

The EU's Response to Displacement from Ukraine

ECRE's Recommendations, updated 5 January 2023

ECRE's assessment is that the EU's response to displacement from Ukraine is largely positive, however, there are areas where changes can be made in order to better support displaced people and to ensure that asylum systems continue to function. This document collates and updates ECRE's recommendations to the EU and its Member States. It draws on the work of ECRE's members across Europe which are directly involved in the response. See also ECRE's Information Sheet, which provides a detailed analysis of implementation of the Temporary Protection Directive (TPD) country by country, available [here](#).

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

ECRE calls on EU Member States (EUMS) to continue efforts in operationalising 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 the guidelines to ensure a slightly wider scope of the temporary protection regime has the potential to significantly reduce the administrative burden on the EUMS.

EUMS should further:

- Ensure that registration takes place in a rapid and efficient manner, including the timely updating of the Temporary Protection Registration Platform;
- Treat documents available in digital format (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 the entire duration of the TPD regime 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 unable to access 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;
- Ensure that neither registration for TP nor residence permits are 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

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, the Member States concerned should adjust their practice immediately:

- Non-issuance or delayed issuance of residence permits, which is in clear violation of the TPD. In addition, residence permits issued have to be included in the [list of residence permits issued by member states](#) to ensure their recognition and the possibility to enjoy freedom of movement.
- Lack of clear information about the rights of TP beneficiaries made available in relevant languages and in an easily accessible form.

For the following, 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. Additionally, there should be a mechanism to challenge the decisions related to the TP status.

- **Problems with narrow family definitions:** there have been cases of differential treatment of unmarried partners and or cases where third-country nationals married to Ukrainians have fled and are not covered by the TPD, again contravening the Decision. Narrow interpretation of dependency also affects third-country nationals including the parents of children with Ukrainian citizenship, as well as Ukrainian parents of children who are nationals of third countries.
- **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 (see Section 3).

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.
- **Access to suitable and long-term accommodation has to be ensured:** given the particular needs of people living with disabilities and children, the general practice of institutionalisation should be kept to an absolute minimum, in line with good practice, with preference given to the provision of accessible and suitable accommodation instead of placement in institutions. Efforts should be increased to ensure availability of long-term accommodation.
- **Family reunification requires more support:** due to the lack of identification, family tracing is proving difficult; EUMS should thus put in place systems to facilitate family reunification.
- **Identification and registration of unaccompanied and separated children is weak:** more cooperation is required among the EUMS to strengthen the identification and registration of unaccompanied and separated children fleeing the conflict, to support family reunification.

3. Maintaining TP status for the whole duration of the TPD regime

Diverging policies in MS regarding pendular movements of TP beneficiaries between EUMS and Ukraine pose a high risk of premature withdrawal of the TP status and thus the suspension of related rights and benefits. To avoid the concomitant administrative burden, and in order to respect the objectives and purpose of the TPD, namely to ensure minimum standards and to balance efforts across the EU, EUMS should:

- Maintain TP status for TP beneficiaries until an official decision on the termination of the TPD or its expiry after the three-year term;
- If necessary, and following individual assessment, use de-activation of TP-related benefits instead of de-registration of the TP status in the event of a notified voluntary return;
- Refrain from refusing re-entry to EUMS for people who have returned to Ukraine;
- Ensure rapid re-activation of the TP status upon return to an EUMS in order to facilitate the process of regaining access to the rights afforded by the TPD;
- Update in a timely manner the relevant data on the Temporary Protection Registration Platform, managed by the European Commission, including on de-activation of the TP status;

- The EU Fundamental Rights Agency (FRA) should monitor the situation on the border with Ukraine to ensure that there are no obstacles to the re-entry of TP status holders after short-term visits or voluntary returns.

4. Responses for People fleeing Ukraine who are outside the scope of the TPD regime

- Access to asylum has to be guaranteed to anyone in fear of persecution. Other forms of protection and – where relevant – legal residence should be made available to third country nationals who fall outside the scope of the TPD.
- For people who can and wish to return safely to their home countries, residence permits to allow time for travel arrangements, access to Embassies, as well as support for return travel, are necessary.
- Access to asylum is particularly important for the categories of people leaving Ukraine who are at particular risk following the invasion, including Belarussians and Russians in Ukraine who do not fall within the scope of the TPD, and defectors from the Russian army in Ukraine.

5. Responses for people fleeing Russia

- There a large number of people fleeing Russia who are likely to be in need of international protection. Those at risk of persecution in Russia and fleeing Russia, include human rights defenders, human rights lawyers, activists, journalists, and men fleeing military conscription. Access to asylum is crucial, and applicants should benefit from all relevant safeguards under international refugee law and the CEAS.
- EUMS should support those fleeing Russia with safe routes out of the country and into the EU. Obligations on access to asylum, including on provision of information on how to access protection, should be respected for these groups of people in need, as for any other.

6. Access at the EU's Borders

- All persons fleeing war should be able to cross borders in order to seek protection in the neighboring countries.
- 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.

7. Adequate Funding and Distribution to those Best Placed to Respond

- Member States should invest in more efficient and humane asylum and migration systems for all, through adequate resourcing and respect for legal obligations. Rather than allowing development of a two-tier system, lessons from the Ukraine response should be applied to the asylum system as a whole.
- The financial response should be primarily focused on long-term socio-economic inclusion of temporary protection beneficiaries, by making full use of possibilities under the European Social Fund+, and under the CARE initiative.
- Funding available 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 in support in the EUMS most affected, especially at the point of immediate arrival. Where relevant, 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. Member States should ensure diversification of beneficiaries receiving EU funding, including by implementing the requirement to grant a minimum of 30% of resources to civil society organisations and local authorities for both AMIF and Cohesion funds. Funding modalities, including eligibility criteria, of both AMIF and Cohesion funds must be simplified to ensure that funding is accessible to civil society.

- Additional direct funding modalities for both AMIF and Cohesion funding should be made available, including through direct management by the European Commission. It is essential to ensure that service providers, including civil society and international organisations, in the countries most affected receive direct support, especially given longstanding questions about the absorption capacity and management of funds by Member States. Ongoing concerns about the rule of law mean it may not be appropriate to provide (additional) funding to certain EUMS.
- Accountability and transparency of resources for displaced people should be ensured by systematically gathering country-specific data and by publishing regular updates on the implementation at the Member State and EU levels, including by sharing information on the discussions taking place in the framework of the Solidarity Platform.
- Long-term planning should include securing sufficient resources for future emergencies in order to minimise the risk of diversion of resources from other areas, priorities and crises.
- The Partnership Principle should be applied by involving civil society, local authorities, and migrant- and refugee-led organisations in the re-programming, implementation and monitoring and evaluation of actions to respond to Ukraine displacement, including through regular consultations of the monitoring committees.

8. EU Agencies' Support for Access to Territory and for Protection in the EU

- The EU Asylum Agency (EUAA) should continue to provide operational support (as it is doing in [12 EUMS](#)), covering both temporary protection and the wider implementation of asylum rules by the EUMS, as well as maintaining its assistance to Moldova.
- Where EUMS are 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 the border, the deployment of Frontex should be considered, but always to be accompanied with the deployment of fundamental rights monitors.

9. 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 is not a primary consideration, 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 temporary protection status are set out in the Council Implementing Decision. The EU can play a role through the provision of funding and expertise tied to accessing the rights specified.
- Although a comprehensive picture is not yet available, preliminary evidence indicates that there are major challenges in accessing the rights set out in the Decision in most of the EUMS, with particular concerns relating to access to housing, education and medical services.
- The unspent resources under AMIF, Cohesion Funds (CARE initiative) and REACT-EU must be allocated 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 the 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 the 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.
 - 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.
 - The current validity of the TPD-related regime until March 2024 is welcome, as is its potential further prolongation. Nonetheless, EUMS should already develop strategies for transitioning out of the TP system. This could include the assessment of individual asylum applications and other protection claims, as well as development of labour mobility frameworks and ensuring access to long-term resident status. Considering the possibility of an increase in returns upon the ending of TP status, it is also important to adopt an inclusive approach to the reconstruction of Ukraine which addresses the needs of ethnic minorities and other vulnerable groups.

10. Solidarity Contributions from across the EU

- All EUMS should offer support, including relocation and hosting, via the Solidarity Platform.
- To address the lack of transparency regarding the functioning of the Solidarity Platform, the European Commission should consider creating an *ad hoc* expert group attached to the Platform, which could include civil society and other Ukrainian stakeholders. The expert group could inform further policy-making related to TPD implementation and support a response suited to the level of displacement from Ukraine.
- Additionally, the European Commission should address flaws in the Registration Platform launched in the framework of the Solidarity Platform, to allow for efficient coordination and the exchange of information among EUMS.
- 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 continue to be an option for all people covered under the temporary protection regime. Safe passage within Europe is essential.

11. Invest in wider Asylum Systems

- The TPD is part of the CEAS, being an instrument for use during a 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, despite increased pressure. It should not then be used as an alternative to a functioning CEAS or as a justification for differential treatment.
- The proposal to repeal the TPD as included in the draft Regulation addressing situations of crisis and force majeure in the field of migration and asylum (the Crisis Regulation), should be firmly rejected by co-legislators. The value of the Crisis Regulation overall is doubtful – the response to displacement from Ukraine demonstrates that the EU can deal with mass arrivals.

The main elements of an effective response include rapid access to protection, freedom of movement inside the EU, and EU support to MS.

- Despite the increased responsibilities generated by the war, asylum systems in Europe need to continue to function, with EUMS ensuring that protection is available for all. The Ukraine displacement is not an excuse for a 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 asylum systems so that 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.

12. Support Humanitarian Relief, Peace and Justice in Ukraine

- Humanitarian support should continue being 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 continue, 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 relevant provisions of international law, including respective mandates, and based on experience and ownership should be respected.
- Governments should support the efforts of the ICC 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.