

The EU's Response to Displacement from Ukraine

ECRE's Recommendations, updated 10 October 2023

1. 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 application 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 (TPBs) 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 in question need to adjust their practice immediately:

- Non-issuance or delayed issuance of residence permits, which is in clear violation of the TPD; in addition, the residence permits issued should 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 issues, clarification in the form of 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 Ukrainian ones have fled and are not covered by the TPD, again contravening the Decision. Narrow interpretation of dependency also affects third-country nationals who are parents of children with Ukrainian citizenship or Ukrainian parents of the children who nationals of third countries.
- **Different interpretations of freedom of movement by EUMS:** while the European Commission has publicly confirmed that beneficiaries of temporary protection are 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 2).

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 particular needs of people living with disabilities and children, the general practice of institutionalisation should be minimised, favouring the provision of accessible and suitable accommodation instead of the placement in specific institutions. Moreover, more efforts should be made to enhance long-term accommodation.
- **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.
- **Identification and registration of unaccompanied and separated children remains flawed:** more cooperation is required among the EUMS to strengthen the identification and registration of unaccompanied and separated children fleeing the armed conflict with the aim of family reunification. The best interest of the child shall be prioritised in all decisions involving children.

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

Diverging policies regarding the pendular movements of TP beneficiaries between EUMS and Ukraine pose a high risk of premature withdrawal of the TP status and the suspension of related rights and benefits. To avoid the complementary administrative burden and to follow the objective and purpose of the TPD, namely to ensure minimum standards for TP, and to promote a balance of efforts between the Member States in receiving displaced persons, EUMS should:

- Maintain TP status for TP beneficiaries until an official decision on the termination of the TPD or its expiry after the 3-year term;
- Resort to de-activation of TP-related benefits instead of de-registration of the TP status in the event of a notified voluntary return, following an individual assessment;
- Refrain from introducing refusals on re-entry to EU Member States for people who have performed the return to Ukraine;
- Ensure speedy re-activation of the TP status upon return to EU Member States, to facilitate the process of regaining access to the rights afforded by the TPD;
- Update relevant data on the Temporary Protection Registration Platform, managed by the European Commission, in a timely manner, including on de-activation of the TP status.
- In cases where a broader interpretation of the TP eligibility scope was adopted in line with Article 2(3) of the Council Decision, including those who did not have the specified “permanent” legal right of residence in Ukraine, EUMS should refrain from revising this policy by restraining access to TP and its renewal to this group.

For 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.

3. Developing longer-term options for current TP holders

In light of the ongoing war and the related uncertainty experienced by current TP status holders, measures should be taken to extend their legal status to the full three years afforded by the TPD. Following the Council's Decision to extend the TPD until March 2025, a broader interpretation of the TPD to enable its extension beyond March 2025 at least for another (fourth) supplementary year should be explored and introduced as soon as possible. This is particularly important given the potential delays in decision making in 2024 following the European Parliament elections and the appointment of a new College of Commissioners.

To ensure a smooth transition of out of TP regime upon its expiry, including avoiding panic, mitigating the risk of legal limbo, and tackling the increasing uncertainty both at the level of the EUMS and among current TP holders, the following should be addressed:

- The European Commission should maintain the approach of coordination and leadership in response to the displacement from Ukraine beyond emergency assistance, including developing EU-wide policy for post-TP options and continuing to provide assistance to the most affected EUMS.
- In the framework of ongoing revision of the EU Long-Term Residence Directive (LTRD), co-legislators should ensure the inclusion of TP beneficiaries and holders of other forms of national protection as eligible groups, with a possibility to accumulate periods of residence in different EUMS and reducing the disproportionate 5-year requirement of continuous stay. In addition, the co-legislators should extend the permitted absences to 12 months in line with the proposal of the European Parliament and adopt a flexible approach to exceptional circumstances, allowing for necessary derogations, given the specificity of the current TP regime which allows visits and short-term stays in Ukraine. Moreover, the co-legislators should reduce and clarify the period of assessment of stable and regular income and take into account breaks due to individual circumstances, as well as include social assistance for those unable to work and consider individual circumstances while evaluating integration requirements.
- EUMS should ensure access to asylum applications and other protection claims, as well as to permits under national law related to employment, student status or a specific health condition. Respective national frameworks should be explored and developed taking into account the needs of vulnerable groups.

4. Focus on inclusion/integration through access to rights

- 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 persist on 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.

- More than one and a half years since the activation of the TPD, 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 1) limited access to long-term independent housing; 2) lack of facilitated procedures for recognition of qualifications and available training; 3) impeded access to education; and 4) limited access to healthcare and social welfare.
- At the EU level, there should be 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 and more active use of the existing inclusion-related policy and coordination mechanisms (e.g. European Integration Network) including coordination with private sector as per the [commitments taken](#) by 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.
- 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.
- Reinforced and consistent coordination between all state actors responsible for the reception of TP applicants is essential.
- To facilitate inclusion through ensured access to socio-economic rights, specific attention should be paid to:
 - improving public housing conditions in line with EUAA guidelines, creating more affordable long-term private housing solutions; developing better matching and vetting systems for private housing to tackle the risks of abuse and exploitation given limited safeguards;
 - ensuring direct access to labour markets and reducing administrative barriers to access to education, through simplified recognition of qualifications and diplomas as well as facilitated access to language courses and counselling;
 - simplifying conditions for access to healthcare beyond emergency assistance, sustaining aid in terms of health insurance without time limits; enhancing translation assistance and increasing the capacities of mental healthcare;
 - providing TPBs with full access to social welfare, harmonising the respective standards and ensuring there is a particular focus on the most vulnerable groups.

5. Continue to ensure access to protection through implementation of the Council Decision on Temporary Protection and Following the Operational Guidelines

ECRE calls on EU Member States (EUMS) to continue efforts to operationalise temporary protection, using [the European Commission's operational guidelines](#) to ensure uniform application across the EU. 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 on the EUMS. 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.

EUMS should further:

- Ensure that registration takes place in a speedy 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 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;
- Ensure that neither registration for TP nor residence permits will be affected should a beneficiary return to Ukraine temporarily.

For the EUAA:

- 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.

6. 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 should be made available to third-country nationals who fall outside the scope of the TPD.
- These options should cover categories of people at particular risk following the invasion of Ukraine, including Belarussians and Russians in Ukraine who do not fall within the scope of 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.

7. Responses for people fleeing Russia

- Those at risk of persecution in Russia, including human rights defenders, journalists, human rights 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.
- EUMS should support those fleeing Russia with safe and legal pathways and the provision of information on how to access protection.

8. Access at the EU's borders

- All persons fleeing war should be able to cross the border and seek protection in the neighbouring 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 fulfil entry conditions.

9. Adequate funding and distribution to those best-placed to respond

- In the context of the revision of the Multiannual Financial Framework, additional resources should be used for a comprehensive implementation of EU migration and asylum policy, which includes reception conditions, accommodation and procedural guarantees, and refrain from creating a two-tier system that would exclude certain categories or nationalities of people.
- The financial response should be primarily focused on long-term socio-economic inclusion of TPBs, by making full use of possibilities under the European Social Fund +, and under CARE initiatives.
- Funding available under the Asylum, Migration and Integration Fund (AMIF) should be focused on reinforcing reception capacity, staffing in asylum systems, for civil society service provision of support in the EUMS most affected, especially at the point of immediate arrival, as well as for information provision, legal aid, and social, medical and psychological support.
- Member States should ensure diversification in EU funding beneficiaries by implementing the requirement of granting a minimum of 30% of resources to civil society organisations and local authorities for Cohesion and AMIF 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 of both AMIF and Cohesion funding should be made available, including through direct management by the European Commission, in order 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, as well as the rule of law debate, which leads to questions concerning the appropriateness of providing (additional) funding to certain EUMS.
- Accountability and transparency of resourcing of support to 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 level, including by sharing information on the discussions taking place in the framework of the Solidarity Platform.
- Long-term planning should be improved by securing sufficient resources for future emergencies in order to reduce to a minimum the risk of diversion of resources from other priorities.
- 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 responding to Ukraine displacement, including through regular consultations of the monitoring committees.

10. EU Agency support for access to territory and for protection in the EU

- The EU Asylum Agency (EUAA) should continue providing operational support (currently in [15 EUMS](#)) with the implementation of asylum systems, reception and temporary protection activities, as well to maintain its assistance provision to Moldova.
- If some 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.

11. Solidarity contributions from across the EU

- All EUMS should continue offering support, including relocation/hosting, via the Solidarity Platform.
- The Solidarity Platform should hold more frequent consultations with civil society particularly Ukrainian experts, and TP holders themselves, to inform any further policy-making related to the TPD implementation as well as coordinated transitioning out of the TP regime.
- Additionally, the European Commission should address the drawback of the Registration Platform launched in the framework of the Solidarity Platform, to allow for efficient coordination and the exchange of information among EUMS. In case of onward movements and presented applications for TP in a second Member State, the authorities should refrain from imposing the requirement of providing a document proving the de-registration of the TP status in the Member States of previous registrations. Instead, the Registration Platform should be used to track the status of TP registrations, without imposing any additional burden of proof on displaced persons.

- As set out in the TPD, moving to another EUMS should continue being available for all persons covered under the temporary protection regime. Safe passage within Europe is essential.

12. Invest in wider asylum systems

- The TPD is part of the CEAS, as an instrument for use in the situation of large-scale arrivals, 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 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 line with [UNHCR's non-returns advisory](#), EUMS should remove Ukraine from “safe country of origin” lists.
- Additionally, 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.

13. Support Reconstruction, 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 EUMS should support the proposal of creating a special instrument dedicated to Ukraine reconstruction, as per the envisaged [“Ukraine Reserve”](#) in the framework of the proposed revision of the Multiannual Financial Framework. Provision of reconstruction assistance should follow an inclusive approach, with particular consideration of the needs of ethnic minorities and vulnerable groups.
- 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 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.