

# MONITOR

## SOCIAL COHESION

# Protection here and now?

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## The Temporary Protection Directive for displaced persons from Ukraine in the long run

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- › The Temporary Protection Directive (TPD) is an EU legislative instrument for dealing with situations of mass influx. It was introduced in 2001, yet it was not activated until 2022. After more than two decades of hibernation, Member States demonstrated strong agreement and unanimously decided to activate the TPD for the people fleeing the Russian aggression in Ukraine.
- › It is unclear how long the Russian aggression will last. The EU needs to consider a possible scenario of having to extend the temporary protection into a more permanent one after the protection period ensured under the TPD finishes. That is why the focus needs to be placed on solutions for bridging TPD with long-term solutions tailored to the needs of displaced persons from Ukraine.
- › More sustainable solutions for municipalities and cities as well as future resources and strategies for long-term integration need to be secured.
- › Besides integration, reintegration options and return assistance should not be excluded from the programs either, as many displaced persons have already moved back or expressed the wish to move back to Ukraine.
- › Redistribution efforts should be made to resolve the unequal burdens among the Member States. Assuring a coherent application of the TPD and equal access to rights across the Member States is crucial for viable redistribution to take place.
- › The TPD itself has a provisional nature and that is why the temporary measures and actions envisioned in its text need not be changed. Nonetheless, pathways should be created for the TPD to relate to more sustainable and long-lasting solutions.

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### Introduction

More than six months have passed since Russia started the war of aggression against Ukraine. The Russian invasion has led to the biggest upsurge of displaced persons in Europe since WWII. The EU has kept its doors widely open to refuge seeking people from Ukraine and activated<sup>1</sup> the Temporary Protection Directive (TPD)<sup>2</sup> just several days after the outset of the war. As of now, more than 8.5 million Ukrainians have entered the EU since the beginning of the war,<sup>3</sup> whereas over 4.2 million displaced persons from Ukraine have registered for temporary protection in the EU+ countries.<sup>4</sup>

The prompt and unified response of the EU came as a surprise to many. Not just because the TPD was put into action for the first time in history, but also because such agreement in the matters of migration and asylum is far from the usual scenario encountered. In 2001, the TPD was made part of the EU legislative in the aftermath of the wars in former Yugoslavia that had created the biggest displacement crisis in Europe at the time. Yet, the instrument was in hibernation for more than two decades until it was activated by unanimous support of the Member States in the Council in 2022.

There is no doubt that it was an important decision to set the TPD in motion. However, the activation is just the first step. Its implementation and long-term effects need to be given a closer look, especially considering that peace seems to be far off. The TPD also requires solutions that need to be administered in case the temporary stay of displaced persons from Ukraine ought to be extended beyond the envisioned maximum stay of three years. Without changing the TPD itself, the aim of this paper is to shed light on the areas that will need to be addressed in the long run. The first part of this paper analyzes the meaning and scope of the TPD as an instrument of the EU legislative framework. The second part investigates the blind spots that will need to be resolved and that go beyond the sole activation of the measure.

## What is the TPD?

The TPD is part of the EU legal framework that can be triggered in response to a mass influx of nationals from third countries. As a *directive*, it is a legislative act that sets out a goal for the Member States to reach yet allows them to reach it in their own way. According to the Article 288 of the Treaty of the Functioning of the European Union, 'a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.<sup>5</sup> Usually, Member States have two years to transpose a directive into national law. So far, all the Member States have transposed the TPD, except for Denmark which holds opt-outs in the matters of freedom, security and justice.<sup>6</sup>

The purpose of the TPD is to 'establish minimum standards for giving 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 and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons' (Article 1). Mass influx is defined as 'arrival [...] of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival [...] was spontaneous or aided' (Article 2). It is up to the Council to decide whether a situation is to be categorized as a mass influx or not. For that to occur, a qualified majority in the Council is needed, which represents two thirds of the vote. On 3 March 2022, this threshold was easily surpassed as all Member States voted in favor of the proposal made by the Commission to set the TPD in motion. On 4 March 2022 the Council Decision came into effect.

How did the TPD come into being? The establishment of the TPD emerged as an answer to the EU experiences with displaced persons from former Yugoslavia. The wars in the 1990s led to massive movements across Yugoslavia, resulting in more than 3 million displaced persons both inside and outside Yugoslavia. This was the first time the EU had to face a large wave of protection seeking people of that scale. As a response to the conflict, different temporary protection schemes were put in place that varied significantly in their scope from country to country. The vast differences in country responses demonstrated the weaknesses of the EU in response to sudden, large inflows of displaced persons and resulted in a more coherent European policy on asylum and concretely in the creation of the Common European Asylum System. Initially, Commission submitted proposals as early as in 1997 for joint action on temporary protection, yet there was no consensus reached on the issue of burden-sharing.<sup>7</sup> Once the Amsterdam Treaty came into force in 1999, more action ensued and a Commission proposal for a Council Directive was adopted in 2001.<sup>8</sup> The main goal of this Directive is to relieve the burden of the national asylum systems in a situation of a mass influx and provide immediate group-based protection instead of sometimes lengthy case-by-case status determination procedures.

What does the TPD entail? As already mentioned, the TPD stipulates the minimum standards that need to be provided to beneficiaries of temporary protection. If the TPD is administered, the beneficiaries are eligible to gain access to residency permits (Article 8), labor market (Article 12), accommodation, social welfare and medical care (Article 13) as well as education (for minors) (Article 14). It should be noted that these represent the minimum standards, whereas the Member States are free to extend the rights of beneficiaries.

Who is eligible for temporary protection? An important element of the Directive is the scope of the beneficiaries it includes. Not only the Ukrainian citizens and their family members, but also stateless persons and third country nationals who resided in Ukraine with a refugee status or equivalent protection in Ukraine along with their family members before 24 February 2022. In addition, other third country nationals and stateless persons who were holders of a permanent Ukrainian resident permit before 24 February 2022 and cannot safely return to their country of origin are included, whereas in this case Member States are given the choice to apply either the TPD or adequate protection measures under national law.

How temporary is temporary protection? From the current standpoint, the people who fled Ukraine are granted this status for three years maximum. The initial protection status is granted until 4 March 2023, which can be extended automatically two times, once every six months. After 4 March 2024, the Council has the option to extend it for one more year. After 4 March 2025, the measure is set to terminate.

### **Bridging options needed**

The TPD is not an instrument without shortcomings. In this chapter, the focus is placed on the aspects that could be a source of difficulties in the long run. The name of the measure says it all – it is a temporary measure. Hence, it is a weaker form of protection than international protection under the 1951 Refugee Convention and it is understandable that it does not include the same elements that a permanent measure would. Despite being a temporary measure, there should be options for bridging temporary into long-term solutions. This is particularly important as temporary protection does not necessarily have to end in scenarios envisioned in the Directive which are either voluntary or forced return (Article 21, Article 22) after the three-year maximum duration period.

The question of what happens if protection is needed for more than the duration of the TPD remains unanswered. In the context of the current situation and moving beyond the sheer text of the TPD, both medium and long-term integration of Ukrainians in the EU should be thought through more thoroughly. In the example of Germany, even though the integration commissioner Reem Alabali-Radovan has described the integration of displaced persons from Ukraine in Germany as a model example, the voices from the municipalities paint a different picture.<sup>9</sup> Helmut Dedy, the managing director of the Association of German Cities speaks of a very tense situation on the housing market but also in schools and kindergartens.<sup>10</sup> In addition to that, the lack of sufficient language courses as well as school spots allocation need to be resolved, especially considering the high number of children among the displaced persons.<sup>11</sup> Pressure should be relieved from the municipalities, communities and cities that have been overly burdened and sustainable integration strategies should be implemented. Considering that many displaced persons from Ukraine are staying in private accommodation and depending on the hospitality of the local communities, a more feasible solution will need to be put in action soon as the patience of volunteers is wearing off.<sup>12</sup> The volunteers have been the backbone of providing immediate assistance and protection to displaced persons from Ukraine, yet in protracted displacement scenarios structural solutions are needed.

In the long run, a masterplan should be drafted considering different scenarios and varying numbers of displaced persons whereas the possible resources of funds for integration should be allocated. Moving beyond the framework of the Member States itself, an exchange between the Member States on best practices and challenges is necessary. Initiatives such as European Integration Conference<sup>13</sup> can be of great value and there should be regular meetings of Ministers for Integration across the EU for discussing the topic of the integration of displaced persons from Ukraine.

### **From protection to reintegration**

In addition to integration, reintegration programs and return assistance should be given a proper thought as well. Furthermore, it should not be ignored that many Ukrainians wish to return to their homes and that many have already crossed the border back to their home country even with the war still ongoing.<sup>14</sup> At the moment, the number of entries to Ukraine is on par with the number of exits. This is a sign that the future reintegration options of returnees should be taken into consideration in the programs of host countries as well. There is evidence of returnees to former Yugoslavia bringing the skills acquired abroad back to their home countries,<sup>15</sup> which is an indication that the focus could be put on skills that could be useful upon their possible return.

### **Redistribution of beneficiaries**

Another element that needs to be given a closer look in relation to the TPD is the topic of redistribution of beneficiaries of temporary protection among the Member States. With the Council Decision to activate the measure, the Article 11 of the TPD was waived. The Article 11 stipulates that a 'Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorization onto, the territory of another Member State'. Hence, secondary movements across the Union without returns to the Member State where temporary protection was initially provided are allowed. However, the free choice of the country of destination might prove to be an issue in the long run. Disproportionate burdens among the Member States are already visible when it comes to the numbers of displaced persons from Ukraine. In relation to its population size, Poland has taken by far the largest number of Ukrainians, followed by Slovakia, Hungary and Romania.<sup>16</sup> This aspect gains even more importance, considering that the Council Decision from 4 March 2022 does not include the information on the reception capacity of Member States, as required in the TPD. The Article 25 of the TPD clearly states that 'Member States shall receive persons who are eligible for temporary protection in spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. This information shall be set out in the Council Decision'. As these figures have not been included in the Council Decision, it could open a set of issues in the future in case the numbers of arrivals stay on the rise and most Ukrainians concentrate in just a few Member States. Looking back at the example of the displacement crisis that followed the wars in former Yugoslavia, it will be of utmost importance to keep the implementation of the TPD on the same level across the Member States. This will allow for redistribution to take place and provide for equal opportunities and access to services across the EU.

## **Conclusion**

There is no doubt that the activation of the Temporary Protection Directive has been a landmark achievement for the EU in the migration and asylum realm, with Member States demonstrating unprecedented unity and solidarity. The TPD is an important legislative instrument, and its activation was the right choice for the issue at hand. Yet, the work does not stop with the mere activation of the TPD. The implementation as well as the long-term impact of the measure require further consideration. The war might last longer than the protection envisioned under the TPD and that is why the focus should be placed on options for bridging temporary with more permanent solutions. The bottom line is that the instrument itself does not need to change, however its connection to sustainable solutions should be made possible. Integration, reintegration/return assistance as well as redistribution are the crucial elements that should be considered in the long run. Flexibility is key and the solutions should be tailored towards the needs of displaced persons from Ukraine.

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- 1 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.
  - 2 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving 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.
  - 3 FRONTEX (31.08.2022): Ukraine: Border traffic at high, but stable level, <https://frontex.europa.eu/media-centre/news/news-release/ukraine-border-traffic-at-high-but-stable-level-UZbmia>.
  - 4 EUAA (07.09.2022): Analysis on Asylum and Temporary Protection in the EU+ in the Context of the Ukraine Crisis Week 35 (29 August – 4 September) 2022, [https://euaa.europa.eu/sites/default/files/publications/2022-09/2022-09\\_Ukraine\\_Asylum\\_TPD\\_Issue\\_EN\\_Public.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-09/2022-09_Ukraine_Asylum_TPD_Issue_EN_Public.pdf). Data includes 27 EU Member States plus Norway and Switzerland, which activated their own temporary protection schemes.
  - 5 Consolidated version of the Treaty on the functioning of the European Union [2016] OJ C202/171.
  - 6 Beirens, H., Maas, S., Petronella, S., & van der Velden, M. (2016): Study on the Temporary Protection Directive. *Final report. Brussels: European Commission, Directorate-General for Migration and Home Affairs.*
  - 7 Kerber, Karoline (2002): The Temporary Protection Directive, *European Journal of Migration and Law* (4): 193-214.
  - 8 Ibid.
  - 9 Tagesschau (23.08.2022): Von „gut gelungen“ bis „Herausforderung“, <https://www.tagesschau.de/inland/fluechtlinge-ukraine-151.html>, ZDF (07.09.2022): Kapazitäten teils am Limit. Städte: Probleme bei Flüchtlingsunterbringung, <https://www.zdf.de/nachrichten/politik/fluechtlinge-staedte-wohnraum-100.html>.
  - 10 Tagesschau (23.08.2022): Von „gut gelungen“ bis „Herausforderung“, <https://www.tagesschau.de/inland/fluechtlinge-ukraine-151.html>.
  - 11 Sächsische Zeitung (05.09.2022): Flüchtlingshelfer beklagen Mangel an Sprachkursen für Ukrainer, <https://www.saechsische.de/sachsen/sachsen-ukraine-fluechtlinge-asyl-kurse-5752643.html>, Bayerischer Rundfunk (03.09.2022): Kinder aus der Ukraine warten oft noch auf Schulplatz, <https://www.br.de/nachrichten/deutschland-welt/kinder-aus-der-ukraine-warten-oft-noch-auf-schulplatz,TGMKWUo>.
  - 12 ZEIT (22.08.2022): Nehmt doch Platz. Nur nicht so lange, <https://www.zeit.de/2022/34/ukraine-gefluechtete-deutschland-private-aufnahme>.
  - 13 KURIER (28.08.2022): Ukraine-Vertriebene und steigende Asylanträge dominieren Integrationskonferenz, <https://kurier.at/politik/inland/integrationskonferenz-wir-muessen-menschlich-bleiben/402090721>.
  - 14 UNHCR (2022): Lives on Hold: Profiles and Intentions of Refugees from Ukraine, <https://www.unhcr.org/news/press/2022/7/62ce6ad64/unhcr-survey-finds-refugees-ukraine-hope-home.html>.

- <sup>15</sup> Bahar, D., Özgüzel, C., Hauptmann, A., & Rapoport, H. (2019): Migration and post-conflict reconstruction: The effect of returning refugees on export performance in the former Yugoslavia, IZA DP. No. 12412, IIZA Institute of Labor Economics.
- <sup>16</sup> Briefing, Research for REGI Committee (June 2022): Cities and the Ukrainian refugees, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/699654/IPOL\\_BRI\(2022\)699654\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/699654/IPOL_BRI(2022)699654_EN.pdf).



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