

# Research Reports

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## Temporary Protection of Ukrainians in the European Union

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The Russian invasion of Ukraine began on 24 February 2022 and led to large-scale displacement of Ukrainian citizens. To protect Ukrainians fleeing the invasion, the European Council unanimously adopted the Council Implementing Decision (EU) 2022/382 of 4 March 2022<sup>1</sup>, giving those fleeing war in Ukraine the right to temporary protection. This was the first time the Council Directive 2001/55/EC<sup>2</sup> (Temporary Protection Directive) had been activated or, in other words, implemented to respond to the large-scale arrival of displaced persons fleeing a conflict zone.<sup>3</sup> The Temporary Protection Directive applies to all EU Member States except Denmark, which has nevertheless introduced a similar national temporary protection scheme by adopting the special Act on Temporary Residence Permit for Persons Displaced from Ukraine.<sup>4</sup> Iceland, Norway and Switzerland have also introduced similar national schemes.<sup>5</sup> UNHCR reports that, as of 27 September 2022, more than 7.5 million persons have fled Ukraine, whereas 4.178 million persons have registered for temporary protection or other national protection statuses in Europe. This contribution reviews the legal framework concerning the temporary protection of more than four million Ukrainians in the European Union and explains who receives protection, which rights they enjoy and when the temporary protection regime will come to an end. In doing so, the report also briefly assesses the EU's response to the mass displacement from Ukraine.

## 1. Eligibility for Temporary Protection

The Temporary Protection Directive allows the Council to designate any group of third-country nationals who had to flee their country or region of origin, including refugees, persons fleeing armed conflict and violence, and victims of systematic or generalised human rights violations, as eligible for temporary protection.<sup>6</sup> On 4 March 2022, the Council decided the following groups enjoy temporary protection in the EU: a) Ukrainian nationals residing in Ukraine who have been displaced on or after 24 February 2022 and their family members, and b) stateless persons and third-country nationals who benefitted from international protection or equivalent national protection in Ukraine before 24 February 2022 and who have been displaced from Ukraine on or after 24 February 2022, and their family members.<sup>7</sup> Besides these groups, the Council noted that temporary protection or adequate protection<sup>8</sup> under the national laws of Member States should be provided to stateless persons and third-country nationals who were holding valid permanent residence permits in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.

The EU Member States are free to extend temporary protection to those other than identified in the Council Implementing Decision 2022/382, provided that they flee Ukraine and need protection. Several Member States have indeed enacted legislation to provide temporary protection status to a broader category of displaced persons from Ukraine than those indicated in the Council Implementing Decision (EU) 2022/382 of 4 March 2022; however, these groups usually include nationals of Ukraine either who were already present in the host state on 24 February 2022 if their respective permits were about to expire (e.g., Finland, Austria, Germany, Netherlands, Estonia, Lithuania, and Poland)<sup>9</sup> or who left Ukraine before 24 February 2022 (e.g., Romania, Germany<sup>10</sup>, Spain and Sweden).<sup>11</sup>

## 2. Rights of Temporary Protection Beneficiaries

Admission to the territories of the Member States is a crucial step for persons fleeing Ukraine towards enjoying protection in the EU. The Temporary Protection Directive is silent on the issue of admission; however, in the context of displacement from Ukraine, Ukrainian nationals holding biometric passports, or other third-country nationals who are exempt from the requirement to be in possession of a short-stay visa for entering the Union, have the right to move freely within the Schengen area after being admitted into the territory for a 90-day period within a 180-day period.<sup>12</sup> For persons who are not visa-exempted and do not hold a short-stay visa or a long-stay visa or residence permit issued by a Member State and who are entitled to temporary protection or adequate protection under national law, the Commission requires the Member States to give every facility for obtaining the necessary visas for the

purpose of being admitted to their territories.<sup>13</sup> The Commission notes that the Member States should admit all persons fleeing Ukraine, including those who cannot qualify for temporary protection.<sup>14</sup>

No explicit right to freedom of movement for the temporary protection beneficiaries in the Union foreseen in the Temporary Protection Directive<sup>15</sup>; by not implementing article 11 of the Temporary Protection Directive, the Council decided to give temporary protection beneficiaries freedom to move to another Member State before the issuance of a residence permit and freedom to move freely in the Union for 90 days within a 180-day period after a residence permit in the host EU country is issued.<sup>16</sup> Persons who are eligible for temporary protection under EU law are to enjoy the following rights and entitlements: a) a residence permit for the entire duration of the protection, b) access to information on temporary protection, c) access to employment (subject to a number of rules and restrictions such as those that are applicable to the profession and to national labour market policies), d) access to suitable accommodation, social welfare and means of subsistence (if necessary), e) access to medical care, f) access to education for children and g) a limited right to family unification.<sup>17</sup> Temporary protection beneficiaries may also apply for international protection, although the Member States can postpone processing of asylum applications until the end of temporary protection.<sup>18</sup> Although the outlined are only the minimum rights and entitlements that the Member States are required to provide to the temporary protection beneficiaries under EU law, Member States are free to extend the rights and/or remove any restrictions on the outlined rights and entitlements in the Temporary Protection Directive.

### 3. Termination of Temporary Protection

The Temporary Protection Directive provides that temporary protection can continue up to one year, though this can be extended up to three years if the Council decides so. For now, the temporary protection regime will last until 4 March 2023; however, it can be renewed automatically for another year (in six-month periods), meaning until 4 March 2024, and this period may be extended for another year depending on the situation in Ukraine.<sup>19</sup> The Council can terminate the temporary protection status for the protected groups at any point once "the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement".<sup>20</sup> This means the termination of the temporary protection would depend on the course of the conflict in Ukraine; nevertheless, the temporary protection regime should be terminated on 4 March 2025 at the latest.

## 4. A Brief Assessment of the EU's Response to the Mass Displacement from Ukraine

Activation of the Temporary Protection Directive by the European Council was the right response to the mass displacement from Ukraine. The Temporary Protection Directive's flexible eligibility criteria and its broad personal scope, its fine harmonisation, and formalisation of the protection standards to be offered to temporarily protected persons, as well as its voluntary-based burden-sharing mechanism, make the Directive the right legal instrument to respond to the mass displacement from Ukraine. Implementing the Directive ensures crucial benefits to both Member States and persons displaced from Ukraine.<sup>21</sup> Ukrainian nationals can be protected within the Directive's framework for up to three years. The Directive provides a temporary protection status that confers temporary residence permits, emergency health care, shelter, social benefits and education for minors, as well as limited access to the labour market and a limited right to family reunification. By not requiring individual status determination, the Temporary Protection Directive grants temporary protection beneficiaries, in this case Ukrainian nationals, immediate access to crucial rights secured under the Directive without going through lengthy status determination procedures.

Despite the many crucial benefits that the Temporary Protection Directive offers, the Directive has a number of weaknesses that may in the future create some challenges for the Member States and the protected persons alike. This is mostly due to the fact that the Temporary Protection Directive has never been updated and/or recast, and it has never caught up with developments in the EU asylum acquis. For example, unlike the other EU directives on asylum, the Temporary Protection Directive does not establish common standards but provides only minimum standards. Therefore, the Temporary Protection Directive only prescribes minimum treatment, and it leaves much discretion to the Member States. Illustrating this point, the European Union Agency for Asylum concludes that there are stark differences in practices among the Member States in terms of services relating to the provision of information, registration, consultation on access to rights, counselling, referrals to accommodation, basic care, documentation of biometric data and security screening.<sup>22</sup> Moreover, the Temporary Protection Directive includes nothing about procedures: it has no provision on how to conduct eligibility and exclusion<sup>23</sup> assessment and registration.<sup>24</sup> The Commission attempted to fill this gap to an extent by publishing its Operational Guidelines<sup>25</sup> but, since the guidance is non-binding, the Member States, as well as their national courts, are free to invoke any procedural rules they wish and fill the gaps in the Temporary Protection Directive as they see fit as long, as they observe the principles set out by the EU and international law.

## 5. Conclusion

The Russian invasion of Ukraine and the ongoing conflict have caused a significant rise in fuel and food prices in the Union as the cost of living in the Member States has soared.<sup>26</sup> These economic hardships together with other financial, social and capacity-related challenges that the mass influx of refugees from Ukraine creates mean that some Member States are now facing serious difficulties in adhering to the protection standards prescribed by the Temporary Protection Directive. It remains to be seen whether all the Member States can continue offering generous protection standards as prescribed by the Temporary Protection Directive to millions of people who had to flee Ukraine and set an example to the world for the protection of persons fleeing armed conflict.

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<sup>1</sup> 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, ST/6846/2022/INIT OJ L 71, 4.3.2022. (*hereinafter* Council Implementing Decision (EU) 2022/382 of 4 March 2022).

<sup>2</sup> 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 OJ L 212, 7.8.2001.

<sup>3</sup> Please note that this piece builds upon M. Ineli Ciger, "5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022", EU Migration and Asylum Law Blog (2022) <<https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/>>; M. Ineli-Ciger, "Reasons for the Activation of the Temporary Protection Directive in 2022: A Tale of Double Standards" ASILE Forum (2022) <<https://www.asileproject.eu/reasons-for-the-activation-of-the-temporary-protection-directive-in-2022-a-tale-of-double-standards/>>

<sup>4</sup> European Commission, New Danish law for those fleeing Ukraine mirrors EU Temporary Protection Directive (2022) < [The Japan Institute of International Affairs  
Research Group on 'Europe'](https://ec.europa.eu/migrant-integration/news/new-danish-law-those-fleeing-ukraine-mirrors-eu-temporary-protection-directive_en#:~:text=Instead%2C%20the%20Danish%20government%20has,and%20until%2024%20February%202022>; Denmark, Act on Temporary Residence Permit for Persons Displaced from Ukraine (Act No 324).</p></div><div data-bbox=)

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<sup>5</sup> EUAA, Analysis of Measures to Provide Protection to Displaced Persons from Ukraine, July 2022 < [https://euaa.europa.eu/sites/default/files/publications/2022-07/2022\\_temporary\\_protection\\_Ukraine.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-07/2022_temporary_protection_Ukraine.pdf)>.

<sup>6</sup> See Articles 2 (a) and 2(c) of the Temporary Protection Directive.

<sup>7</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022; for an analysis of these groups see S. Peers, Temporary Protection for Ukrainians in the EU? Q and A, 27 February 2022, <<http://eulawanalysis.blogspot.com/2022/02/temporary-protection-for-ukrainians-in.html>>.

<sup>8</sup> According to the Commission, the 'adequate protection' referred to by the Council in the Council Implementing Decision (EU) 2022/382 of 4 March 2022 should secure a dignified standard of living such as residency rights, access to means of subsistence and accommodation, emergency care and adequate care for minors. See Communication from the Commission on Operational guidelines for the implementation of Council Implementing Decision 2022/382 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 2022/C 126 I/01. C/2022/1806, OJ C 126I, 21.3.2022. (*hereinafter* Operational guidelines for the implementation of Council Implementing Decision 2022/382).

<sup>9</sup> EUAA, Analysis of Measures to Provide Protection to Displaced Persons from Ukraine, July 2022, < [https://euaa.europa.eu/sites/default/files/publications/2022-07/2022\\_temporary\\_protection\\_Ukraine.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-07/2022_temporary_protection_Ukraine.pdf)> p .4.

<sup>10</sup> Germany grants temporary protection to Ukrainian nationals having fled Ukraine shortly before 24 February 2022 or having stayed in another EU Member State shortly before that date (e.g., on holiday or on business). Cf. Germany, Residence Act, Section 24 (28 August 2007 - latest amendments: 1 June 2022); Germany, Ordinance of the Federal Ministry of the Interior on temporary exemption from the requirement to hold a residence permit for persons displaced from Ukraine (9 March 2022 - but applied retroactively from 24 February 2022).

<sup>11</sup> Germany grants temporary protection to Ukrainian nationals having fled Ukraine shortly before 24 February 2022 or having stayed in another EU Member State shortly before that date (e.g., on holiday or on business). Cf. Germany, Residence Act, Section 24 (28 August 2007 - latest amendments: 1 June 2022); Germany, Ordinance of the Federal Ministry of the Interior on temporary exemption from the requirement to hold a residence permit for persons displaced from Ukraine (9 March 2022 - but applied retroactively from 24 February 2022).

<sup>12</sup> Commission, Operational guidelines for the implementation of Council Implementing Decision 2022/382 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>

<sup>13</sup> Commission, Operational guidelines for the implementation of Council Implementing Decision 2022/382 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>>.

<sup>14</sup> Commission, Operational guidelines for the implementation of Council Implementing Decision 2022/382 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>>.

<sup>15</sup> S. Peers, Temporary Protection for Ukrainians in the EU? Q and A, EU Law Analysis, 27 February 2022 < <http://eulawanalysis.blogspot.com/2022/02/temporary-protection-for-ukrainians-in.html>>.

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<sup>16</sup> Cf. D. Thym, 'Temporary Protection for Ukrainians: the Unexpected Renaissance of 'Free Choice', EU Immigration and Asylum Law and Policy, 7 March 2022, < <https://eumigrationlawblog.eu/temporary-protection-for-ukrainians-the-unexpected-renaissance-of-free-choice/> >.

<sup>17</sup> Chapter III of the Temporary Protection Directive.

<sup>18</sup> Article 17 of the Temporary Protection Directive.

<sup>19</sup> EUAA, What you need to know about temporary protection (Adults) (2022)

<https://euaa.europa.eu/publications/what-you-need-know-about-temporary-protection-adults>

<sup>20</sup> Article 6(2) of the Temporary Protection Directive.

<sup>21</sup> M. Ineli-Ciger, Has the Temporary Protection Directive Become Obsolete?: An Examination of the Directive and its Lack of Implementation in view of the Recent Asylum Crisis in the Mediterranean. In *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common Asylum System* (2015 Brill) p. 223.

<sup>22</sup> EUAA, Analysis of Measures to Provide Protection to Displaced Persons from Ukraine, July 2022, < [https://euaa.europa.eu/sites/default/files/publications/2022-07/2022\\_temporary\\_protection\\_Ukraine.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-07/2022_temporary_protection_Ukraine.pdf)> p. 12.

<sup>23</sup> S. Singer, Addressing security and criminality concerns: the Temporary Protection Directive's 'exclusion clauses' unpacked, ASILE Forum (2022) < <https://www.asileproject.eu/addressing-security-and-criminality-concerns/>>.

<sup>24</sup> Y. Kader, Registration insights from Turkey's Temporary Protection experience, ASILE Forum (2022) <https://www.asileproject.eu/registration-insights-from-turkeys-temporary-protection-experience/>.

<sup>25</sup> Commission, Operational guidelines for the implementation of Council Implementing Decision 2022/382 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>>.

<sup>26</sup> Save the Children, Putting Children First: Priorities for the European Union's response to the conflict in Ukraine, < [https://resourcecentre.savethechildren.net/pdf/Putting\\_children\\_first\\_Policy\\_paper.pdf](https://resourcecentre.savethechildren.net/pdf/Putting_children_first_Policy_paper.pdf)>.