

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

(2000/C 311 E/18)

(Text with EEA relevance)

COM(2000) 303 final — 2000/0127(CNS)

(Submitted by the Commission on 24 May 2000)

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,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Whereas:

(1) 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.

(2) 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.

(3) 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.

(4) 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⁽¹⁾, 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⁽²⁾.

(5) The Action Plan of the Council and the Commission of 3 December 1998⁽³⁾ 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.

(6) 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.

(7) 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.

(8) 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 and bearing the consequences of receiving such persons.

(9) 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.

(10) This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudice 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.

⁽¹⁾ OJ C 262, 7.10.1995, p. 1.

⁽²⁾ OJ L 63, 13.3.1996, p. 10.

⁽³⁾ OJ C 19, 23.1.1999, p. 1.

- (11) 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.
- (12) Provision should be made for this Directive not to apply to persons received under temporary protection schemes before its entry into force.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) The implementation of temporary protection should be accompanied by administrative cooperation.
- (22) It is necessary to determine cases of exclusion from temporary protection in the event of a mass influx of displaced persons.
- (23) The Member States should provide for penalties in the event of infringement of this Directive.
- (24) The implementation of this Directive should be evaluated at regular intervals.
- (25) 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 in 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 prejudice recognition of refugee status under the Geneva Convention.
2. Member States shall apply temporary protection with due respect for human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.
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 persons 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 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.

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 into account all of the facts and specific circumstances in assessing the validity of the evidence submitted and the credibility of the statements by the interested parties.

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

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

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

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

Article 14

1. The Member States shall take the necessary measures as soon as possible, 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 has 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 the grounds of sex, race, ethnic origin, nationality, religion or convictions, 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 .../..., 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.

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 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.

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.

ANNEX

Model pass for the transfer of persons under temporary protection

PASS

Reference number (1):

Issued under Article 26 of Directive .../.../EC 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:

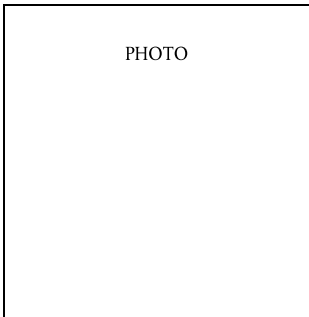
Surname:

For name:.....

Place and date of birth:

Nationality:

Date issued:



SEAL

For the Home Secretary/Minister for the Interior

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

This document is issued only pursuant to Article 26 of Directive .../.../EC 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.

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