rule out the possibility that the treatment may be continued in the country of origin, if this does not harm the personal interests of the persons concerned.

2. Similar measures must be taken for the benefit of families who wish to avoid any sudden interruption in the school term of children who are minors. The Member States retain the power to define the school term in question (trimester, semester, end of the school year).

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Article 23

One lasting solution which may prove necessary is resettlement, carried out in cooperation with the UNHCR. It is covered by UNHCR programmes and by bilateral agreements between the UNHCR and individual States. This Article states that the Member States must facilitate such programmes by taking appropriate measures, in a form which they themselves may define.

Chapter VI: Solidarity

The Directive acknowledges the link between temporary protection and solidarity. It contains provisions on how that solidarity should be organised.

Article 24

Financial solidarity is an important instrument for achieving the objectives of the Directive. This Article sets out how it should be organised, referring to financing from the European Refugee Fund.

Article 25

This Article provides for solidarity in the form of the physical reception of displaced persons, which it organises on the basis of the principle of double voluntary action.

1. This paragraph organises the first aspect of voluntary action: action by the host Member States. It asserts the principle of Community solidarity and requires Member States to indicate their capacity to receive displaced persons, although they need not necessarily quote figures. A link is made to the Decision triggering temporary protection: the information given by the Member States must be included in the declarations attached to that Decision. The Member States may subsequently indicate any additional capacity by informing the Council and the Commission. A Member State may also indicate that it has no capacity to receive displaced persons, stating the reasons. Any such statement is also attached to the Decision triggering temporary protection. In view of the UNHCR's mandate and its possible role in the area from which the displaced persons originate, a requirement is laid down that this information be passed on swiftly to the UNHCR.

2. This paragraph defines the second aspect of voluntary action: beneficiaries who are not yet on the territory of the Member States must be willing to be received, thus preventing any forced movement of people.

Article 26

This Article provides for another possible expression of solidarity following the Decision triggering temporary protection - again on a voluntary basis. A Member State may still wish to appeal to the solidarity of other Member States if a massive influx into its territory continues. In practical terms, this means that persons already benefiting from temporary protection on its territory may change to another host Member State. This Article lays down the procedure to be followed.

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1. This paragraph enables Member States to cooperate in this context with a view to transferring the persons concerned to another host country. The person's consent must be obtained in order to avoid any movement which is forced and contrary to human rights.

2. This paragraph lays down the method of making transfer requests. The principle of voluntary action by the host countries also applies here.

3. This paragraph lays down the consequences of the transfer of residence for the persons concerned in terms of residence permits and entitlement to temporary protection.

4. This paragraph is designed to facilitate the organisation of transfers between countries by the use of a model pass, which is attached to the Directive.

Article 27

This Article contains a reminder that the voluntary physical reception of displaced persons may not lead to an exemption from the non-refoulement obligation laid down in the Geneva Convention and the European Convention on Human Rights. This principle does not depend on a burden-sharing agreement.

Chapter VII: Administrative cooperation

Article 28

Implementation of temporary protection requires good coordination, information-sharing and administrative cooperation between the Member States throughout its duration.

1. The clear appointment of a contact point in each Member State is essential for smooth administrative cooperation. His or her address must be immediately available to the other Member States and the Commission. The Member States must also take any measures that are necessary to improve cooperation and the exchange of information, in liaison with the Commission.

2. The Member States must communicate certain data and information, which are defined here, together with the communication arrangements.

Chapter VIII: Special provisions

Article 29

This Article enables Member States to exclude individuals from the benefit of temporary protection.

1. This paragraph specifies the sole applicable grounds for exclusion.

2. This paragraph lays down the limits within which these grounds apply. They must be evaluated strictly on the basis of the personal conduct of the person concerned. The measures must be proportionate and open to appeal.

Chapter IX: Final provisions

Article 30

This Article is a standard provision in Community law, providing for effective, proportionate and dissuasive penalties. It leaves Member States with the discretionary power to lay down penalties for infringements of the national provisions adopted pursuant to the Directive. For example, the Member States must lay down the measures that are necessary in cases where beneficiaries of temporary protection are illegally expelled from accommodation centres or where a required medical centre refuses access to emergency care.

Article 31

The Commission is instructed to draw up a report on the Member States' application of the Directive, in accordance with its role of ensuring the application of provisions adopted by the institutions pursuant to the Treaty. It is also given the task of proposing possible amendments. A first report must be submitted no later than two years after the deadline for transposal of the Directive in the Member States. After this first report, the Commission must draw up a report on the application of the Directive at least every five years.

Article 32

The Member States are required to transpose the Directive by 31 December 2002. They must inform the Commission of the amendments they make to their laws, regulations or administrative provisions and include a reference to the Directive when adopting those measures.

Article 33

This Article lays down the date when the Directive enters into force.

Article 34

The Directive is addressed only to the Member States.

Annex

The Annex contains a model pass for the transfer of persons under temporary protection pursuant to Article 26 of the Directive.

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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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 2(a) and (b) of Article 63 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the Opinion of the European Parliament[2],

Having regard to the Opinion of the Economic and Social Committee[3],

Having regard to the Opinion of the Committee of the Regions[4],

Whereas:

(7) The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(8) Le Conseil européen de Tampere a reconnu, lors de sa réunion spéciale à Tampere les 15 et 16 octobre 1999, la nécessité d'arriver, sur la question d'une protection temporaire de personnes déplacées, à un accord qui repose sur la solidarité entre les Etats membres.

(9) Le Plan d'action du Conseil et de la Commission du 3 décembre 1998 prévoit l'adoption aussi rapidement que possible, conformément aux dispositions du Traité d'Amsterdam, de normes minimales relative à l'octroi d'une protection temporaire aux personnes déplacées en provenance de pays tiers qui ne peuvent retourner dans leur pasy d'origine et des mesures contribuant à l'équilibre des efforts entre Etats membres pour l'accueil de ces personnes et pour supporter les conséquences de cet accueil.

(10) Cases of mass influx of displaced persons who cannot return to their country of origin have become substantially more frequent in Europe in recent years. It is often necessary to set up exceptional temporary protection schemes to offer them immediate temporary protection to avert the risk of harmful dysfunctions in the asylum system.

(11) In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the European Union institutions expressed their concern at the situation of displaced persons.

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1 OJ C

2 OJ C

3 OJ C

4 OJ C

(12) On 25 September 1995 the Council adopted a Resolution on burden--sharing with regard to the admission and residence of displaced persons on a temporary basis[5], and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis[6].

(13) The Action Plan of the Council and the Commission of 3 December 1998[7] provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.

(14) On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.

(15) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

(16) It therefore seems necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving ~~of such persons~~ and bearing the consequences of receiving such persons.

(17) Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order to avert the risk of secondary movements and support the common European arrangements for asylum. They should therefore be enacted in a single legal instrument.

(18) This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudge the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.

(19) The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and, in the context of temporary protection in the event of a mass influx of displaced persons, effect should be given to Declaration No 17 relating to Article 73k, now Article 63, of the Treaty establishing the European Community, to the Amsterdam Treaty.

(20) Provision should be made for this Directive not to apply to persons received under temporary protection schemes before its entry into force.

(21) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

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5 OJ C 262, 7.10.1995, p. 1.
6 OJ L 63, 13.3.1996, p. 10.
7 OJ C 19, 23.1.1999, p. 1.

(22) Given the specific nature of temporary protection in the event of a mass influx of displaced persons and the impossibility of setting quantitative criteria as to what constitutes a mass influx in advance, a maximum duration for such protection should be set and its implementation should be made subject to a Council Decision. That Decision should then be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be determined. de cette décision

(23) Member States wishing to do so should be allowed to extend the temporary protection in the event of a mass influx of displaced persons to additional categories of displaced persons over and above those to whom the Council Decision applies, where they are displaced for the same reasons and from the same country of origin, and the conditions for exercising this possibility should be determined.

(24) The Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.

(25) Any discrimination liable to compromise the objective of developing the European Union as an area of freedom, security and justice, including as regards asylum policy and temporary protection in the event of a mass influx of displaced persons, should be avoided.

(26) Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States' international obligations and with the Treaty.

(27) Provision should be made for principles and measures governing return to the country of origin and the situation in the Member States for the purposes of temporary protection in the event of a mass influx of displaced persons.

(28) Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial. The second concerns the physical reception of persons in the Member States on the basis of voluntary action by both the receiving Member States and the displaced persons. The possibility of not applying the second component should be provided for, as should the conditions for its application.

(29) The implementation of temporary protection should be accompanied by administrative cooperation.

(30) It is necessary to determine cases of exclusion from temporary protection in the event of a mass influx of displaced persons.

(31) The Member States should provide for penalties in the event of infringement of this Directive.

(32) The implementation of this Directive should be evaluated at regular intervals.

(33) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

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 effort between Member States in receiving and bearing the consequences of receiving such persons.

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; hereinafter referred to as "temporary protection";

(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;

(c) "displaced persons 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;

(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;

(e) "refugees" means third-country nationals or stateless persons within the meaning of Article 1A 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;

(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 regime in a Member State and applying to be joined by one or more members of his family.

Article 3

1. Temporary protection does not prejudge recognition of refugee status under the Geneva Convention.

2. Member States shall apply temporary protection with due respect for human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the United Nations High Commission for Refugees (UNHCR) and other organisations concerned.

4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.

5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable provisions for persons covered by temporary protection.

Chapter II

Duration and implementation of temporary protection

Article 4

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

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

Article 5

1. A mass influx of displaced persons shall be established by a Council decision adopted by qualified majority 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:

   (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.

2. The Council Decision shall be based on:

   (a) an examination of the situation and the scale of the population movements;

   (b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

   (c) information received from the Member States, the Commission, the UNHCR and other organisations concerned.

3. The relevant provisions of the Council's Rules of Procedure governing urgent cases may apply where appropriate.

4. The European Parliament shall be informed of the Council Decision.

Article 6

1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached;

or

(b) at any time, by Council Decision adopted by qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

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, in accordance with Article 33 of the Geneva Convention and the European Convention on Human Rights. The European Parliament shall be informed of the Decision.

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.

Chapter III

Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents shall be issued for that purpose.

2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 15.

3. The Member States shall, if necessary, provide persons admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. These visas shall be free of charge. Formalities must be reduced to a minimum because of the urgency of the situation.

Article 9

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

Article 10

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

Article 11

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation 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 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 financial support necessary for medical care shall include at least emergency care and the treatment of illness.

3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

4. 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.

Article 12

1. The Member States shall grant minors enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may limit such access to the state education system. Minors shall be younger than the age of legal majority in the Member State concerned.

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.

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Article 13

1. When the circumstances surrounding the mass influx have led to the separation of families which already existed in the country of origin, the Member States shall authorise the entry and residence of the following persons:

(a) the spouse or unmarried partner in a stable relationship, if the legislation of the Member State concerned treats unmarried couples in the same way as married couples;

(b) the children of the couple referred to in point (a) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted;

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

2. Families may be reunited at any time during the period of temporary protection until two months before the end of the maximum two-year period. Reunited family members shall be granted residence permits under the temporary protection scheme.

3. The application for reunification shall be lodged by the applicant in the Member State where he resides. The Member States shall establish that the various members of the family agree to this reunification.

4. For the purposes of any decision under paragraph 1, the absence of documentary evidence of the family relationship shall not be regarded as an obstacle in itself. Member States shall take account of all the facts and specific circumstances in assessing the validity of the evidence submitted and the credibility of the statements by the interested parties.

5. If the members of a single family as described in paragraph 1 enjoy temporary protection in different Member States, the Member States shall authorise the family to be reunited in the host Member State of their choice under the same conditions as in paragraph 2. Transfer of the family to this Member State for the purposes of reunification shall result in the withdrawal of the residence permit issued in the Member State of departure and termination of the obligations towards the persons concerned relating to temporary protection in the Member State of departure.

The application for reunification shall be lodged in the host State in which the family wishes to be united. The Member States shall establish that the various members of the family agree to this reunification.

6. The Member State concerned shall examine the application for reunification as quickly as possible. Any decision rejecting the application shall be accompanied by a statement of reasons and be open to legal challenge in the Member State concerned. When examining applications, the Member States shall give priority to the interests of minors.

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7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

Article 14

1. The Member States shall take the necessary measures as soon as possible, to ensure the representation of unaccompanied minors enjoying the temporary protection by legal guardianship, or representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:

(a) with adult relatives;

(b) with a foster-family;

(c) in reception centres with special provisions for minors, or in other accommodation suitable for minors.

3. The Member States shall take the necessary steps to enable an unaccompanied minor whose family have not been located to be placed, where appropriate, with a person or persons who looked after the child when fleeing. The Member States shall establish that the unaccompanied minor and the person or persons concerned agree to this reunification.

Article 15

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

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.

Article 17

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

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 for temporary protection, the Member States shall, without prejudice to Article 29, provide for that person to continue to enjoy temporary protection for the remainder of the period of protection.

Chapter V

Return and measures after temporary protection

Article 19

When the temporary protection ends, the ordinary law on protection and entry and residence of foreign nationals 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.

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.

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.

Article 22

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. 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.

Article 23

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

Chapter VI

Solidarity

Article 24

The measures provided for in this Directive shall be financed by the European Refugee Fund set up by Decision .../...[8], under the conditions laid down in that Decision.

Article 25

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall either indicate - in figures or in general terms - their capacity to receive such persons, or state the reasons for their incapacity to do so. This information shall be set out in a declaration by the Member States to be annexed to the Decision provided for in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to the UNHCR.

2. The Member States, acting in cooperation with the competent international organisations, shall ensure that the beneficiaries defined in the Decision referred to at Article 5, who are not yet on their territory are willing to be received on their territory.

Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other, where appropriate, with a view to transferring the residence of persons enjoying temporary protection from one Member State to another. The beneficiaries' consent shall be obtained.

2. A Member State shall communicate its requests for transfers to the other Member States and notify the Commission and the UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.

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[8] OJ

3. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure expires 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 ~~beneficiaries of~~persons enjoying temporary protection.

Article 27

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

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 crime 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.

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.

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Chapter IX

Final provisions

Article 30

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.

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 in Brussels,...

For the Council

The President

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ANNEX

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: .....

FORENAME: .....

PLACE AND DATE OF BIRTH: .....

NATIONALITY: .....

Date issued: .....

PHOTO

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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FINANCIAL STATEMENT

1. TITLE OF OPERATION

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.

2. BUDGET HEADING(S) INVOLVED

A – 7030.

3. LEGAL BASIS

Articles 63(2) (a) and (b) of the EC Treaty.

4. DESCRIPTION OF OPERATION:

4.1 General objective

The aim of the Directive is to establish minimum standards at Community level for the grant of temporary protection in the event of a mass influx of displaced persons and measures to promote a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

4.2 Period covered and arrangements for renewal or extension

Indeterminate.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure.

5.2 Non-differentiated appropriations.

5.3 Type of revenue involved

Not applicable.

6. TYPE OF EXPENDITURE OR REVENUE

Not applicable.

7. FINANCIAL IMPACT

The emergency measures and other measures provided for in the Directive will, if eligible, be financed from the European Refugee Fund (budget line B5-811), under the terms laid down by the Decision establishing that Fund.

8. FRAUD PREVENTION MEASURES

Not applicable.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1. Specific and quantified objectives; target population

Not applicable.

9.2. Grounds for the operation

Not applicable.

9.3 Monitoring and evaluation of the operation

Not applicable.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE GENERAL BUDGET)

The administrative resources actually mobilised will be determined in the Commission's annual decision on the allocation of resources, taking into account the additional staff and appropriations granted by the budgetary authority.

10.1 Impact on the number of posts

Types of post		Staff to be assigned to manage the operation		of which duration		
		permanent posts	temporary posts	using existing resources within the DG or department concerned	drawing on additional resources	
Officials	A	1	1	1	1	Duration of -the temporary protection
or temporary members of staff	B		1		1	idem
	C					
Other resources						
Total		1	2	1	2	idem

The additional resources must be available from the beginning of the period of temporary protection.

10.2 Overall financial impact of additional human resources

	Amount	Method of calculation
Officials	EUR 108 000	1P/year 1 x EUR 108 000 = EUR 108 000
Temporary staff	EUR 216 000	2P/year 2 x EUR 108 000 = €EUR 216 000
Other resources (indicate budget -heading)		
Total	€EUR 324 000	

10.3- Increase in other administrative expenditure arising from the operation

Budget heading	Amount	Method of calculation
A-7030		Coordination group meeting no more than twice a year for the duration of the temporary protection One-day meetings with one national expert per Member State Average cost per expert per meeting: €EUR 650 2 x 15 x €EUR 650 = €EUR 19 500
Total	€EUR 19 500	

The expenditure relating to Title A7, set out at point 10.3, will be covered by appropriations from DG JAI's overall allocation.