

7296/97

LIMITE

ASIM 70

OUTCOME OF PROCEEDINGS

from : "Asylum" Working Party with experts in migration matters

dated : 19 and 20 March 1997

No prev. doc : 7042/97 ASIM 64

Subject : Commission proposal for a Joint Action concerning Temporary Protection of Displaced Persons⁽¹⁾

In his introductory remarks, the Commission representative emphasized that the text circulated informally at the previous meeting was not the finalized proposal (the proposal, which was not available during the meeting, is contained in document 7042/97 ASIM 64). It then outlined the background and the content of the proposal. The text, it was stressed, aimed at providing Member States with a general legal framework in the event of future crises, and not at granting individual rights to persons currently enjoying temporary protection.

During the initial exchange which followed, most delegations generally welcomed this timely initiative in an area where there was an urgent need of harmonization (DK, D, GR, E, I, L, NL, A, FIN). The Luxembourg delegation, in particular, undertook to pursue this proposal actively during the upcoming Presidency, in the event that it was not adopted during the current Presidency. The French and Belgian delegations were still reserved on the appropriateness of a text in this matter, particularly in view of the ongoing discussions on related topics within the context of the IGC (F). In this connection, the Commission representative considered that the discussions in the IGC focused on the general framework for EU action in this area, while this proposal aimed at regulating specific substantive issues within the existing possibilities in the third pillar; waiting for the entry into force of the outcome of the IGC, furthermore, would most likely prevent any progress in the matter for a long time.

⁽¹⁾ An advanced copy of this proposal was circulated at the 7 March meeting of the Working Party.

The following observations were further made at the meeting.

UNHCR's involvement. The Danish delegation called for UNHCR's involvement in any future work on this proposal. The Presidency undertook to bring about this involvement. In this connection, it mentioned that, in addition to holding regularly informal contacts with UNHCR, it planned to hold a meeting between the Troika with the Commission and UNHCR, as had been done during the Irish Presidency. The Commission representative added, on the one hand, that the text acknowledged the role of UNHCR (e.g., in Article 4 of the proposal), on the other, that on drafting its proposal, the Commission had consulted UNHCR informally and had taken into account certain observations received from it.

Situations of mass influx. The Spanish delegation took the view that a dual approach on the subject was required, since the determination of a minimal level of protection for persons entitled to temporary protection does not take away the need to cope with situations of mass influx (referred to in Article 3(1)), where the analysis of individual situations is not feasible. The Commission representative replied that the proposal allowed for the setting up of preventive measures, insofar as its scope extended beyond the occurrence of actual cases of mass influx, as was made clear by the reference in Article 1(c) to the "strong probability" that a situation of mass influx may arise.

Burden-sharing. A number of delegations commented on this point. The Spanish delegation asked for a clarification regarding the functioning of the burden-sharing mechanisms foreseen in the proposal. The Netherlands delegation welcomed the link in the proposal between temporary protection and burden-sharing. The Swedish delegation advocated more detailed rules in the matter. The German and Austrian delegations stated that the proposal fell short of the measures required on burden-sharing. In particular, they called for a link in the text between burden-sharing and the reception of refugees, and regarded Article 5 of the proposal, introducing the possibility of some burden-sharing arrangements, as too weak. The Greek delegation deemed that the concept of burden-sharing could further be developed at a later stage. The Commission representative mentioned that burden-sharing was a controversial subject and, consequently, for the time being it had been deemed appropriate to leave it out of this proposal (except for the reference in Article 5), without prejudice to the possibility of reintroducing it at a later stage.

Relationship with the Geneva Convention. The Netherlands delegation asked on what grounds the Commission had foreseen in Article 10 that the examination of applications for asylum could be postponed for as long as five years. The Swedish delegation considered that this provision needed further scrutiny, as the relationship with the Geneva Convention as a whole. The Commission representative clarified that the five-year period was a ceiling, but did not constitute an obligation imposed on Member States, which, therefore, could choose a shorter period; it also stressed that the withholding of examinations of applications did not prejudice individuals' right to lodge applications. The Belgian delegation wished to have the opinion of UNHCR on the relationship between the Geneva Convention regime and this alternative regime, and took the view that the latter should not be established to the detriment of the former. The Commission representative stressed that the objective of the proposal was the setting up of a supplementary, not alternative, regime, to the system established under the Geneva Convention, in view of the inadequacy of its mechanisms to deal with certain extreme situations.

Opening up and phasing out of regime. The Netherlands delegation welcomed the provisions in Articles 3 and 4, according to which the beginning and the end of the regimes had to be determined. The German and Austrian delegations objected to the adoption at a two-thirds majority of implementing measures, such as those on the opening up and the phasing out of the temporary protection regime, in an area where the interests of Member States differ greatly, and stated that these differences were not just due to a lack of harmonization of reception conditions. The Commission representative considered that the existence of harmonized conditions could help reduce the differences among Member States.

Status rights. The Netherlands delegation, while welcoming the section on the granting of rights, questioned the use of the notion of "minimum rights". The Swedish delegation commented that the list of rights was quite extensive and deserved careful examination. The Austrian delegation noticed that there were some references in the text to the status enjoyed by recognised refugees, and considered that the question as to the extent to which displaced persons could benefit from this status should be further considered.

Adaptation of national laws. The Swedish delegation advocated a flexible system, whereby Member States could implement this instrument on the basis of their national legislations. The Finnish and Belgian delegations mentioned that they did not have a temporary protection regime in their national laws. The Finnish delegation, in particular, stated that amendments to its national legislation might require quite a long time to be brought about. The Presidency suggested that this problem should be solved by providing for a transitional period to allow for sufficient time to implement the instrument.

Consultation of the European Parliament. The Commission representative considered that it would be appropriate to consult the European Parliament on the proposal, and referred to Article K.6(2) of the TUE, according to which it was the Presidency's prerogative to do so. The Presidency took note of this request, and indicated that it would reflect on this point.

In view of the favourable opinions generally expressed by delegations, the Presidency concluded that the joint Working Party would give this proposal the highest priority, and the JHA Council could possibly be sent a progress report, in the event that work on this proposal could not be accomplished during the current Presidency.
