

Law no. 67/2003 of 23 August

It transposes into national law Council Directive no. 2001/55/EC of 20 July, on minimum standards for granting 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.

Pursuant to Article 161(c) of the Constitution, the Assembly of the Republic decrees the following, to be valid as general law of the Republic:

CHAPTER I
General provisions

Article 1
(Object)

This law transposes into Portuguese law the Council Directive no. 2001/55/EC of 20 July, and regulates the regime for granting 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 in the short term, and establishes the procedures for implementing this regime.

Article 2
(Concepts)

For the purposes of this law, the following definitions shall apply:

- a) "Temporary protection" means a procedure of exceptional character providing, in the event of a mass influx of displaced persons from third countries, who are unable to return to their country of origin, or imminent mass influx, immediate temporary protection, in particular if the asylum system cannot process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;
- b) "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;
- c) "Displaced persons" means citizens of countries outside the European Union or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and whose safe and durable return is impossible because of the situation prevailing there and who may fall within the scope of article 1-A of the Geneva Convention or other international or national instruments of international protection, and in particular:
 - i) People who have fled from areas of armed conflict or endemic violence;
 - ii) Persons who have been subjected to a serious risk or have been victims of systematic or widespread breaches of human rights;
- d) "Mass influx" means the arrival on national territory of a large number of displaced persons, who come from a specific country or geographical area of their own free will or through an evacuation programme;
- e) "Refugees" mean third-country nationals or stateless persons within the meaning of article 1-A of the Geneva Convention;
- f) "Unaccompanied minors" means third-country nationals or stateless persons below the age of 18, who arrive on national territory unaccompanied by an adult responsible for them under the law, and as long as they are not effectively taken into the care of such a person, or minors who are abandoned after they have entered national territory;

- g) “Temporary protection document” means the document issued by the Portuguese authorities allowing displaced persons to remain in national territory under temporary protection in accordance with the regime enshrined in this law;
- h) “Applicant for reunification” means a third-country national enjoying temporary protection on national territory who wishes to be joined by members of his/her family.

Article 3

(Application of the Geneva Convention)

Temporary protection does not prejudice recognition of refugee status under the 1951 Geneva Convention and the 1967 New York Protocol.

CHAPTER II

Application and duration of temporary protection

Article 4

(Application of temporary protection)

- 1 - Once the existence of a mass influx of people has been declared, by a decision of the Council of the European Union, in a specific process organised in accordance with Community regulations, the Portuguese State shall, through the competent Ministries, take the measures provided for in this law for the application of that decision.
- 2 - The Ministry of Internal Affairs shall chair the inter-ministerial commission referred to in article 5, coordinating the application of the measures referred to in the previous paragraph.
- 3 - Without prejudice to the provisions of the previous paragraph, and applying, with the necessary adaptations, the provisions of this law, the Portuguese State may grant temporary protection through a resolution of the Council of Ministers, considering, in each situation, the risks to which the displaced persons are exposed, the urgency and necessity of temporary protection, and the consequences for public order and national security.

Article 5

(Inter-ministerial Commission)

- 1 - Whenever a mass influx of displaced persons is expected to occur under the terms of this law, the Government shall determine, through a resolution of the Council of Ministers, the creation of an inter-ministerial commission, which shall be responsible for:
 - a) Assessing the Portuguese State’s capacity to provide temporary protection;
 - b) Defining the conditions for reception, as well as the way in which the rights of displaced persons, provided for in Chapter III of this law, will be guaranteed;
 - c) Assessing the possibility of supplementary reception, under the terms of article 9 of this law;
 - d) Coordinating the actions resulting from the application of the temporary protection regime during its term, as well as proposing the adoption of supplementary measures deemed as pertinent.
- 2 - The inter-ministerial commission must hear, if possible, women representatives of the communities to be received, both in the process of organizing the reception and their stay in Portuguese territory.

Article 6

(Exclusion from temporary protection)

- 1 - The temporary protection regime is not open to persons:
 - a) For which there are strong reasons to consider that:
 - i) They have committed a crime against peace, a war crime or a crime against humanity, as defined in domestic law and international instruments on the matter in which Portugal is a party.
 - ii) They have committed a serious non-political crime outside the Portuguese territory before they can be admitted in Portugal as beneficiaries of temporary protection;
 - iii) They have committed acts contrary to the purposes and principles of the United Nations;
 - b) In relation to which there are serious reasons to consider them dangerous for national security or that they have been convicted, by a final decision, of a serious common law crime or that they constitute a serious threat to the national community.
- 2 - The application of the exclusion clauses referred to in paragraph 1 shall be based exclusively on the personal conduct of the displaced person in accordance with proportionality criteria.
- 3 - In assessing the seriousness of the crime listed in paragraph 1(a)(ii), it should be taken into account that the severity of the subsequent criminal proceedings should correspond to the nature of the criminal offence of which the person involved is suspected, and particularly cruel or inhumane acts, even those committed with allegedly political aims, may be classified as serious non-political crimes.
- 4 - The provisions of the previous paragraph also apply to situations of mediated authorship and incitement.
- 5 - For the purposes of paragraphs 1(a)(ii) and (b), a serious non-political crime shall be deemed to be a crime punishable by imprisonment of more than 3 years.
- 6 - It is the responsibility of the Minister of Internal Affairs to decide on exclusion from temporary protection, after a reasoned opinion from the Immigration and Borders Service.
- 7 - The decision rendered under the terms of the previous paragraph shall be subject to appeal as provided for in article 28.

Article 7

(Duration)

- 1 - Without prejudice to the provisions of article 8, temporary protection lasts for one year and may be automatically extended for six-month periods up to a maximum of one year, without prejudice to the decision of the Council of the European Union terminating the protection in accordance with subparagraph b) of the following article.
- 2 - Temporary protection may be extended beyond those limits only for a maximum period of one year, on the grounds that the reasons justifying its continuation continue to exist, as recognised by a decision of the Council of the European Union.

Article 8

(End of temporary protection)

Temporary protection ends:

- a) When it has reached the maximum duration period;

- b) Anytime, according to a decision of the Council of the European Union, based on the verification if the situation in the country of origin allows a safe and lasting return of the beneficiaries of temporary protection.

Article 9

(Additional categories of persons)

- 1 - Temporary protection may be granted to additional categories of person besides those covered by the decision of the Council of the European Union, provided they are displaced for the same reasons and from the same country or region.
- 2 - This protection is granted and declared extinct by resolution of the Council of Ministers, through the opinion of the inter-ministerial commission mentioned in article 5 of this law.
- 3 - This resolution shall be immediately forwarded to the Council of the European Union and the European Commission.

CHAPTER III

Conditions of stay of beneficiaries of temporary protection

Article 10

(Temporary protection document)

- 1 - Beneficiaries of temporary protection shall be issued with a temporary protection document, in a form to be approved by statutory order of the Minister of Internal Affairs.
- 2 - The temporary protection document shall enable persons enjoying temporary protection to remain on national territory for the duration of their stay.
- 3 - If necessary, depending on the urgency of the situation, the procedure for obtaining visas for persons to be admitted to the national territory for the purposes of temporary protection may be speeded up and simplified, in particular by reducing the time limits for the necessary formalities, and by dispensing with those which, in the in general terms, can be eliminated.
- 4 - The documents referred to in the previous paragraphs are granted free of charge.

Article 11

(Information for beneficiaries of temporary protection)

Beneficiaries of temporary protection shall be provided with a document, in a language likely to be understood by them, setting out the rights and obligations arising from this protection.

Article 12

(Registration of personal data)

In order to enable the effective application of the decision of the Council of the European Union recognising a mass influx of displaced persons, the personal data referred to in Annex II of this law concerning beneficiaries of temporary protection on national territory shall be registered in the database of the Immigration and Borders Service.

Article 13

(Readmission)

Without prejudice to bilateral agreements on the matter, persons residing in Portugal who, during the period of temporary protection, remain illegally or attempt to enter the territory of another Member State of the European Union without authorisation, shall be readmitted to the national territory.

Article 14

(Right to work and training)

- 1 - Beneficiaries of temporary protection on national territory may engage in employed or self-employed activity and participate in vocational training activities for a period not exceeding that of protection.
- 2 - However, beneficiaries' access to such activities cannot prejudice the priority given to nationals of the European Union and of the States bound by the Agreement on the European Economic Area, and to foreigners resident in national territory who benefit from unemployment benefit.

Article 15

(Other benefits)

- 1 - Beneficiaries of temporary protection shall be provided with suitable accommodation.
- 2 - Where they do not have sufficient resources, they must be guaranteed the necessary support in terms of social benefits and means of subsistence.
- 3 - The possibility of providing for their own subsistence through professional activity is taken into account in fixing the level of aid envisaged.
- 4 - Beneficiaries of temporary protection shall also be entitled to medical assistance, as regards emergency care and basic treatment of illness.
- 5 - Without prejudice to the provisions of the previous paragraph, medical or other assistance shall be provided to beneficiaries of temporary protection who have special needs, such as unaccompanied minors or persons who have been victims of torture, rape or other forms of moral, physical or sexual violence.

Article 16

(Education)

Minors enjoying temporary protection are granted access to the public education system under the same conditions as nationals.

Article 17

(Family protection and reunification)

- 1 - For the purposes of family reunification and in the event of separation arising from the circumstances connected with the mass influx, the following persons are deemed to be members of the same family:
 - a) The spouse of the regrouper;
 - b) The minor unmarried children of the regrouper or his/her spouse;
 - c) Other close relatives living in a common economy, as members of the family unit dependent on the regrouper at the time of the events leading to the mass influx and totally or predominantly dependent on him/her.
- 2 - In the case of separated members of a family enjoying temporary protection in other Member States of the European Union, the members of the family, considered as such under subparagraphs a) and b) of the previous paragraph, shall be reunited, taking into account their wishes.

- 3 - Where the regrouped enjoys temporary protection in Portugal and his/her family is not yet in another Member State, the family members identified in paragraph 1(a) and (b) shall be reunited if they are in need of protection.
- 4 - The reunification of family members who can be shown to fall under paragraph 1(c), taking into account, on a case-by-case basis, the extreme hardship which may be caused by the absence of family reunification, may be carried out.
- 5 - Family reunification will take into consideration the interests of the children involved.
- 6 - Decisions regarding family reunification fall under the competence of the Minister of Internal Affairs, on the proposal of the inter-ministerial commission referred to in article 5.
- 7 - Family members staying on national territory under temporary protection will be granted temporary protection documents, under the terms of this law.
- 8 - The transfer of protected citizens to another host State, for the purpose of reunification, determines the cancellation of the temporary protection documents in national territory issued in their favour and the extinction of the rights granted to the persons concerned under the temporary protection regime in Portugal.
- 9 - At the request of a Member State, information concerning the beneficiaries of temporary protection mentioned in Annex II to this law which is necessary for family reunification shall be provided.

Article 18

(Unaccompanied minors)

- 1 - The Portuguese State shall provide the necessary representation of unaccompanied minors by a legal guardian or, if necessary, by an organisation responsible for the care and well-being of the minor, or other adequate representation.
- 2 - During the period of temporary protection unaccompanied minors should be placed with adult relatives, in foster care, in reception centres with special facilities for minors, or other places with facilities suitable for minors, or with the person who looked after the child when they ran away.

CHAPTER IV

Access to asylum procedures

Article 19

(Access to asylum)

- 1 - During the period of temporary protection, beneficiaries have the opportunity to submit an asylum application.
- 2 - Any asylum application not processed before the end of the period of temporary protection shall be examined after the end of that period.

Article 20

(Determination of the State responsible for examining the asylum application)

- 1 - Where an asylum application is lodged by a person enjoying temporary protection, the criteria and mechanisms for determining the Member State responsible for examining an asylum application shall apply, in accordance with the international legislation on the matter involving Portugal.
- 2 - The Member State responsible for examining an asylum application submitted by a person enjoying temporary protection shall be the Member State which has accepted the beneficiary's transfer to its territory.

Article 21

(Access to refugee status)

- 1 - Beneficiaries of temporary protection shall have the status of protected persons under the terms of this law until their application for refugee status is granted.
- 2 - Denial of a request for asylum or any other form of protection shall not affect access to or continuation of temporary protection under the terms of this law.

CHAPTER V

Return and measures following temporary protection

Article 22

(Effects of the termination of temporary protection)

- 1 - Without prejudice to the provisions of articles 23 and 24 of this law, once temporary protection has ended, the general regime for the entry, stay, exit and expulsion of foreigners from national territory shall apply to citizens who have benefited from it.
- 2 - After the end of the temporary protection, the beneficiaries have the duty to return to their country.

Article 23

(Voluntary return)

- 1 - During the temporary protection, beneficiaries may voluntarily return to their country of origin, and this return should be facilitated under humanly dignified conditions.
- 2 - It must be ensured that the decision of voluntary return is taken of a free and conscious will.
- 3 - When the right of voluntary return to the country of origin is exercised, the Portuguese State shall assess any requests for return to its territory, taking into consideration the circumstances motivating such requests.

Article 24

(Coercive return)

Forced removal of persons whose period of protection has ended shall be carried out in accordance with the general law, taking account of compelling humanitarian reasons which may make return impossible or unreasonable in certain situations, and shall be conducted with respect for the principle of human dignity.

Article 25

(Postponement of return to the country of origin)

- 1 - At the end of the temporary protection period, and with a view to postponing the return to the country of origin, situations must be considered in which the return would have seriously harmful effects on the health of the beneficiary and for as long as such situations persist, and their residence conditions must be guaranteed.

- 2 - Families covered by the temporary protection regime whose minor children are in the last term of the school year in progress may benefit from residence conditions allowing them to complete the school year.
- 3 - In these cases, the return must occur at the end of the situation that justified the postponement.

CHAPTER VI

Solidarity and cooperation

Article 26

(Transfer of residence)

- 1 - During the period of temporary protection, Portugal shall cooperate with the other Member States in transferring the residence of the beneficiaries, subject to the consent of the persons concerned to such transfer.
- 2 - When a transfer is made under the terms of the previous paragraph, the requesting Member State, the other Member States, the European Commission and the United Nations High Commissioner for Refugees shall be informed.
- 3 - At the request of a Member State, the information referred to in Annex II of the present law concerning beneficiaries of temporary protection which is necessary for the purposes of this article shall be provided.
- 4 - Whenever a transfer is made to another Member State, the temporary protection document in Portugal is cancelled and the obligations of the beneficiaries associated with temporary protection in the national territory cease.
- 5 - Persons transferred from another Member State will be granted the temporary protection regime in Portugal.
- 6 - For the transfer of residence of persons under temporary protection the laissez-passer model is used, contained in Annex I of the present law.

Article 27

(Cooperation)

- 1 - The Minister of Internal Affairs will appoint the national contact point which will ensure administrative cooperation and exchange information with the other Member States that may be necessary for the implementation of temporary protection.
- 2 - It shall communicate regularly and as quickly as possible to the Member States and to the European Commission the data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the application of temporary protection.

CHAPTER VII

Special provisions

Article 28

(Right of appeal)

The decision to deny temporary protection, under the terms of article 6, and family reunification can be judicially challenged before the administrative courts, under the terms of the law.

Article 29

(Repeal)

Article 9 of Law no. 15/98, of 26 March is hereby repealed.

Article 30

(Entry into force)

This law shall enter into force on the day following its publication.

Approved on 15 July 2003.

The President of the Assembly of the Republic, João Bosco Mota Amaral.

Ratified on 4 August 2003.

It shall be published.

The President of the Republic, JORGE SAMPAIO.

Endorsed on 8 August 2003.

The Prime Minister, José Manuel Durão Barroso.

ANNEX I



MINISTÉRIO DA ADMINISTRAÇÃO INTERNA
SERVIÇO DE ESTRANGEIROS E FRONTEIRAS

Modelo de salvo-conduto relativo à transferência de pessoas sob protecção temporária

SALVO-CONDUTO

Estado-Membro que emite o Salvo-Conduto:

Número de referência (*):

Emitido nos termos do n.º 6 do artigo 26.º da Lei 103 de 1993, que regula o regime de concessão de protecção temporária no caso de afluxo maciço de pessoas deslocadas de países terceiros.

Válido unicamente para a transferência de (1) para(2), devendo a pessoa apresentar-se em (3) antes.....(4)

Emitido em:

APELIDO:

NOME:

LOCAL E DATA DE NASCIMENTO:

Se menor, indicar nome(s) do(s) adulto(s) responsável/veis:

Sexo:

NACIONALIDADE:

Data de emissão:



SELO

Pela autoridade competente:

Assinatura do beneficiário:

O portador do presente salvo-conduto foi identificado pelas autoridades(5)(6)

Não foi determinada a identidade do portador

O presente documento é emitido unicamente por força do disposto no n.º 6 do artigo 26.º da Lei 103 de 1993, e não constitui um documento equiparável a um documento de viagem que autorize a passagem das fronteiras externas ou a um documento que comprove a identidade do indivíduo.

- (1) O número de referência será atribuído pelo país a partir do qual se efectua a transferência para outro Estado-Membro.
- (2) Estado-Membro a partir do qual se efectua a transferência para outro Estado-Membro.
- (3) Estado-Membro para o qual se efectua a transferência.
- (4) Local onde a pessoa se deverá apresentar à sua chegada ao segundo Estado-Membro.
- (5) Data-limite em que a pessoa se deverá apresentar à chegada ao segundo Estado-Membro.
- (6) Com base nos documentos de viagem ou de identidade seguintes apresentados às autoridades.
- (7) Com base em documentos que não sejam o documento de viagem ou de identidade.

ANNEX II

The information referred to in articles 12, 17 and 26 of Law no. 67/2003, of 23 August, includes, as necessary, one or more of the following documents or data:

- Personal data on the person concerned (name, nationality, date and place of birth, marital status, family ties);
- Identity documents and travel documents of the person concerned;
- Documents concerning the proof of family ties (marriage certificate, birth certificate, adoption certificate);
- Other information essential to establish the person's identity or family ties;
- Residence permits, visas or residence permit refusal decisions and visas issued to the person concerned by the Member State and documents on which such decisions are based;
- Applications for residence permits submitted by the person concerned and pending in the Member State and the state of progress of the proceedings.

The Member State providing the information shall notify the requesting Member State of any corrected information.

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Supplementary Information

Law no. 67/2003 of 23 August (in Portuguese):

[Original Version](#)