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NOTE

from: Presidency

to : Asylum Working Party

Subject: Temporary protection of displaced persons and solidarity in matters of admission and residence
– solidarity in burden-sharing

1. Basic issues

1.1. Current state of play in the negotiations and conclusions to be drawn

Good progress was recorded in the negotiations on temporary protection of displaced persons held under the Austrian Presidency on the basis of the Commission proposals.

1.1.1. Need for discussion of principles

However, the fact is that on the basic issue of possible application of solidarity in burden-sharing the differences of opinion that persist are so serious that deadlock may be said to have been reached. At this juncture there therefore seems little point in continuing to negotiate on the basis of the existing texts in the hope of arriving at a solution via new forms of words. It would be better, now that the Member States' basic positions have become clear in the negotiations, to discuss principles afresh to see whether, despite Member States' apparently irreconcilable positions, there are ways of reaching a compromise.

This is not therefore the time for detailed drafting proposals, but rather for setting the ground rules for a possible arrangement on burden-sharing.

The purpose of this Presidency note is to refocus the debate on principles and sound out possible approaches to a solution.

1.1.2. Basic negotiating positions

The negotiations made it clear that:

While some Member States see an admission decision and a solidarity decision as inseparable parts of the same package and want to establish a standard burden-sharing model in advance of any crisis that may occur, other delegations believe that the two types of decision ought to be taken separately in order to maintain sufficient flexibility to respond to individual situations with proper regard for all the interests at stake.

Some delegations also argue that solidarity in burden-sharing should deal exclusively with, or at least give priority to, assigning people to places, while others believe sharing the financial burden should be the sole aim, or at least the priority.

1.1.3. Link between admission and solidarity in burden-sharing

In this note, intended as a basis for discussion of principles, the Presidency would like to posit just one as axiomatic. Nothing else should be ruled out or in in the debate:

It is legitimate to demand that a Europe-wide decision on admission be accompanied by a decision on solidarity in burden-sharing. Admission of a large number of displaced persons at short notice places enormous demands on a country. People must be given shelter and care, in the longer term they will need suitable accommodation, adults will join the other jobseekers on the already crowded labour market in the EU Member States and children and young people will have to be afforded educational opportunities. If temporary protection becomes permanent, the host States will have to integrate these people. Examples of integration gone wrong in many Member States, with the consequent tension between ethnic minorities and majorities, show that integration is not an automatic process. Although it basically depends on the readiness of the people concerned to become integrated, it needs to be encouraged and promoted by State action.

Since admission entails burdens, admission and burden management are the two sides of the coin of humanitarian protection for displaced persons. That coin may be national or European. A Member State which takes a sovereign decision to admit displaced persons must bear the burden as an individual State; but if the EU Member States take common humanitarian action they must share that burden on a basis of solidarity, especially as the "temporary protection" can only be terminated by common accord, so that Member States also have to relinquish control of the decision as to how long they are willing to bear the burden.

Regulating admission at European level is incompatible with managing the burden nationally, with the size of the burden on a Member State being solely dependent on the displaced persons' choice of host country or the accident of geography that determines the position of the crisis area in relation to the EU.

1.2. Ground rules for discussing principles

1.2.1. Admission decision and procedure

One way to avoid ending the negotiations with an admission of deadlock and go on to seek a Europe-wide solution instead would be to make the suggested link between admission decision and solidarity decision less rigid by making solidarity arrangements very flexible, in the hope that this will reconcile divergent positions.

The following ground rules could apply:

In close cooperation with the UNHCR the Council establishes the admission requirement as the result of a crisis.

The Council ensures that as part of the decision-making process Member States indicate, having regard to their present situation, e.g.

- cultural or historical ties to the crisis area;
- number of persons needing protection already admitted;
- labour market situation;
- involvement in peace-keeping measures, etc.,

how many people they are prepared to offer temporary protection.

This figure is topped up by the number of displaced persons already admitted to the Member State in question, or the State itself tells the Commission how many more people it can still take.

Member States try to direct people potentially eligible for temporary protection to Member States that have reported spare capacity.

Two types of situation should be distinguished:

The potential beneficiaries of temporary protection are outside EU territory

Member States grant temporary protection only if the potential beneficiaries are prepared to go to a Member State that has indicated its willingness to admit them. Families must of course stay together.

The potential beneficiaries of temporary protection are inside EU territory

A Member State which has exceeded its self-imposed admission figure may ask potential beneficiaries of temporary protection to go to a Member State whose quota is not yet filled. Here it must, however, be clear that people can on no account be sent to another Member State unless that State is prepared to admit them and unless they themselves agree to go. However, Member States may deny anyone who refuses to go to another Member State the rights accorded to those entitled to temporary protection by the relevant legislation. In other words, potential beneficiaries would forfeit the right to be covered by the temporary protection system if they did not comply with instructions to go to a Member State with free capacity. In such cases Member States are free to apply ordinary alien and refugee law.

As under the Dublin Convention procedure, transfers are possible when beneficiaries of temporary protection disregard the allocation decision and, instead of going directly from the area of origin to the Member State ready to admit them, try to gain entry to a Member State with no spare capacity.

1.2.2. Financial solidarity

As an incentive to granting admission, the Council would ensure that the admission decision is accompanied by arrangements for sharing the financial burden.

Member States would receive financial support for all persons resident in their territory as a result of the crisis, irrespective of whether these people were granted temporary protection as part of the numbers which they agreed to take when the decision was adopted, were included in the temporary protection system outwith that previously agreed figure, or were only allowed to stay in the State on the basis of ordinary alien and refugee law, with restricted social rights, because they refused to follow instructions to go to another Member State.

To encourage Member States to admit people for temporary protection, such financial support will have to be substantially higher for people admitted as being entitled under the temporary protection regime.

The proposal therefore is that:

- instead of fixed quotas, admission capacity be set flexibly in accordance with the political will of the Member States;
- instead of pre-established allocation models, reliance be placed on pressure to reach political agreement in acute crises, accompanied by a more favourable financial regime for greater readiness to grant admission.

2. Implementation

This note is intended to stimulate discussion of the basic principles of possible solutions to the problem of solidarity in burden-sharing. It is not therefore the place to go into detail on practical proposals for implementing such solidarity.

However, it seems clear that such a procedure presupposes that people flooding into the territory of the EU Member States as a result of a crisis are registered, so that practical problems such as family reunion, inclusion in an admission quota, direction to another Member State, refusal of entitlement to temporary protection, calculation of financial support and implementation of readmission or return obligations can be dealt with.

Registration would have to be centralised. Throughout the period of temporary protection, the central office could also act as a clearing house.

A proper standard of data protection would have to be ensured.

The proposals made by the ICMPD in the context of the EU's Odysseus Programme could be of interest here.