

MOVEMENT TO AND FROM UKRAINE UNDER THE TEMPORARY PROTECTION DIRECTIVE

ECRE's analysis of EU Member States' policies and practices on "pendular" movement to and from Ukraine and its recommendations to ensure security of status and rights for people covered by the TPD regime.

I. INTRODUCTION

According to the United Nations Refugee Agency (UNHCR), following Russia's invasion of Ukraine on 24 February 2022, more than **7.8 million** displaced persons from Ukraine have been recorded in Europe, with nearly 4.8 million registrations for Temporary Protection or similar national protection statuses. The response of the EU has been marked by the decision to trigger the **Temporary Protection Directive** (2001/55/EC) (TPD) on 4 March 2022 – for the first time since its adoption in 2001. The unprecedented and speedy measure, in contrast to other responses to displacements, allowed for an **effective response** and granted access to a wide spectrum of rights to those fleeing Ukraine. This includes the possibility to choose the Member State where the application for temporary protection (TP) is submitted and the rapid issuance of residence permits, as well as access to a number of socio-economic rights.

In addition, in line with the **Council Implementing Decision**, Article 11 of the TPD restricting the movement to other EU Member States has not been applied, which enables free movement in the EU. Besides facilitated intra-EU movement, TP beneficiaries are able to visit Ukraine. A significant number of back-and-forth movements – so-called "pendular" movement – has been recorded: as of 1 November 2022, UNHCR had registered more than **7 million crossings** to Ukraine compared to 15 million border crossings *from* Ukraine. This data includes the pendular movements to and from Ukraine and demonstrates the fluid dynamics of the conflict-induced displacement.

The wording of the TPD provides no definition of "short-term" visit, which, along with the **diverging transposition** of

the TPD, results in considerable inconsistencies across the EU and a variety of practices in relation to the maintaining, freezing and de-registering of TPD status in response to pendular movements. Due to the volatility of the situation in Ukraine, and the [uncertainty](#) of current TP beneficiaries about their possible future voluntary return to Ukraine, it is essential to ensure continued access to the protection afforded by the Directive and the respective rights and benefits even in the case of pendular movement.

Given the absence of the clear legal provisions regulating pendular movements to and from Ukraine of TP holders, this Policy Note analyses the related practices of the EU Member States considering the [purpose](#) and objectives of the TPD, namely to lighten the administrative burden on the asylum system, to ensure minimum standards for TP, and to promote a balance of efforts between the Member States in receiving displaced persons. The Policy Note concludes by outlining a set of recommendations.

II. ANALYSIS

RISK OF PREMATURE WITHDRAWAL OF TP STATUS

The EU's response to the displacement from Ukraine based on the activation of the TPD affords persons displaced from Ukraine a set of rights tied to their TP status. This includes the right to move freely within the EU. The European Commission also recommended that Member States allow TP beneficiaries to carry out trips to Ukraine without losing TP status. In the case of voluntary return, in line with [Article 21 \(2\)](#) of the TPD, as long as the TPD remains active, former TP beneficiaries should be allowed to return to the host EU Member State even after they have voluntarily returned to Ukraine. It should be noted that in refugee law, return to the country of origin does not automatically entail the loss of refugee status, which [persists until a durable and sustainable solution is achieved](#). This can also be applied to the current situation of the people displaced from Ukraine, given that there is no prospect of safe and durable conditions in the country for now. This implies that TP status should not be withdrawn after a return journey to and from Ukraine, at least not before an official decision on the termination of the TPD has been taken or before its expiry after the three-year term.

The legal framework has been complemented by clarifications from the European Commission, which, first, [acknowledge](#) the need to carry out trips to Ukraine by TP beneficiaries for family and other reasons, and, second, [discourage](#) EU Member States from the de-registration of those returning home for a longer period. At the same time, it has been recommended that TP beneficiaries [notify the national or local authorities](#) in the host Member State about their intention to return to Ukraine when there is a [notification system in place](#). Following this recommendation, the good practices of [Finland](#) and [Luxemburg](#) show that displaced persons granted TP have the possibility of short-term trips to Ukraine without having to specify their duration. In the latter case there is a need to renounce the TP status with the authorities in the event of a voluntary return. Similarly, [the French government](#) allows temporary trips to Ukraine without any impact on the status of TP beneficiaries, although it is "preferred" that the return occurs while their provisional residence permit is still valid.

DIFFERENT APPROACHES TO PENDULAR MOVEMENTS

Further attempts to clarify the terms regulating movement under the TPD have been made by UNHCR in its recent [report](#), which recommends that visits not exceeding [three months](#) are considered short-term and thus do not affect the TP beneficiary's status and related rights. This approach is applied in [Belgium](#), where a short visit to Ukraine, where return occurs within three months does not lead to cessation of the TP status. At the same time, planned trips exceeding this term should be flagged to municipalities, with a possibility to re-apply for the TP status on return if that is after three months.

Other Member States have adopted a more restrictive approach to pendular movements which is at odds with the spirit of the TPD. In Poland, the country hosting the [highest number](#) of displaced people from Ukraine, a short-term visit is generally defined as one not exceeding [one month](#). Longer absences from the territory mean that TP beneficiaries lose the right to legally stay in Poland. Similarly, in [the Netherlands](#), TP beneficiaries are required to report any planned trip to the authorities; those not exceeding a 28-day period do not affect the benefits related to social assistance. Short visits to Ukraine are only possible for Ukrainian nationals who hold a biometric passport and have proof of residency in the Netherlands as a TP-beneficiary. A short-term visit to Ukraine does not result in de-registration of TP status. On the contrary, [Malta's approach](#) is to withdraw TP status, irrespective of the duration of the visit to Ukraine and the reason behind it, albeit with the possibility to request TP status again upon return to Malta. Even more restrictive is the Swiss temporary protection framework (S-status) which [can be revoked](#) if the person stays longer than fifteen days in Ukraine, unless a longer stay abroad has been registered in advance.

Based on the overview of the above practices, ECRE's concern is that setting any specific term for short-term trips

poses a risk of arbitrariness and may lead to premature suspension of TP-related rights and the withdrawal of the TP status. ECRE therefore stresses the need for individual assessment to avoid the automatic cessation of status and/or withdrawal of rights. Besides ensuring minimum standards for TP holders, this approach would also lessen the administrative burden on states by avoiding de-registration and maintaining TP until the TPD regime officially ends.

OPTING FOR *DE-ACTIVATION* INSTEAD OF DE-REGISTRATION

The fluidity of the war in Ukraine inevitably shapes individuals' decision-making related to their stay in the EU and return to Ukraine. A recent study by UNHCR on the intentions of the people displaced from Ukraine [suggests](#) that "43 per cent are still undecided on whether to go back or not in the next three months, including 4 per cent who reported intentions to go back but were not sure whether it would be on a permanent basis", while only 13 per cent are planning a permanent return to Ukraine in the upcoming months. These figures imply that pendular cross-border movements are likely to persist, revealing the need to ensure continuous access to TP-related rights. In ECRE's view, to preserve the TP status for the duration of the TPD regime and to avoid related burdens on administrative authorities deriving from the potential need for re-registrations for TP, notifications of a voluntary return to Ukraine should lead at most to a temporary de-activation of the TP status or simply a temporary suspension of certain benefits, rather than complete de-registration of the TP status.

GOOD PRACTICES RELATED TO TRAVEL UNDER TP REGIMES

In refugee law, return to the country of origin does not automatically imply the loss of refugee status, which persists until a durable and sustainable solution is achieved. Similarly, the right to engage in pendular movement to and from the country of origin is not a novel phenomenon arising just for the TPD. Analysis of other national TP regimes shows the established practice of including similar provisions in TP frameworks.

For instance, the United States' [Temporary Protection Status](#) (TPS) grants access to a set of rights to meet short-term needs in the event of an [armed conflict, natural disaster or other extraordinary conditions](#) in the country of origin. It also includes the right to apply for travel authorization, known as "[advance parole](#)", that [allows](#) the beneficiaries to travel abroad for 90 days, including the possibility of multiple entries and exits from the United States, all without losing the TPS. Turkey's TP regime is another example: although usually return to a country of origin is classed as [voluntary repatriation](#), which triggers the individual immediately losing their TP status, an exception has been made for Syrian refugees and TP beneficiaries. Visits to Syria were [allowed](#) for the Eid al-Adha holiday. These visits did not have a cessation effect on the protection status in Turkey and are registered via a digital platform.

ENSURING ELIGIBILITY FOR LONG-TERM RESIDENCE STATUS

Another consideration related to the movement to and from Ukraine under the TPD is how it might impact the eligibility of TP holders for long-term residence in the EU. ECRE draws attention to the [proposal](#) from the European Commission for a recast of the Directive on EU long-term resident status. ECRE urges that TP beneficiaries should be covered by the recast Directive as proposed by the European Parliament in its recent [draft report](#). In addition, the specific circumstances of pendular movements of TP beneficiaries should not present a bar to access to the EU long-term residence permit, meaning that it should be clear that such visits do not constitute a breach of the uninterrupted stay criterion.

III. RECOMMENDATIONS

Overall, there is a need for both clearer guidance from the European Commission and for a change of practice in some Member States. It is important that TP status is maintained for as long as the TPD remains active. In addition, the right to exercise voluntary return to Ukraine and then re-enter the host Member State should be ensured, given the rapidly changing situation in Ukraine, which means that even those who intend to return for a longer period or permanently may have to leave again. In cases of notified voluntary return, the necessity to de-activate certain benefits should be assessed individually, and should be resorted to instead of the complete de-registration of the TP status. In their negotiations of the recast Directive on the EU long-term resident status, the European Parliament and the Council of the EU should ensure that the pendular movements of TP beneficiaries do not bar them from eligibility for long term residence permits.

To the European Commission:

- » Develop guidance for EU Member States to a) discourage the de-registration of TP beneficiaries for as long as the TPD regime is in place; b) in cases of notified voluntary return to Ukraine, use only temporary de-activation of TP status or temporary suspension of benefits, always based on individualised assessment rather than blanket recourse to de-registration.

- » Create an ad hoc expert group attached to the Solidarity Platform to include Ukrainian stakeholders in order to inform any policy-making related to TP status.

To the co-legislators on provisions related to EU long-term residency:

- » Ensure that TP beneficiaries are eligible for the EU long-term residence permit and that TPD-specific pendular movements are not considered to breach the requirement of uninterrupted stay.

To EU Member States:

- » Maintain TP status for TP beneficiaries until an official decision on the termination of the TPD is taken or until its expiry after the three-year term.
- » If necessary and following an individual assessment, use only temporary de-activation of TP status or temporary suspension of TP-related benefits rather than de-registration of the TP status in the event of a notified voluntary return.
- » Refrain from refusing re-entry to EU Member States after a person has returned to Ukraine;
- » Ensure rapid re-activation of the TP status upon return to the EU Member State in order to facilitate the process of regaining access to the rights afforded by the TPD.
- » Update relevant data in a timely manner on the Temporary Protection Registration Platform, managed by the European Commission, including on de-activation of the TP status.

To the EU Fundamental Rights Agency:

- » 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.