NOTE
from: Presidency

to: Working Party on Asylum

Subject: Draft Joint Action concerning temporary protection of displaced persons

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

Delegations will find attached draft texts of the above joint actions drawn up by the Presidency. The drafts have been prepared in the light of discussions on the Commission proposals held at the Working Party on Asylum’s meetings with experts on migration questions on 20 July, 3 and 4 September, 7 October and 28 and 29 October 1998. The preambles have been omitted for the time being, as much of their content is essentially determined by what is decided for the enacting terms.
I.

Draft Joint Action concerning temporary protection
of displaced persons

Article 1

Definitions

For the purposes of this joint action:

(a) "temporary protection regime" means an arrangement offering protection of a temporary nature to persons requesting, and in need of, 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 origin and whose safe return under dignified and humane conditions is impossible in view of the situation prevailing in that country, and in particular:

- persons who have fled from areas affected by armed conflict or persistent violence;

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

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

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

(f) "region of origin" means the country of origin and at least the countries bordering on the region from which the persons in need of international protection come, except for Member States of the European Union.

**Article 2 (¹)**

*General provisions*

1. This joint action shall not apply to persons who were admitted by Member States in the context of temporary protection regimes set up before the adoption of this joint action.

2. Until such time as the Council adopts a decision as referred to in Article 3, or a decision on groups of persons not covered by a decision as referred to in Article 3, each of the Member States shall remain free to adopt or to retain national temporary protection arrangements even after entry into force of this joint action.

3. This joint action is without prejudice to Member States’ power to adopt or to retain more favourable conditions for groups of persons covered by a decision as referred to in Article 3.

(¹) Paragraphs 2 to 4 have been re-arranged in a more logical order. Paragraph 2 has now become paragraph 4, and the previous paragraphs 3 and 4 have been moved up accordingly.
4. The Member States shall give effect to Articles 3 and 4 of this joint action in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Article 3

The establishment of temporary protection regimes

1. In cases of mass flight of persons in need of international protection, the Council, taking into consideration the report provided for in paragraph 3 or in accordance with paragraph 5, and in particular 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).

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

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;

(b) the implementing measures for Article 7 regarding family reunification;

(c) the duration of the regime, which shall not exceed five years on aggregate.
3. In the event of a crisis which might require the introduction of a temporary protection regime, the Council, shall request the Commission in preparation for the decision, to compile a situation report, as quickly as possible, but within no more than one month, covering in particular:

- situation in the region of origin;
- nature and extent of the population movements and the influx into the Union, in particular information from the Member States on the numbers of people already admitted and how many could still be admitted;
- possibility of protection in the region of origin, including the adoption of measures on the spot;
- financial and social implications of any measures as regards the Union.

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

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

5. In the event of a crisis requiring immediate introduction of a temporary protection regime, the Council may adopt a decision as referred to in paragraph 1 before the report has been submitted. This decision shall be reviewed after the report referred to in paragraph 4 has been submitted.
Article 4

Revision and/or phasing-out of temporary protection regimes

1. Every year, and at least six months before the end of a temporary protection regime, or when the Council so requests, the Commission shall prepare a report on the situation in the country of origin and on the application of the temporary protection regime by the Member States, as well as on its financial and social implications. The report shall be based on the information sources referred to in Article 3(4).

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

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

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

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

3. If the Council has not adopted any decision as referred to in paragraph 2 before expiry of the temporary protection regime, the regime shall be extended for a further six months. If no decision to review or phase out the regime is taken within this period, the regime shall be regarded as ended. Article 12(2) and (3) shall apply mutatis mutandis.

In any event, the temporary protection regime shall end when a period of five years has elapsed since it was established. If, within this period, the Council has not adopted a decision to phase out the regime, Article 13 shall apply.
4. The principles governing the return shall be coordinated by the Council, in close cooperation with the international organisations concerned, and in particular the United Nations High Commissioner for Refugees.

Article 5

Solidarity in the application of the temporary protection regime

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

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

Article 6

Authorisation to remain

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

2. Such authorisation may be withheld or revoked on grounds of public policy or public security.
Article 7

Family reunification

1. Member States shall ensure that beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 have the possibility of 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 and the implementing measures laid down in the decision referred to in Article 3.

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.

... (1)

Article 8

Employment and social security

Member States shall ensure that beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 are granted permission to engage in employment in accordance with the provisions of their national law regarding legally resident aliens.

There shall be equality of treatment between beneficiaries of a temporary protection regime and legally resident aliens regarding remuneration, social security and other working conditions.

(1) The last paragraph of Article 7, on particularly vulnerable persons, has been amended and added to Article 9, in the interests of a more logical ordering.
Article 9

**Housing, welfare benefits and education**

1. ... Member States ... shall, where necessary, endeavour to offer suitable housing facilities, or adequate means to obtain such housing, to the beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6.

2. Member States shall ensure that the beneficiaries of a temporary protection regime who hold an authorisation to remain on their territory in accordance with Article 6 receive all necessary support, in particular with regard to means of subsistence, where they do not have adequate means, and medical care according to their immediate needs. Where the beneficiaries exercise a gainful activity, whether employed or self-employed, their ability to provide for their own subsistence is to be taken into account in determining the level and nature of support arrangements.

3. Special medical and other assistance shall be provided for particularly vulnerable categories, such as unaccompanied minors or persons who have suffered torture, rape or any other serious physical or sexual violence, who are the beneficiaries of a temporary protection regime.

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

Minors of school age shall have access to general education under the same conditions as nationals of the host Member State.
Article 10

Asylum

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 1990 (1).

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

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 one of the grounds for exclusion listed in Article 1 F of the Geneva Convention applies.

A Member State may refuse the benefit of a temporary protection regime to any person in respect of whom one of the circumstances referred to in Article 33(2) of the Geneva Convention is found to apply.

Article 12

*Decision-making procedure*

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

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

3. The implementing measures adopted pursuant to this joint action shall be published in the Official Journal of the European Communities.
Article 13

_long-term protection measures_

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

Article 14

_final provision_

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

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

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

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 joint action .../.../JHA [concerning temporary protection of displaced persons] (hereinafter referred to as "the temporary protection regime").


Article 2

Principle of solidarity

1. When temporary protection regimes are adopted ... in accordance with the procedure laid down in Article 12(1) (¹) of joint action .../.../JHA [concerning temporary protection of displaced persons], the Council shall adopt decisions implementing solidarity mechanisms providing for assistance to the Member States particularly affected by the admission of beneficiaries of temporary protection.

(¹) The intention is to make it clear that the same voting rules apply for adoption of the first action and of this action. The actual quorum is still to be decided.
2. The Council may decide to adapt the decision referred to in paragraph 1 as necessary after examining the report referred to in Article 4(1) of joint action .../.../JHA [concerning temporary protection of displaced persons].

Article 3 (1')

Distribution

The decision referred to in Article 2(1) shall provide for beneficiaries of temporary protection to be distributed between Member States in accordance with an allocation scale established in the decision on the basis of information provided by the Member States. This allocation scale should be met as far as possible with the beneficiaries' consent, for example through resettlement projects or through direct admission from the crisis area.

Article 4

Financial assistance

The decision referred to in Article 2(1) shall also provide for financial assistance from the Community budget designed to cover certain costs generated by the admission of beneficiaries of temporary protection. The assistance shall include in particular contributions towards the cost of housing, welfare and education measures in accordance with Article 9 of joint action .../.../JHA [concerning temporary protection for displaced persons].

(1') Article 3 now deals with the distribution of displaced persons between Member States, whilst Article 4 deals with financial assistance.
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 joint action .../.../JHA concerning temporary protection for displaced persons has not yet been published, on the day when the latter is so published.