

## The EU's Response to Displacement from Ukraine

### ECRE's Recommendations, updated 1 June 2022

#### 1. Implementation of the Council Decision on Temporary Protection and Following the Operational Guidelines

- ECRE calls on EU Member States (EUMS) to swiftly operationalise temporary protection, using [the European Commission's operational guidelines](#) to ensure uniform application across the EU.
- In particular, EUMS should:
  - Provide detailed information on accessing the Temporary Protection Directive (TPD) in relevant languages and in an easily accessible form on websites and in printed form to be distributed at strategic locations such as registration points;
  - Encourage and facilitate movement within the Schengen area, including issuing visas where needed, and provision of free transport;
  - Make use of discretionary powers under Article 2(3) of the Council Decision to extend the scope of temporary protection to the following categories of people:
    - People who fled Ukraine before 24 February 2022
    - Stateless persons and third country nationals irrespective of the nature of their residence or migration status in Ukraine, thus including those who did not have the specified "permanent" legal right of residence
    - Stateless persons and third country nationals irrespective of whether they can return their countries of origin or residence.
- As well as providing security for the people affected, following guidelines and ensuring a slightly wider scope of the temporary protection regime has the potential to significantly reduce the administrative burden of the EUMS.
- EUMS should further:
  - Ensure that registration takes place in an efficient and dignified manner, including using online registration options. Extensive human resources should be channeled into registration, with EU support to be requested wherever needed;
  - Treat documents available in digital formal (e.g. via the Diia app) of those fleeing Ukraine as equivalent to documents issued by Ukraine in paper format. (The two types of documents hold equal status under Ukrainian law.);
  - Ensure that a lack of documentation does not prevent people from accessing international protection and that it does not lead to detention;
  - Recognise travel documents issued in Ukraine for beneficiaries of international protection (both for refugees and holders of complementary protection statuses);
  - Provide residence permits for two years to ensure additional security for the people concerned and to reduce the administrative burden on the EUMS;
  - Minimise administrative requirements and expedite processes to facilitate immediate access to the rights provided for in the temporary protection status; in several countries, TP beneficiaries are barred from accessing rights and services, including because the issuance of relevant cards is delayed;
  - Recognise the validity of driving licenses issued by Ukraine and held by TP beneficiaries for the duration of their status and related residence permit;

- Clarify that neither registration for TP nor residence permits will be affected should a beneficiary return to Ukraine temporarily.
- The EUAA should publish up-to-date statistics including data on the number of applications introduced, accepted and refused, where possible disaggregated by country of origin/nationality, age and gender using data that should be made available by EUMS.
- The triggering of the TPD is without prejudice to the prerogative of the EUMS to provide more favourable protection statuses should they so wish. It should not be excluded that people leaving conflict and violence may be fleeing situations with characteristics and circumstances that qualify them as refugees under the 1951 Convention, or that other protection statuses may be appropriate. Thus, the TPD safeguards allowing access to asylum procedures should be respected and rights under the TPD should not be waived until the final decision on international protection is taken.
- The TPD provides minimum standards in terms of the content of protection (the rights attached to the protection status) so EUMS should consider more favourable standards, including taking into consideration particular vulnerabilities and needs.

## 2. Addressing Challenges and Gaps in TPD Implementation

Preliminary monitoring of the implementation of the TPD reveals challenges arising either due to the legal design of the TPD or due to its implementation in practice. The TPD is an instrument of the Common European Asylum System (CEAS) so access to rights under the TPD should not be organised and implemented in a parallel system to that of other beneficiaries of international protection. In addition, the support and reinforcement of national structures in response to the triggering of the TPD should contribute to strengthening asylum systems overall (see section below).

- In general, as temporary protection beneficiaries are in a very similar situation to other beneficiaries of international protection, no additional administrative requirements should be introduced to access their rights under the TPD.

For the following issues, respective Member States need to adjust their practice immediately:

- Non-issuance or delayed issuance of residence permits, which is in clear violation of the TPD;
- Lack of clear information about the rights of TP beneficiaries made available in relevant languages and in an easily accessible form.

For the following issues, clarification in the form of detailed European Commission guidelines is necessary:

- **Lack of administrative decisions:** in a number of EUMS, people do not receive administrative decisions on the refusal of temporary protection. It is therefore not possible to challenge the “decision” and to access effective legal remedies. Related to this, it should be specified that any rejections should be provided to the applicant in written form in the relevant languages;
- **Problems with narrow family definitions:** there have been cases of differential treatment of unmarried partners or cases where third country nationals married to Ukrainian men have fled and are not covered by the TPD, again contravening the Decision;
- **Different interpretations of freedom of movement by EUMS:** while the European Commission has publicly confirmed that beneficiaries of temporary protection will be able to move to other EUMS and apply for temporary protection there, and the Decision includes an agreement that Article 11 of Directive 2001/55/EC will not apply, this is not consistently respected by Member States;
- **Ensuring passage to Ukraine for visits/re-entry:** people re-entering Ukraine for short visits, should be guaranteed passage in and out at the EU border, as well as receiving guarantees that re-entry will not have any impact on their status in the EUMS.

For the following issues, a review of the operational implementation of the TPD and related adjustment of processes is necessary:

- **Vulnerabilities are overlooked:** due to the absence of a general screening, for example for medical needs, identification of specific vulnerabilities is not happening systematically. This is exacerbated by the fact that the majority of people are in private rather than public accommodation. As a result, torture and sexual violence survivors, among others, do not have access to specific treatment and rehabilitation;
- **Family reunification requires more support:** Due to the lack of identification, family tracing is more difficult; EUMS should put in place systems to facilitate family reunification.

### 3. Responses for people fleeing Ukraine who are outside the scope of the TPD regime

- Options should be made available to third country nationals who fall outside the scope of the TPD. This could include access to asylum, leave to remain or other temporary residence permits.
- These options should cover categories of people at particular risk following the invasion of Ukraine, including Belarussians and Russians in Ukraine who do not have the documents to fall under the TPD, and defectors from the Russian army in Ukraine.
- For people who can return safely to their home countries, residence permits to allow time for travel arrangements, access to Embassies and support for return travel, are crucial.

### 4. Responses for people fleeing Russia

- Those at risk of persecution in Russia, including human rights defenders, journalists, lawyers, and men fleeing military conscription may be in need of international protection. They should benefit from all relevant safeguards under international refugee law and the CEAS and potentially be considered as *prima facie* refugees.
- EUMS should support those fleeing Russia with safe and legal pathways and provision of information on how to access protection.

### 5. Access at the EU's Borders

- All people fleeing Ukraine who are entitled to leave under national law must be able to leave the country and access the EU and other neighbouring countries. Thus, borders must remain open despite pressures.
- EUMS should make use of the EC's [guidelines for external border management](#) to reduce congestion by relaxing border checks and authorising entry on humanitarian grounds, including when third country nationals do not fulfill entry conditions. Detention on arrival should be limited and may only be used in compliance with EU law.

### 6. Adequate Funding and Distribution to those Best Placed to Respond

- Funding mobilised under the Asylum, Migration and Integration Fund (AMIF) should be focused on reinforcing reception capacity, staffing in asylum systems, and for civil society service provision of support in the EUMS most affected, especially at the point of immediate arrival.
- The AMIF national programmes for the current funding period (2021-2027) should be amended to guarantee resources for information provision, legal aid, and social, medical and psychological support.
- Funding modalities of both AMIF and Cohesion funds must be simplified to ensure that funding is accessible to civil society. Where relevant, the Partnership Principle should be applied so

that civil society can play a role in assessing funding needs at the national and EU level. In addition, the activation of the Emergency Support Instrument for the response in specific Member States should be discussed to ensure that emergency funding is accessible for civil society.

- The European Commission should retain significant amounts of both AMIF and Cohesion funding in order to ensure that it can respond swiftly and directly support service providers, including civil society and international organisations, in the countries most affected, especially given longstanding questions about the absorption capacity and management of funds by Member States, as well as the rule of law debate, which leads to questions concerning the appropriateness of providing (additional) funding to certain EUMS.

## **7. EU Agency Support for Access to Territory and for Protection in the EU**

- All EUMS bordering Ukraine are likely to require support from the EU Asylum Agency (EUAA), including deployment of operations, to ensure registration, to put in place reception systems, to manage and share information, and for other technical and operational expertise.
- If EUMS remain reluctant to request the support of the EUAA, they should at least be able to demonstrate to the European Commission the alternative response mechanisms they foresee.
- Within the context of the European Commission's [guidelines](#) on external border management aimed at guaranteeing access at EU's border, the support from and deployment of Frontex should be considered, but always with the deployment of fundamental rights monitors.

## **8. Focus on Inclusion/Integration from the Outset**

- Given that immediate protection is being provided, meaning that access to asylum and rights within the asylum system are not primary considerations, the focus should switch immediately to inclusion, following the principle of inclusion/integration from day one.
- As for all beneficiaries of and applicants for international protection, inclusion is achieved through access to rights. In this case, the rights attached to the protection status are set out in the Decision. The EU can play a role through provision of funding and expertise.
- Although a comprehensive picture is not yet available, preliminary evidence indicates that there are major challenges in accessing rights set out in the Decision in most of the EUMS, with particular concerns relating to housing and medical services.
- The money set aside under AMIF, Cohesion Funds (CARE) and REACT-EU must be distributed rapidly, with both Member States and European Commission investing in staffing, project management and coordination mechanisms. The existing structures in ministries, agencies and civil society, where there is considerable expertise on inclusion and social cohesion, need to be mobilised and rapidly scaled up, including:
  - Reinforcement of staffing in the units within the European Commission leading on inclusion of refugees at DG Home and DG Employment and Social Affairs;
  - The activation of inclusion-related policy and coordination mechanisms (e.g. European Integration Network) including coordination with private sector (e.g. European Partnership for Integration).
- At the national level, Ministries in charge of social affairs, employment, housing and education need to play a central role in the response as soon as registration has taken place, including deciding on the allocation of EU funding and other support, and managing the funds themselves.
- Reinforced and consistent coordination between all state actors responsible for the reception of TP applicants is essential.
- Direct capacity support and training in the special call under the Technical Support Instrument (TSI) to support EUMS should also cover expertise provided by civil society.

## **9. Solidarity Contributions from across the EU**

- All EUMS should offer support, including relocation/hosting, via the Solidarity Platform.
- On the other hand, while EUMS openness to hosting refugees is welcome, they should also not hesitate to avail themselves of solidarity offered by EUMS and non-EU countries (such as Canada which is offering unlimited support).
- All EUMS should suspend Dublin transfers to countries whose asylum and reception systems are under strain due to a high number of TP applicants, including Poland, Hungary, Czech Republic, Slovakia and Romania.
- As set out in the TPD, moving to another EUMS should be available for all persons covered under the temporary protection regime. Safe passage within Europe is essential.

## **10. Invest in wider Asylum Systems**

- The TPD is part of the CEAS, as an instrument for use in the situation of large-scale influx, such as the displacement from Ukraine. As such, it exists as a safety valve, to ensure that the asylum system as a whole continues to function, even in the situation of crisis.
- Despite the challenge, the wider asylum systems in Europe need to continue to function and EUMS need to continue to ensure that protection is available for all. The Ukraine displacement is not an excuse for lack of respect for obligations under international and EU law. Rather the response to this crisis, should be used to demonstrate that the EU can manage and how to do so, even when significant numbers of refugees arrive in Europe.
- In the short term, EUMS should remove Ukraine from Safe Country Lists.
- In the longer term, all EUMS should ensure adequate resourcing of the asylum systems to ensure they are prepared for increases in the number of people arriving, including addressing CEAS implementation gaps, such as lack of reception capacity and inadequate first-instance decision-making.

## **11. Support Humanitarian Relief, Peace and Justice in Ukraine**

- Humanitarian support must be provided to Ukraine and Moldova, and other neighbouring countries as required, alongside an insistence on humanitarian access and respect for international humanitarian law.
- The EU should support all forms of dialogue that may contribute to ceasefires and eventually to settlements.
- EU efforts to support international criminal justice should be carried out in coordination with and in support of national Ukrainian efforts, the work of the ICC, and any future justice mechanisms, such as transitional justice tools, that may be established. An appropriate division of labour, based on provisions of international law, including respective mandates, and based on experience and ownership should be respected.
- Governments should support efforts to collect evidence and testimonies relating to crimes under international law that are being committed in Ukraine. This includes providing the services and infrastructure to collect and where relevant verify information.
- Support for international and domestic justice mechanisms should be explored.