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**Amended proposal for a
JOINT ACTION**

concerning temporary protection of displaced persons

(presented by the Commission pursuant to paragraph 2(b) of
Article K3 of the EU Treaty)

**Proposal for a
JOINT ACTION**

**concerning solidarity in the admission and residence of beneficiaries
of the temporary protection of displaced persons**

(presented by the Commission pursuant to paragraph 2(b) of
Article K3 of the EU Treaty)

97/0081 (CNS)

**Amended proposal for a
JOINT ACTION**

concerning temporary protection of displaced persons

EXPLANATORY MEMORANDUM

1. In March 1997 the Commission transmitted to the Council and the European Parliament a proposal for a joint action concerning the temporary protection of displaced persons. The proposal was doubly significant:
 - this was the Commission's first proposal to the Council for a third-pillar joint action following the entry into force of the Treaty on European Union. It was also the first time that the Commission was using its right of initiative in relation to asylum, a matter of common interest pursuant to Article K.1 of the Treaty;
 - on the substance, the question of temporary protection has become one of the most delicate issues of asylum policy. The Balkan crisis has revealed that a large number of displaced persons who are not eligible for refugee status under the Geneva Convention of 1951 cannot be returned to their countries of origin as they are at risk of persecution there. This persecution does not necessarily result from governmental authorities, but may be carried out by groups which are not controlled by public authorities.

I. GENERAL PRESENTATION

2. The Commission had worked together with the Member States on the question whether there were grounds for adopting a coordinated approach. The matter was discussed at the informal meeting of Ministers of Justice and Home Affairs at Dublin in September 1996. Many Member States stressed the problems raised by temporary protection and the threat of undesirable effects of the lack of coordination between Member States, notably in terms of secondary migration flows. The upshot was that point 4(f) of the Resolution of 14 October 1996 establishing priorities for the period to 30 June 1998 (OJ C 319, 26.10.1996, pp. 1 to 6) explicitly refers to study of the problems relating to temporary protection and burden-sharing.

This priority was reiterated even more explicitly in the Council Resolution of 18 December 1997 setting priorities until the entry into force of the Amsterdam Treaty (OJ C 11, 15.1.1998, p. 1), point 6(f) of which now provides for a joint action concerning temporary protection and to the problem of burden-sharing. This is a clear reference to the further examination of the Commission's proposal, which thus enjoys priority status.

3. The year's activity has two salient features:
 - the first reading was completed during the Luxembourg Presidency, and the informal Council meeting at Mondorf-les-Bains in October 1997 began the discussion of the central policy issues - burden-sharing and the link between temporary protection and the Geneva Convention. A second reading was started and produced compromises on the many technical points while allowing further discussion of the political issues;

- the European Parliament, having been consulted by the Presidency, delivered its opinion on 23 October 1997, approving the Commission proposal subject to 22 amendments and asking the Commission to amend its proposal accordingly.
- 4. The Commission believes that, to keep work moving in the Council, the time has now come to present its amended proposal. The new proposal reflects discussions already held in the Council and some of the amendments put forward by Parliament. The Commission is keen to take over some of the ideas formulated by Parliament.

The general scheme of the original proposal is not seriously altered. To promote consensus-forming, it is worth adopting some of the forms of words already devised by the Council experts' group, and ten of Parliament's amendments are incorporated either in the letter or in the spirit where consistency in the text so requires.

- 5. The Commission hopes that this will enable the Council to make further progress. Recent events, in particular the arrival in Italy at the end of 1997 of migrants from Iraq and neighbouring regions, have pointed up the need for a coordinated attitude on the part of the Member States. It should be noted that point 12 of the action plan adopted by the Council (General affairs) on 26 January 1998 refers to the Commission proposal.

This amended proposal for a joint action, like the 1997 proposal, still uses Article K.3(2)(b) as the legal basis, as Title VI of the Treaty on European Union is still in force. This in no way prejudices what would have to be done if the proposal had not been adopted when the Amsterdam Treaty came into force. The provisions would obviously have to be recast in a legal form compatible with the new Treaty, in particular Article 63(2)(a). The Commission would then take whatever steps were required.

The Commission is accordingly presenting to the Council the attached amended proposal for a joint action concerning the temporary protection of displaced persons.

II. COMMENTARY ON THE ARTICLES

- 6. The only changes to the citations are purely formal - the Official Journal references of the original Commission proposal and Parliament's opinion are incorporated.

In the recitals, Parliament's amendments 3 and 4 are incorporated. The increase in the number of displaced persons in recent years is now described as substantial rather than dramatic (third recital), and the eighth recital specifies that temporary protection is specifically for displaced persons.

Article 1

- 7. The definitions are tightened up in response to requests from the Member States. Item (a) now refers to temporary protection "in the event of a mass of persons in flight" in order to restrict the circumstances in which a regime can be put in place.

It also specifies that such a regime is without prejudice to refugee status, which brings it into line with Article 10.

Item (b) undergoes no more than a grammar change, but the third indent is deleted as being tautological, referring to no situation in particular. Cases not covered by the remaining two indents can still be taken into consideration, as the definition is not exhaustive (“in particular”).

The language of item (c) is aligned on that of item (a) for the sake of consistency; the definition now states that the origin of a displaced person may be a given country or a geographical region consisting of several neighbouring countries, as requested by Parliament in amendment 6.

8. A new definition is added at item (f) to spell out the concept of “geographical region” to which Article 3(1) refers. The reference is to geographical areas near to the displaced persons’ place of origin where it is worth checking whether protection can already be given before moving to the European Union.

Article 2

9. Paragraph 2 makes clear that the non-discrimination rule applies to the implementing provisions rather than the joint action as such, which must designate the groups of persons eligible for it. The non-discrimination rule is now expressed by a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as the European Parliament asked for in its amendment No 7.

A new paragraph 4 is inserted to provide that until such time as the Council decides to apply the joint action to a given group of persons, the Member States remain free to adopt national arrangements. This is perfectly in line with the spirit of the original proposal but is now stated explicitly, as desired by many Member States.

Article 3

10. Paragraph 1 is aligned on the definitions with a reference to mass flight of refugees.

Paragraph 2 is clarified on the basis of Parliament’s amendment 10. The content of the implementing measures is specified in terms of its minimum. And to secure consistency with Article 10, whereby the examination of an asylum request may not be suspended beyond five years, it is here provided that the maximum duration of the temporary protection measure shall be the same.

Article 4

11. The first paragraph provides that the Commission report, apart from appearing at regular intervals, must be made whenever the Council so requests. This provides the flexibility that is so necessary in an instrument designed to deal with emergencies, a consideration put forward by the Member States. For the same reason, provision should be made for Parliament to be informed (as provided by Article K.6 of the TEU), rather than providing for the report to be laid before Parliament on the same footing as the Council. This will make for speed in decision-making. Finally, as requested by Parliament in amendments 11 and 28, the report is also to cover the social implications in the Member States.

The second paragraph is therefore more explicit. Clearer formulations are proposed as regards the content of the revision and the phasing out of the temporary regime. The Member States appear to prefer a more explicit provision.

Article 5

12. This is one of the proposal's most discussed Articles. Negotiations in the Council have shown that this concerns an aspect which makes acceptance of the Commission's initiative difficult for several Member States. For this reason, so as not to delay progress on temporary protection, it is now proposed that provisions for the establishment of a temporary protection regime be separated from those for special assistance to Member States particularly affected. The Commission's aim is to promote the rapid adoption by the Council of provisions on which agreement is emerging. Such an agreement, keenly desired by the Commission, would facilitate subsequent progress on solidarity between Member States.

Consequently, to preserve the link with this inseparable objective, Article 5 has been restructured to make clear that the solidarity objective should be dealt with in the report that Article 4 requires the Commission to present. Three topics appear to deserve priority:

- emergency aid;
- assistance for the admission and residence of those enjoying temporary protection;
- if appropriate, distribution of the persons enjoying the regime among the Member States.

To ensure that these aspects, which are admittedly related to the purpose but go beyond the definition of a temporary protection regime, do not raise obstacles to the emergence of a consensus on this instrument the procedure for adopting solidarity measures will be proposed as a separate joint action, at the same time as this one. The Commission thus hopes to facilitate rapid agreement on temporary protection while preserving its clear political message on situations where greater solidarity between Member States is essential.

Article 6

13. Regarding the authorizations to remain, only the principle is laid down in the decision; the nature of the relevant document will be to remain determined by each Member State in accordance with its own rules. This principle reappears in Articles 7, 8 and 9. The wording of this Article accordingly provides simply for the issue of a document allowing beneficiaries to remain in the territory of a Member State where temporary protection is enjoyed.

Several Member States have pointed to the need for exceptions on grounds of public order and public security. There is consequently an additional sentence for the purpose.

Article 7

14. Apart from the amendments consequential upon those made to Article 6, it was felt that the spirit of Parliament's amendment 27 - specific measures for unaccompanied minors - should be taken over. But as there is already a Council decision on this, a reference to that decision was felt to be preferable to a reference to the UNHCR text. Specific provisions here can be applied generally in the case of particularly vulnerable categories, and that implies special attention for women.

Article 8

15. This Article is merely aligned on Article 6, with a reference to national law for the issue of documents permitting gainful activity.

Article 9

16. Apart from the same remark as is made on the preceding Article, it is now clearly indicated in the first paragraph that temporary housing is made available to beneficiaries of temporary protection if it is the case for recognized refugees. Furthermore, paragraph 2 provides that income support must be available only for those who have no income. That is logical in itself, and it is also the consequence of the authorization to exercise a gainful activity which is given, without limit as to duration, to enable those enjoying temporary protection to be as light a burden as possible on welfare budgets.

Article 10

17. There was extensive technical discussion on this Article. The scope must be spelled out for the sake of comprehensibility. There are now, therefore, three paragraphs.

The first subparagraph of paragraph 1 states that where a person enjoying temporary protection applies for asylum, the application must be examined in accordance with the relevant national law, i.e. the law of the Member State responsible for the examination. This will not necessarily be the State in which the application is made. The Dublin Convention will determine which Member State is responsible.

The second subparagraph preserves untouched the principle that suspension of the examination of the asylum application can be ordered only pursuant to national law and that the joint action does not affect this question, which remains entirely within national jurisdiction. This makes it quite clear that Member States which regard suspension as impossible will be under no obligation to change their practice. The same applies to those which do allow suspension.

The joint action is confined to setting a maximum suspension period, which may not exceed five years. But the aggregate period must be broken down into components - an initial three-year period that is essential and a second two-year period which will apply if the Council adopts measures to phase out the temporary protection regime. This will offer the flexibility desired by the Member States. It also reflects the concern for gradual application of measures for return to country of origin.

18. Paragraph 2 states that where an asylum application is being examined, applicants may not enjoy the concurrent benefit of the two schemes. In that event they will be treated as asylum seekers and not as persons in need of temporary protection.
19. Paragraph 3 is new. Since a Member State can decide to examine an asylum application from a person who is eligible for temporary protection, it is necessary to regulate the situation that then arises. There is no need to state that applicants recognized as having refugee status will enjoy that status. But it is necessary to state clearly that if refugee status is not recognized they will no longer enjoy temporary protection unless there is a Council measure applying to the group to which they belong. Otherwise, they will be covered by schemes ensuring their return to their country of origin.

For the sake of greater clarity, the various situations are outlined in the diagram annexed hereto.

Article 11

Unchanged

Article 12

20. Part of Parliament's amendment 20 is taken over regarding the situation in relation to implementing measures. Where measures need to be taken as a matter of urgency in a crisis situation, it seems difficult to insist on consulting Parliament, as that would delay a decision on a matter where time is of the essence. But transparency requires that Parliament be at least informed. That is the tenor of paragraph 2.

On the other hand there is no obvious reason for providing that such information, and the publication in the Official Journal, should be confined to implementing measures approved by a majority. All measures, including those approved unanimously, should be published.

Article 13

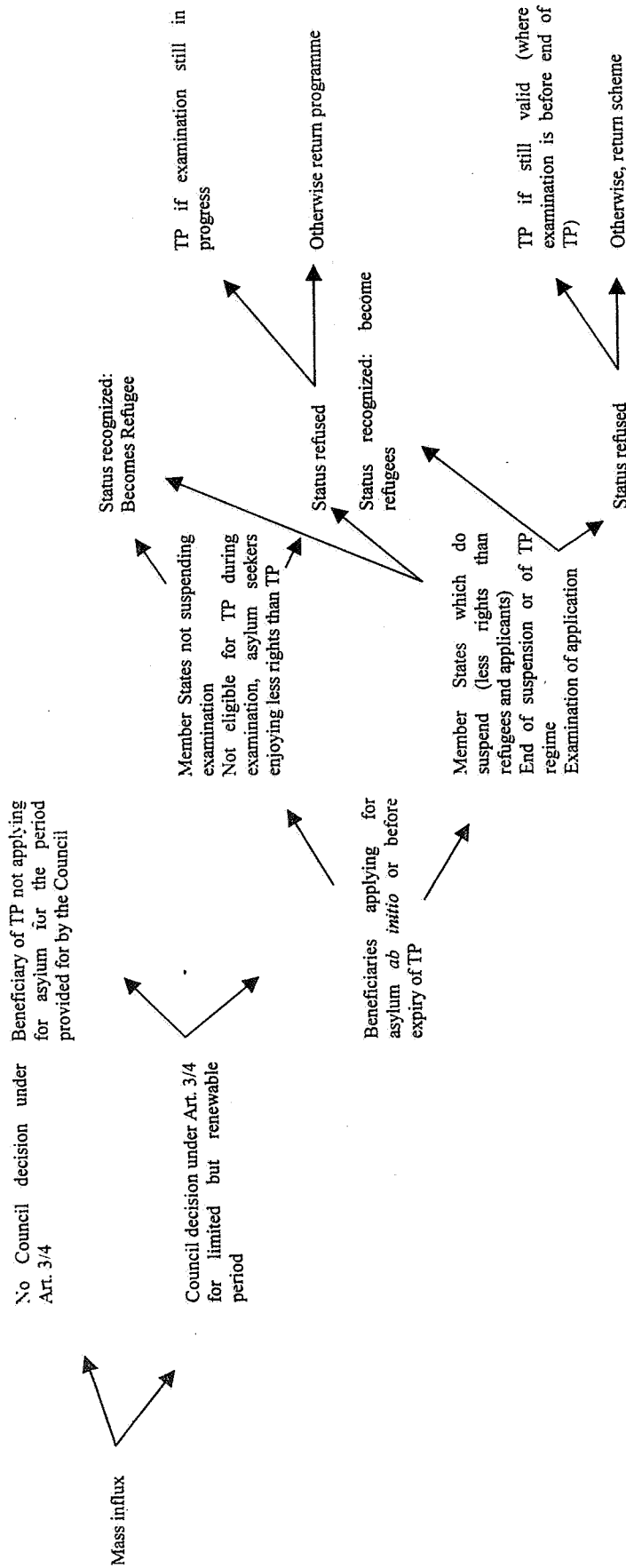
Unchanged

Article 14

21. This Article is adapted in line with the revision of Article 5. Publication in the *Official Journal of the European Communities* must immediately follow adoption of the joint action by the Council. That is standard practice, and there is no reason for departing from it.

However, to maintain a clear political link between the implementation of greater solidarity in the application of the temporary protection scheme, the entry into force of this joint action is simultaneous with the special joint action on solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons which the Commission is presenting at the same time as this revised proposal. Although such an approach seems to be rather unusual, it intends to give an answer to the present deadlock situation in the Council. This means that a stage-by-stage political approach can be promoted. The Commission is thereby seeking to demonstrate its wish to promote rapid progress without harming the interests of the Member States most affected by the scheme.

**OUTLINE OF DIFFERENT POSSIBLE SCENARIOS AS BETWEEN
TEMPORARY PROTECTION, ASYLUM APPLICATION,
REFUGEE STATUS AND RETURN TO COUNTRY OF ORIGIN**



**Amended proposal for a
JOINT ACTION**

concerning temporary protection of displaced persons

THE COUNCIL OF THE EUROPEAN
UNION,

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

Having regard to the proposal from the Commission, Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament, Having regard to the opinion of the European Parliament²,

Whereas, pursuant to Article K.1, point 1, of the Treaty on European Union, asylum policy is regarded as a matter of common interest for the Member States; Unchanged

Whereas, in conformity with Article K.2 of the Treaty on European Union, the principle of non-refoulement, guaranteed by the Convention relating to the Status of Refugees of 28 July 1951, and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, should be observed in all situations; Unchanged

Whereas the number of displaced persons in Europe has dramatically increased in recent years; Whereas the number of displaced persons in Europe has *substantially* increased in recent years;

Whereas the Member States and the Institutions of the Union have repeatedly expressed their concern about the situation of displaced persons, in particular in the conclusion on people displaced by the conflict in the former Yugoslavia, adopted by the Ministers with responsibility for immigration at their meeting in London on 30 November and 1 December 1992, the Unchanged

¹ OJ C 106, 4.4.1997, p. 13.

² OJ C 339, 16.11.1997, p. 146.

resolution on certain common guidelines as regards the admission of particularly vulnerable groups of persons from the former Yugoslavia, adopted by the Ministers with responsibility for immigration at their meeting in Copenhagen on 1 and 2 June 1993, the Commission communication to the Council and the European Parliament on immigration and asylum policies³ and the European Parliament resolution on the Commission Communication on immigration and asylum policies⁴;

Whereas the Council adopted on Deleted 25 September 1995 a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis⁵ and, on 4 March 1996, a Decision on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis⁶;

Whereas the Council has recognized in the abovementioned resolution that an actual or probable mass influx of displaced persons into the territory of the Member States may require prompt and coordinated action in order to avert a serious threat to human life;

Whereas ... (9 words deleted) an actual or a probable mass flight of displaced persons into the territory of the Member States may require prompt and coordinated action in order to avert a serious threat to human life;

Whereas such a coordinated approach should demonstrate solidarity between the Member States and reflect Europe's humanitarian tradition, thus ensuring that all persons in need of international protection within their jurisdiction are treated in conformity with human dignity;

Unchanged

3 COM(94) 23 final, 23.2.1994.

4 OJ C 269, 16.10.1995, p. 156.

5 OJ C 262, 7.10.1995, p. 1.

6 OJ L 63, 13.3.1996, p. 10.

5 Deleted.

6 Deleted.

Whereas it is necessary, therefore, to decide on the establishment of a temporary protection regime in specific situations at the level of the Union;

Whereas it is necessary, therefore, to decide on the establishment of a temporary protection regime for displaced persons in specific situations at the level of the Union;

Whereas it is also necessary to lay down the minimum content of the rights relating to the status of the displaced persons who will be placed under such a regime of temporary protection;

Unchanged

Whereas decisions to set up specific temporary protection regimes implementing this joint action should be taken by qualified majority;

Unchanged

Whereas this Joint Action should enter into force on the same date as the Joint Action [concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons⁵],

HAS ADOPTED THIS JOINT ACTION:

Unchanged

Article 1 Definitions

For the purpose of this joint action:

Unchanged

(a) "temporary protection regime" means an arrangement, pursuant to this joint action, offering protection of a temporary nature to persons in need of international protection;

(a) "temporary protection regime" means an arrangement offering protection of a temporary nature to persons requesting international protection in the event of a mass flight of persons, such arrangement being without prejudice to recognition of refugee status in accordance with the Geneva Convention;

(b) "persons in need of international protection" means any third country national or stateless person who has left his or her country of residence and whose safe return under humane conditions is impossible in view of the situation prevailing in that country, in particular:

(b) "person in need of international protection" means a third country national or stateless person who has left his or her country of residence and whose safe return under dignified and humane conditions is impossible in view of the situation prevailing in that country, and in particular:

⁵ OJ

- Persons who have fled from areas affected by armed conflict and persistent violence;

- persons who have been or are under a serious risk to be exposed to systematic or widespread human right abuses, including those belonging to groups compelled to leave their homes by campaigns of ethnic or religious persecution; and

- persons who for other reasons specific to their personal situation are presumed to be in need of international protection;

(c) "mass influx of persons in need of international protection" means the arrival within the Union of a significant number of persons who claim to be in need of international protection or a strong probability that such a situation may soon arise;

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

(e) "recognized refugees" means persons who have obtained refugee status under the Geneva Convention.

- a person who has fled from areas affected by armed conflict or persistent violence;

- a person who has been or who runs a serious risk of being exposed to systematic or widespread human right abuses, in particular any person belonging to a group compelled to leave their place of origin by campaigns of ethnic or religious persecution;

Deleted

(c) "mass flight of persons in need of international protection" means the sudden arrival within the Union of a significant number of persons from a given country or geographical region who request international protection, or a strong probability that such a situation may soon arise;

Unchanged

Unchanged

(f) "region of origin" means an area adjacent to the geographical region from which the persons in need of international protection come, including at least all countries bordering on such geographical region.

Article 2 General provisions

1. This joint action shall not apply to persons who were admitted by Member States in the context of temporary protection regimes set up before the adoption of this joint action. Unchanged
2. The Member States shall apply the provisions of this joint action without discrimination as to race, religion, or nationality. 2. The Member States shall give effect to Articles 3 and 4 in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.
3. This joint action is without prejudice to the prerogative of Member States to grant more favourable conditions to persons in need of international protection. Unchanged
4. Until such time as the Council adopts the implementing measures referred to in Article 3, the Member States shall remain free to adopt national temporary protection arrangements.

Article 3 The establishment of temporary protection regimes

1. In cases of mass influx of persons in need of international protection, the Council, taking into consideration whether adequate protection can be found in the region of origin, shall decide to establish a temporary protection regime in accordance with the procedure set out in Article 12(1). 1. In cases of mass flight of persons in need of international protection, the Council, taking into consideration whether adequate protection can be found in the region of origin, shall decide whether to establish a temporary protection regime in accordance with the procedure set out in Article 12(1).
2. The decision referred to in paragraph 1 shall determine the specific groups of persons to which the temporary protection regime applies and its duration. 2. The decision referred to in paragraph 1 shall determine at least:
- (a) the specific groups of persons to which the temporary protection regime applies; and
- (b) the duration of the regime, which shall not exceed five years on aggregate.

Article 4

Revision and/or phasing-out of temporary protection regimes

Every year, and at least six months before the end of a temporary protection regime, the Commission shall submit to the European Parliament and the Council a report on the situation in the country of origin and on the application of the temporary protection regime by the Member States, as well as on its financial implications.

1. Every year, and at least six months before the end of a temporary protection regime, or when the Council so requests, the Commission shall prepare a report on the situation in the country of origin and on the application of the temporary protection regime by the Member States, as well as on its financial and social implications.

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

In the light of this report, and at least three months before the end of a temporary protection regime, the Council shall, in accordance with the procedure set out in Article 12(1),

2. After examining the report, and no later than three months before the end of a temporary protection regime, the Council shall, in accordance with the procedure set out in Article 12(1),

- decide to revise the decision taken in accordance with Article 3; or

(a) decide to revise the decision taken in accordance with Article 3 in particular by amending its duration and/or the group of persons to whom it applies; or

- decide on the phasing out of the temporary protection regime and on the return of the persons concerned, if the situation in the country of origin allows a safe return under humane conditions.

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

In organizing the return, priority will be given to the furtherance of voluntary repatriation, in close cooperation with the international organizations concerned, and in particular the United Nations High Commissioner for Refugees.

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

Article 5

Assistance to Member States which are particularly affected

Solidarity in the application of the temporary protection regime

On the basis of the report of the Commission referred to in Article 4, the Council shall examine how best to assist Member States which have been particularly affected by the mass influx of persons in need of international protection.

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

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

Article 6

Residence authorization

Member States shall deliver a residence authorization to the beneficiaries of the temporary protection regime for the duration of the regime.

Authorization to remain

Member States shall deliver in accordance with the provisions of their national law a document authorizing beneficiaries of a temporary protection regime to remain in their territory for the duration of the regime.

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

Article 7

Family reunification

1. Member States shall ensure that beneficiaries of a temporary protection regime have the right to family reunification with respect to their spouses and their minor and dependent children.

1. Member States shall ensure that beneficiaries of a temporary protection regime who hold an authorization to remain on their territory in accordance with Article 6 have the right to family reunification with respect to their spouses and their minor and dependent children for the duration of the regime, in accordance with the provisions of their national law.

2. When deciding on family reunification, the absence of documentary proof of the marriage or of the filiation of children should not in itself be considered an impediment. All the relevant facts and circumstances should be taken into account in order to assess the validity of any evidence and the credibility of the claimant's statements.

Unchanged

Specific measures shall be provided for in respect of particularly vulnerable categories, such as women and unaccompanied minors. The measures shall take account of the Council Resolution of 26 July 1997 on unaccompanied third country national minors⁶, and in particular Article 3(3).

Article 8

Employment and social security

Member States shall ensure that beneficiaries of a temporary protection regime will be granted permission to engage in gainful activity. There shall be equality of treatment between beneficiaries of a temporary protection regime and recognized refugees regarding remuneration, social security and other working conditions.

Member States shall ensure that beneficiaries of a temporary protection regime who hold an authorization to remain on their territory in accordance with Article 6 are granted permission to engage in gainful activity in accordance with the provisions of their national law regarding recognized refugees.

There shall be equality of treatment between beneficiaries of a temporary protection regime and recognized refugees regarding remuneration, social security and other working conditions

Article 9

Housing, welfare benefits and education

1. Member States shall endeavour to provide the beneficiaries of a temporary protection regime with housing facilities similar to those granted to recognized refugees. However, as a provisional measure, temporary housing may be offered during a period of one year from the beginning of the temporary protection regime.

1. Where Member States make temporary housing available to recognized refugees, they shall endeavour to offer equivalent housing facilities. to the beneficiaries of a temporary protection regime who hold an authorization to remain on their territory in accordance with Article 6.

2. Member States shall ensure that the beneficiaries of a temporary protection regime receive all the necessary support, in particular with regard to means of subsistence and medical care. Where the beneficiaries have access to gainful activity, their ability to provide for their own

2. Member States shall ensure that the beneficiaries of a temporary protection regime who hold an authorization to remain on their territory in accordance with Article 6 receive all necessary support, in particular with regard to means of subsistence, where they have no income,

⁶ OJ C 221, 19.7.1997, p. 23.

subsistence is to be taken into account in determining the level and nature of support arrangements.

3. Member States shall ensure that the beneficiaries of a temporary protection regime have access to public education under the same conditions as recognized refugees.

and medical care. Where the beneficiaries exercise a gainful activity, their ability to provide for their own subsistence is to be taken into account in determining the level and nature of support arrangements.

3. Member States shall ensure that the beneficiaries of a temporary protection regime who hold an authorization to remain on their territory in accordance with Article 6 have access to ... education under the same conditions as recognized refugees.

Article 10 Asylum

The examination of an application for asylum under the Geneva Convention introduced by a beneficiary of a temporary protection regime may be postponed for as long as the Council has not adopted a decision on the phasing out of the temporary protection regime in accordance with Article 4, second indent, but in any event for a period not exceeding five years from the beginning of the temporary protection regime.

1. ... An application for asylum under the Geneva Convention presented by a beneficiary of a temporary protection regime shall be examined in accordance with the national law of the Member State responsible pursuant to the Dublin Convention of 15 June 1990⁷.

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

2. Rights under a temporary protection regime may not be enjoyed concurrently with the rights enjoyed by asylum-seekers while their application is under examination.

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

Article 11 Exclusion clauses

The benefit of a temporary protection regime shall not apply to any person with respect to whom there are serious reasons for considering that he or she has

- committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- committed a serious non-political crime outside the country of refuge prior to his or her arrival on the territory of one of the Member States;
- been guilty of acts contrary to the purposes and principles of the United Nations.

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

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

Article 12

Implementing measures

Decision-making procedure

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

2. The implementing measures referred to in paragraph 1 shall be published in the *Official Journal of the European Communities*.

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

3. The implementing measures *adopted pursuant to this joint action* shall be published in the *Official Journal of the European Communities*.

Article 13

Long-term protection measures

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

Article 14

Final provision

This joint action shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Joint Action shall *be published in the Official Journal of the European Communities as soon as it is adopted by the Council.*

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

Done at Brussels,

For the Council
The President

98/0222 (CNS)

**Proposal for a
JOINT ACTION**

concerning solidarity in the admission and residence of beneficiaries
of the temporary protection of displaced persons

EXPLANATORY MEMORANDUM

1. On 5 March 1997 the Commission transmitted to the Council and the European Parliament a proposal for a joint action concerning the temporary protection of displaced persons¹. Its main aim was to define a procedure allowing the Council to decide to grant such temporary protection or put an end to it, and to lay a foundation of minimum rights for the beneficiaries of such regimes. Article 5 of the proposal also set out the principle of assistance for the Member States which are particularly affected by the application of this joint action.

After a year of work two apparently contradictory trends have emerged:

- on the one hand, Parliament, which was consulted on the proposal in accordance with the procedure provided for in Article K.6 of the TEU, is asking for this provision to be strengthened, and has adopted an amendment to this effect asking for financial assistance to be distinguished from the distribution of beneficiaries of temporary protection between Member States;
- on the other hand, certain Member States made it quite clear in the discussions in the Council that they were not in a position to accept provisions on burden-sharing between Member States. This has led to an impasse, jeopardizing the adoption of the specific provisions on temporary protection, on which progress has been made.

I. GENERAL PRESENTATION

2. This is why the Commission proposes, in its revision of the proposal on temporary protection, to separate the two issues and give them two separate legal instruments. The aim of this approach is to get the proposal on temporary protection adopted as soon as possible, without the problems associated with trying to reach a consensus on the solidarity mechanisms. However, this issue will not be dropped; indeed the instrument is devoted to it. Moreover, in order to clearly maintain the political link between these two aspects of the same issue, although the Council may adopt them separately, it is expressly provided that the two instruments should enter into force simultaneously. The political logic governing the original proposal is thus maintained.
3. As it is intended to tie in with the revised proposal on temporary protection, the two proposals being presented simultaneously, this proposal adopts the same format as the former. It is a framework decision which must be adopted unanimously by the Council. The publication of this joint action does not create any automatic effects. Practical effects will be obtained when the Council adopts implementing measures which will adapt this joint action to the case in hand, for which the Council will then be able to set out the practical provisions which must be implemented.

¹ COM(97) 93 final, 5 March 1997; OJ C 106, 4. 4.1997, pp. 13-16.

This distinction between framework decision and implementing measures is justified for reasons of both politics and substance. It is important that the Council should first define the principles of the solidarity mechanisms that could be implemented. This could not be done under the pressure of a crisis. This technique is used for temporary protection and should also be used here. This will allow appropriate solidarity measures for each individual case to be adopted.

4. The procedure for adopting the implementing measures will also follow the same, parallel, pattern. As in the original proposal on temporary protection, it is proposed that these measures should be adopted unanimously. This is both for legal reasons (under Article K.8, third-pillar recourse to the Community budget for operational expenditure requires the Council to decide unanimously) and for political reasons (there can be no question of majority voting on distributing beneficiaries of temporary protection between Member States, because that could mean forcing a Member State to accept such beneficiaries while it was opposed in the Council to doing so).
5. This proposal is presented in the legal framework created by Title VI of the Treaty on European Union, currently in force. It goes without saying that, if the proposal has not been adopted by the Council when the Amsterdam Treaty comes into force, the Commission will represent it on the new legal basis that will then be applicable, specifically Article 63(2)(b) of the consolidated Treaty establishing the European Community.

II. COMMENTARY ON THE ARTICLES

Article 1

6. This Article corresponds to Article 2 of the temporary protection proposal. The principle is that the solidarity measures will have no retrospective effect. Their scope *rationae personae* will not extend, for instance, to those benefiting from existing international protection regimes operated by Member States under their national rules. In other words, the exclusion covers unilaterally adopted national temporary protection regimes operated by the Member States in the absence of a Council decision, or prior to a Council decision laying down implementing measures, even if the joint action on temporary protection itself has already been adopted. This approach confirms that the solidarity measures provided for by this proposal must follow on from a Council decision applying the temporary protection joint action to a specific category of person. This sequence of events is political as well as logical.

The second paragraph states that the rules must be implemented without discrimination. The wording of this provision, which also appears in the temporary protection proposal, has been adapted as Parliament wished.

Article 2

7. This Article has two objectives:
 - First, it states the principle of solidarity to come to the aid of those Member States which are most affected by the admission of beneficiaries of temporary protection. This principle is central to the arrangements set out in

this proposal. It is based on the spirit of Article 5 of the Commission's 1997 proposal on temporary protection. However, by reducing the scope *ratione personae* (now only "beneficiaries of temporary protection", a more precise definition than the previous "persons in need of international protection"), this provision becomes more effective, as it refers to a precise category of people, which will be defined by the Council itself when it adopts measures implementing the joint action on temporary protection;

- Secondly, it extends the scope *ratione tempore* during which the Council can adopt such a decision: this may now also be simultaneous with the Council's decision establishing temporary protection. This was not previously envisaged, but a number of Member States wanted it. However, this is only a possibility, not an obligation, since any failure to reach consensus on the solidarity measures should not stop the Council setting up a temporary protection regime. At any rate, when the Commission has drawn up the report on the application of the temporary protection regimes which it is bound to do pursuant to Article 4 of the joint action on these regimes, the Council will have to make a statement on whether or not solidarity measures are to be adopted. This is an obligation as to the manner of proceeding (consideration of the Commission's report) and not the actual measures taken.

By proposing this two-phase method, the Commission is trying to ensure that there is a debate after an initial period of application of temporary protection, though without excluding the possibility of such measures being adopted simultaneously. This flexible formula would allow the concerns of the various Member States to be taken into consideration.

8. Adoption of the decision will require unanimity in the Council. Although Article K.3 allows measures implementing a joint action to be adopted by qualified majority, the Commission, out of a concern for political realism, is proposing that they be adopted unanimously in this case. As point 4 of this Explanatory Memorandum explains, there are valid legal reasons for this also, as Article K.8 requires measures affecting operating expenditure charged to the Community budget to be taken unanimously. The initiative for implementing measures may, as is usual under Title VI, come from either a Member State or the Commission. This was worth restating.

In support of the initiative, the opinion of the Office of the United Nations High Commissioner for Refugees may be sought prior to the Council's decision. This is only a possibility, not an obligation, but it was worth providing for as the UNHCR is the dominant body in these matters.

Article 3

9. This Article clearly sets forth what solidarity consists of. First and foremost it means financial assistance. This is a concrete definition which did not exist in the 1997 temporary protection proposal. Its aim is to ensure that the costs which must be borne by the Member States in the manifestation of solidarity are shared. It is not about offsetting costs against each other but rather awarding aid to cover part of these additional costs.

10. The first type of assistance is "emergency aid". There is at present no Community budget item for this, so a new one must be created to confer financial reality on the policy proposals. By definition, emergency aid is limited in time (three months) and concerns only immediate costs. The main areas covered will be temporary accommodation, means of subsistence and medical costs. Clearly it cannot cover infrastructure expenditure but must concentrate on the immediate needs created by the arrival of beneficiaries of temporary protection.

It would be a flat-rate financial aid, calculated on the basis of objective criteria which must be defined in the Council decision. This approach is necessary for reasons of speed, so that solidarity can be immediately implemented.

11. The second type of financial assistance is the financing of reception projects for the beneficiaries of temporary protection. This involves the use of an existing budget heading, B5-803, which has already been allocated ECU 3.75 million in the 1998 budget and which the 1999 preliminary draft budget suggests be increased to ECU 5 million. It differs from the emergency aid in two respects:

- First, in terms of substance: not only is it a longer-term form of aid, and thus able to cover certain infrastructure projects, but also its objective would be to contribute to certain "social" costs, set out in the joint action on temporary protection: the accommodation, social assistance and education costs, for which Article 9 of the instrument mentioned above defines certain minimum standards. There is thus a direct link between the level established by the beneficiaries of temporary protection and the aid that the Community could provide by implementing budgetary resources.
- Secondly, in terms of the method: it would not be a flat-rate amount of aid, but "targeted" assistance for a number of projects which clearly focused on these three elements. There can thus be a more direct conditionality between the objective pursued and the means implemented to achieve it.

This alternative method allows the financial contributions to be better targeted to the objectives pursued. These additional contributions will constitute the link between the objectives of temporary protection and the measures of solidarity.

12. The decision must provide for a scale for distribution between the Member States. This is applicable both to emergency aid and to the distribution of the beneficiaries of temporary protection between Member States provided for by Article 3. However, while the scale may be the same for both aspects, the Council can adopt different distribution scales for the emergency aid and the distribution of beneficiaries between Member States. This also means that a distribution scale applicable only to emergency aid can be adopted, as long as the Council does not decide to implement Article 4.
13. As regards contributions to reception projects, the decision must specify the proportion of the relevant budget headings which the Council intends to allocate exclusively to the management of any crisis which is the subject of implementing measures for this joint action. This is because the result of doing this as part of the adoption of the general budget of the European Communities would be an extremely inflexible instrument, which could not be adapted for the management of

crises which arise during the course of the year. Hence, the Council should decide the amount which it wishes to devote exclusively to a given type of situation.

As regards funding of the reception projects referred to in the second indent of Article 4, the general rules for determining projects must be applied. This involves the legal basis specific to budget heading B5-803. For 1997, this was the joint action of 22 July 1997 (OJ L 205 of 31 July 1997, page 5), which was renewed for 1998 at the Council meeting of 18 March 1998 (OJ L 138 of 9 May 1998, page 8). In the course of 1998 the Commission intends to present a multiannual legal basis for the use of this budget heading, which will become effective.

Article 4

14. Apart from financial assistance, it is provided, though as a secondary measure only, that a further action may be planned, to allow not only solidarity but also greater burden-sharing. It should allow a more equitable distribution of the beneficiaries of temporary protection between Member States. Implementing this objective raises practical and legal problems, however. It is therefore set within two constraints:

- First, it can only be implemented before, or, at the latest, on arrival of the beneficiaries of temporary protection on the territory of the Member States. Forcibly moving people who are already resident in a Member State would not be realistic: it would create permanent potential insecurity for the beneficiaries of temporary protection, undermining the objective of a European approach. However, as long as the Member States agree, it would appear acceptable to designate the Member State in which the regime will apply to the beneficiaries of temporary protection.
- Secondly, it must not conflict with the rules governing the determination of the Member State responsible for examining an application for asylum under the Dublin Convention of 15 June 1990. This is necessary because the provisions governing the granting of refugee status have permanent legal effects. Also, if a Member State implements provisions of its national legislation to suspend the examination of an application for asylum made by a beneficiary of temporary protection, it is logical that during this period the applicant may be asked to be resident in another Member State. Not to do this would mean that by making an application for asylum the practical effect of these measures of temporary protection could be neutralised.

This approach is a significant innovation, which is why, at this stage, it is anticipated that these should be only secondary measures, i.e. measures taken in particularly serious crises or which would particularly affect one or two Member States. Here again the wording of the proposal is flexible, so that it can be adapted to different types of crisis which, by definition, it is not possible to classify in abstract terms.

Article 5

15. In view of the importance of the implementing measures, since this proposal is a framework decision, it is important that specific transparency measures are laid down. This consists, first and foremost, of systematically keeping Parliament informed, though this is not customary for implementing measures. Parliament is

also one of the arms of the budgetary authority and as such has an additional, legitimate interest in being kept fully informed. Prior consultation is not an option, partly because it is not provided for by the Treaty, but mainly because in operational terms it would slow down a decision which, by definition, must be taken quickly.

Again for reasons of transparency, it is provided that these implementing measures must be published in the Official Journal as soon as they have been adopted.

Article 6

16. The first paragraph is standard, providing for the publication of this joint action in the Official Journal. The statement on adoption is important because in the second paragraph it is provided that entry into force is not necessarily simultaneous with adoption.

The second paragraph sets out the principle of simultaneous entry into force of the two joint actions (the one on temporary protection and this one). This means that if the joint action on temporary protection has already been adopted when the Council adopts this instrument, the latter will immediately enter into force. If this is not the case, however, even after its adoption this joint action will not enter into force until the one on temporary protection does so. Thus the political principle promoted by the Commission is legally ensured: supplementing temporary protection regimes with measures of solidarity, to ensure that the existence of these regimes does not result in certain Member States bearing a disproportionate share of the burden.

Statement in the Council Minutes

17. The distribution scale, which is determined on a case-by-case basis pursuant to Articles 3 and 4, must match the circumstances giving rise to the implementation of this joint action as closely as possible. The Council Resolution of 25 September 1995 gives valuable information on this point. All the economic and social indicators in the Member States, and the efforts they have already made in crisis-prevention and peace-keeping operations, including military intervention, must also be taken into consideration so that the burden created by an international crisis should be shared equitably.

**Proposal for a
JOINT ACTION**

concerning solidarity in the admission and residence of beneficiaries
of the temporary protection of displaced persons

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission of¹,

Having regard to the opinion of the European Parliament of²,

Whereas, pursuant to Article K.1(1) of the Treaty on European Union, asylum policy is regarded as a matter of common interest for the Member States;

Whereas, since its Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis³, the Council has recognized the importance of adopting measures of solidarity to allow a more equitable distribution of efforts;

Whereas the Joint Action of [concerning temporary protection of displaced persons⁴] increases the importance of supplementing the Member States' efforts with measures aiming at greater solidarity;

Whereas the principle of solidarity must find expression in concrete measures designed to help the Member States particularly affected by the admission of beneficiaries of temporary protection;

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

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

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

¹ OJ C

² OJ C

³ OJ C 262, 7.10.1995, p. 1.

⁴ OJ

Whereas this joint action must enter into force on the same date as that concerning temporary protection of displaced persons,

HAS ADOPTED THIS JOINT ACTION:

Article 1
General provisions

1. This joint action shall apply to the beneficiaries under a temporary protection regime provided for by Articles 3 and 4 of the joint action [on temporary protection of displaced persons] (hereinafter referred to as “the temporary protection regime”).
2. Member States shall implement this joint action in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Article 2
Principle of solidarity

1. When temporary protection regimes are adopted, or on the basis of the report referred to in Article 4 of the joint action [on temporary protection], the Council may, acting unanimously on the initiative of a Member State or of the Commission, adopt decisions implementing solidarity mechanisms providing for assistance to the Member States particularly affected by the admission of beneficiaries of temporary protection.
2. The opinion of the Office of the United Nations High Commissioner for Refugees shall be sought before the Council adopts the decision.

Article 3
Financial assistance

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

- (a) a contribution to provisional accommodation, means of subsistence and emergency medical assistance requirements for the first three months of the temporary regime; and/or
- (b) a contribution to projects for beneficiaries of temporary protection, in particular the costs of accommodation, social assistance and education under Article 9 of the joint action [on temporary protection].

Article 4
Other assistance

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

This potential distribution shall not affect the rules of the Dublin Convention of 15 June 1990⁵, unless the Member States decide to suspend the examination of such applications for asylum under the conditions set out by the second subparagraph of Article 10(1) of the joint action [on temporary protection].

Article 5
Transparency

1. The European Parliament shall be informed forthwith of the implementing measures adopted pursuant to this joint action.
2. The implementing measures adopted pursuant to this joint action shall be published in the *Official Journal of the European Communities* as soon as they are adopted by the Council.

Article 6
Final provisions

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

It shall enter into force on the day of its publication, or, if the joint action on temporary protection has not yet been published, on the day when the latter is so published.

Done at Brussels,

For the Council
The President

⁵ OJ C 254, 19.8.1997, p. 1.

Statement in the Council Minutes

For the purposes of the decisions provided for by Articles 3 and 4, account shall be taken of the Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis¹.

¹ OJ C 262, 7.10.1995, p. 7.

FINANCIAL STATEMENT

TITLE OF OPERATION

Joint action on Solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons.

BUDGET HEADING INVOLVED

Heading to be created: Emergency aid in the form of financial assistance to Member States in the event of mass influx of displaced persons onto the territory of a Member State of the European Union.

B5-803: Policy on asylum-seekers and other displaced persons¹.

LEGAL BASIS

Article K.3(2) of the Treaty on European Union.

DESCRIPTION OF OPERATION

General objective

Article 6 f) of the Council Resolution laying down the priorities in the field of justice and home affairs for the period from 1 January 1998 to the date of entry into force of the Amsterdam Treaty² includes the questions of temporary protection of displaced persons and solidarity between Member States among the priorities for that period.

This two-pronged Joint Action will create a financial mechanism for solidarity with regard to admission and residence of beneficiaries of the Joint Action on temporary protection of displaced persons which is being submitted to the Council at the same time. In this respect there is a clear link between the two initiatives.

The two financial components of the strategy would be:

- (a) The emergency aid action (budget item to be created) will provide financial assistance to Member States in the event of mass influx of displaced persons onto the territory of a Member State of the European Union under Article 4 of the Joint Action on solidarity between Member States in admission and residence of beneficiaries of temporary protection of displaced persons. The purpose would be to compensate individual Member States for the substantial costs which they incur in meeting the needs of displaced persons on their territory. The use of the emergency aid would be limited in time to the three initial months of a crisis and

¹ OJ L 138, 9.5.1998, p. 8.

² OJ C 11, 15.1.1998, p. 1.

would mainly cover costs such as provisional accommodation, means of subsistence and medical expenses.

There is at present no budget item to support this kind of action. In the first instance, expenditure could be charged to B5-803 until a decision has been taken on the creating of a separate budget item the emergency aid actions. Sums would be payable to the competent authority in Member States, to NGOs, humanitarian organizations and other equivalent organizations.

- (b) For the measures to improve reception conditions for asylum seekers and displaced persons and to facilitate access to asylum procedures, the plan is that the existing budget article (B5-803) would also be used for the purposes of solidarity between Member States in admission and residence of beneficiaries of temporary protection of displaced persons. This would concern longer-term projects designed to improve reception conditions and/or facilitate access to asylum procedures. The measures under Article B5-803 must take place on the territory of the EU Member States.

Period covered

- (a) Emergency aid action: grants limited to no more than the first three months following arrival of the target population.
- (b) B5-803 is for projects during 1998. In 1998 projects may cover a maximum period of 12 months but the Commission will put forward a proposal for a full legal basis under which there will be financing possibilities for projects of a longer duration.

The European Parliament will be informed about the implementing measures adopted.

CLASSIFICATION OF EXPENDITURE

Compulsory/Non-compulsory expenditure

Non-compulsory

Differentiated/Non-differentiated appropriations

Differentiated

Type of revenue involved

Not applicable

TYPE OF EXPENDITURE

- (a) Emergency aid action: Standard subsidy on the basis of actual costs incurred (calculated on the basis of objective criteria to be defined by the Council), of up to 100% of operations during the first three months of a mass influx situation.
- (b) B5-803: Subsidy for joint financing with other sources. For 1998, the rate of support from the Community budget is a maximum of 60%. A contribution covering a maximum of 80% of the project costs will be available only where the planned activity is of special interest or concerns a priority in the field of justice

and home affairs. For the coming years, the Commission will propose a full legal basis before the end of 1998, which will determine the level of support.

FINANCIAL IMPACT

Method of calculating cost of operations (relation between individual and total cost)

- (a) Emergency aid action: The expenditure will cover temporary accommodation, medical care and means of subsistence for a limited period of time (first three months) through a lump sum.
- (b) Targeted aid to cover the reception of refugees and displaced persons in situations of sudden influx from an acute crisis area (measures to ensure minimum standards of living conditions, especially access to accommodation, medical care, education, and special assistance to vulnerable groups derived from the implementation of the Joint Action concerning temporary protection of displaced persons.

Itemized breakdown of cost

- (a) Emergency aid action

Amounts are yet to be decided. In the absence at this stage of reception structures, resources could initially be financed from Article B5-803.

- (b) Concerning the financing of specific projects in favour of asylum-seekers and refugees.

The amount of ECU 3 750 000 has been entered under Article B5-803 for 1998. The Council will decide on the implementing measures for this Joint Action and the amount to be allocated to solidarity actions.

FRAUD PREVENTION MEASURES

The grant application form will require information on the identity and nature of potential beneficiaries so that their reliability can be assessed in advance.

Fraud prevention measures (checks on the spot, intermediate reports, final reports) are included in the agreements or contracts between the Commission and the beneficiaries. The Commission will check reports and ensure that work has been properly carried out before intermediate and final payments are made.

ELEMENTS OF COST EFFECTIVENESS ANALYSIS

Specific and quantifiable objectives; target populations

Target population: beneficiaries of the Joint Action on temporary protection of displaced persons

Justification for action/Grounds for the operation

The Commission's March 1997 proposal envisaged, in general terms, the need to back up a European temporary protection regime with assistance to Member States specially affected by a mass influx of displaced persons. Consultation of the European Parliament

further highlighted the importance of establishing concrete solidarity mechanisms. In establishing the priorities for the work to be carried out during the period before the entry into force of the Treaty of Amsterdam, the Council has also identified the issue of solidarity between Member States as a priority. In tabling this Joint Action, the Commission gives practical effect to a highly regarded principle by proposing that financial mechanisms be set up. With this approach, the Commission is endeavouring to go beyond simple expressions of intent by establishing real solidarity in the reception of displaced persons. In doing so the Commission is taking a first step towards achieving the objective of promoting balanced burden-sharing effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons as set out in Article 63(2)(b) of the Treaty.

- (a) Emergency aid action: Council decision as stipulated in Article 4 of the Joint Action.
- (b) B5-803: For 1998, in accordance with criteria and committee procedure arrangements set out in the Joint Action of 27 April 1998 (98/305/JHA) concerning the financing of specific projects in favour of asylum-seekers and refugees³. In the coming years there will be a multiannual legal basis, which the Commission will propose before the end of 1998.

Monitoring and evaluation of the operation

Emergency aid action: The Commission will regularly assess the emergency aid operations financed by the EU budget in order to establish whether they have achieved their objectives and to produce guidelines for improving the effectiveness of subsequent operations. At the close of each financial year, the Commission will submit an annual report to the EP and to the Council with a summary of the operations financed in the course of that year. Further evaluation tools and requirements will be defined in the Council decision under Article 4 of the Joint Action, launching an emergency aid operation.

B5-803: For 1998, monitoring and evaluation will be carried out in accordance with Article 5 of the Joint Action of 27 April 1998 concerning the financing of specific projects in favour of asylum-seekers and refugees⁴. Thereafter it will be carried out according to the multiannual legal basis referred to under 9.2 b. above.

ADMINISTRATIVE EXPENDITURE

(Section III of the general budget)

The implementation of this Joint Action will not entail administrative expenditure as such. Such expenditure will derive from implementing decisions taken by the Council under Article 4 of the Joint Action launching an emergency aid operation.

³ OJ L 138, 9.5.1998, p. 8.

⁴ OJ L 138, 9.5.1998, p. 8.