



Temporary protection in Switzerland: S Status and prospects of leaving the temporary system

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This paper, written by Cesla Amarelle, a Professor of Law at the University of Neuchâtel, discusses the temporary protection mechanism in Switzerland, known as S status, which provides immediate protection to individuals in situations of mass influx due to war or violence. It highlights the challenges and tensions in the implementation of this status, including eligibility criteria, procedural issues and the need for legal certainty and integration measures.

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Cesla Amarelle

In the asylum protection architecture, temporary protection is an exceptional mechanism that offers immediate protection for a limited period of time. Although Switzerland is not a member of the EU and does not apply the European Temporary Protection Directive (TPD), it does have its own Asylum Act (LAsi) that provides for a temporary protection mechanism very similar to the TPD through *status S*. As in the case of the European temporary protection system, two conditions must be met before the *status S* can be activated. First, there must be a situation of “*imminent mass influx of people*” and “*serious public danger*” (Article 4 of the Swiss Asylum Act). As these concepts are not precisely defined, they depend above all on the initial capacity of states to receive asylum seekers at a given time. Article 66 of the Swiss Asylum Act stipulates that it is up to the government to decide whether there is a “*mass influx*” or a “*serious public danger*”. The primary function of protection S is therefore to prevent the asylum system from being overburdened. Secondly, the underlying cause of the mass influx is to be found in situations of war, armed conflict, or other situations of violence.

Implementation under pressure

As in the EU, S status was activated by the Federal Council on 11 March 2022. In September 2024, the Federal Council **extended** this status until 4 March 2026 in view of the continuing lack of stability in Ukraine. However, it should be noted that, the Federal Chambers partially adopted a motion (24.3378) calling for a regional differentiation in the granting of protection status S and for its regional abolition in December 2024. As a result, only people from regions occupied by Russia or where fighting is taking place should be able to benefit from protection in Switzerland. For people from all other regions, protection status S should be abolished. The implementation of this new rule will be limited to new applications for S status. Consequently, all new applicants will be subject to an individualized asylum procedure, and the previous simplified procedure will be abolished.

Since its activation, temporary protection has revealed a number of tensions in its implementation. The difficulties initially concerned the application of the eligibility criteria, which are in principle simple. Several issues required an in-depth assessment of each case, in particular with regard to the conditions under which third-country nationals who had previously lived in Ukraine could expect to have to return to their country of origin if they were refused S status in Switzerland, as stated in several Federal Administrative Court decisions (see in particular D-2722/2022 of 10 August 2022 and D-3189/2022 of 10 August 2022).

Other sources of tension relate to the link between *the procedure for granting S status* and *the asylum procedure*, in particular the priority of the S status procedure over the asylum procedure (Articles 69 and 70 of the Swiss Asylum Act), which requires a waiting period. A five-year processing period for asylum applications is possible following the granting of S status, which increases the risk of losing evidence of alleged persecution and the potential

loss of S status should the asylum procedure be reactivated. Finally, another source of tension concerns the *composition of S status rights*, which are very hybrid and in some respects constitute an *ad hoc* preferential regime that is not in line with the rights granted by other asylum law statuses, in particular provisional admission (F status) (see Groupe d'évaluation du statut S, Rapport sur son nouveau mandat, June 2024, p. 26 ; Alberto Achermann, Die vorläufige Aufnahme und der S-Status Überlegungen zu einer Neukonzeption, October 2023, p. 12 ff).

What are the prospects?

In the future, a number of pitfalls will have to be overcome if protection S status is to be applied more fairly. Firstly, the legal certainty and predictability of S status must be consolidated. The links between S status and the asylum procedure need to be streamlined with procedural issues codified, and the rights conferred by in this status consolidated. In general, this status requires a higher level of normative density and more comprehensive binding standards.

Secondly, S status must provide access to asylum without replacing it. As the Swiss Federal Administrative Court has stated in several rulings, S status is even a *preliminary stage* in the asylum procedure. Depending on the grounds put forward by the person in need of protection, S status may even implicitly constitute an application for asylum.

The differences between F, B, and S statuses need to be addressed and status-based disparities must be eliminated. Without such harmonisation there is a risk of systemic double standards and conflicting protection models in the long term.

Finally, S status is return oriented, but is intended to last if the conflict persists. It is only after 10 years that a person in need of protection can be considered truly established in Switzerland. In order to facilitate integration, the Federal Council is now relying on the concept of *dual intention integration*, which allows people to continue their education and to consolidate their situation both locally and with a view to their return. (see Groupe d'évaluation du statut S, Rapport sur son nouveau mandat, June 2024, p. 24 ff). In practice, the S status would require quick transitional solutions to an alternative regularisation status in the case of an extension of the stay. The aim is to guarantee a formal, permanent and, if possible, already existing legal status that would consolidate the S status in case of a longer stay (more than 3 years) and to create bridges between the S status and temporary admission (F). These are transitional solutions for those who do not have access to other types of protection in order to obtain a residence permit on humanitarian grounds. (Article 14 of the Swiss Asylum Act).