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What will happen to the refugees and asylum seekers that fled Ukraine? Addressing the threat of legal limbo after temporary protection ends

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Introduction

After millions of people fled to the EU following Russia's invasion of Ukraine, [Council Directive 2001/55/EC](#) was activated for the first time in more than 20 years. Temporary protection was designed to protect not only Ukrainian nationals and their family members, but also people recognised as stateless and people granted international protection in Ukraine (see Article 2 of [Council Implementing Decision 2022/382](#)). When forced to flee, however, these particularly vulnerable categories face [barriers to protection](#) in the EU. These people's documents may not be recognised by Member States, or they may lack the documents required of third-country nationals. States may insist that asylum seekers and refugees provide the [national ID](#) of their country of origin, which is held by authorities in Ukraine: they cannot travel to retrieve it (due to a lack of travel documents).

Many asylum seekers who found themselves in Ukraine when the full-scale war broke out had been waiting for months or years for a decision due to Ukraine's [dysfunctional](#) asylum procedure. Whereas people with international protection documents are explicitly included in the scope of temporary protection, people who were seeking asylum are much less likely to be protected. They are not specifically included in the scope: rather, Member States can *choose* to offer temporary protection to people who were legally residing in Ukraine and cannot return safely to their country (or can instead offer "adequate protection under national law" - Article 2(2) of Council [Decision 2022/382](#)). On these

grounds, some asylum seekers have received temporary protection, but most have been redirected to the asylum procedure or remain without status.

Temporary protection currently lasts until 4 March 2025. After this date, temporary protection holders must either access another legal status in the EU Member State they reside in, or return to Ukraine if – and only if – the hostilities have ended (Article 21 of Council Directive 2001/55/EC). Non-Ukrainian refugees and asylum seekers, even if they have received temporary protection so far, risk being excluded from national statuses offered when the Council Directive 2001/55/EC expires. Further, they risk being returned to their country of origin, or to Ukraine (while conflict persists), or being held in detention. Those who did not succeed in obtaining temporary protection are in an even more frightening situation: they may be undocumented, or unable to access an asylum procedure. Currently, no EU-wide approach has been announced that would offer harmonised and durable legal status to the some four million people currently protected by temporary protection.

In this blog, we explore how four possible EU-wide options for post-TPD status would impact the rights of asylum seekers and refugees who fled Ukraine (both those who benefit from temporary protection and those who did not obtain temporary protection).

Four options for post-TPD protection

To protect non-Ukrainian refugees and asylum seekers from refoulement and harm, various options are on the table to ensure their legal stay in an EU Member State once the Council Directive 2001/55/EC expires. These four options apply to both Ukrainians and non-Ukrainians, but this is about non-Ukrainian refugees and asylum seekers.

Firstly, the European Commission and Spanish Presidency have raised the possibility of a further one-year extension of the Council Directive 2001/55/EC after 2025. Herein, both the EC and Spanish presidency have discussed this in public meetings, but it has not been proposed in writing. However, Article 4 of Council Directive 2001/55/EC leaves little doubt that the current maximum duration of temporary protection is 3 years. The protection regime has been extended twice, and the three-year limit will be reached in March 2025. If any further extension of temporary protection is to respect the rule of law, the EU would need to amend Council Directive 2001/55/EC (legislation dating from 2001) to increase the maximum possible duration of the Temporary Protection regime (for instance, until the end of hostilities in Ukraine). As doing so would extend the duration of protection of any other future population protected under TPD (and there is some political reticence to “opening the doors” to more expansive protection), this scenario can be considered extremely unlikely.

More pertinently, however, any further extension of temporary protection would only buy time in finding durable solutions for people displaced. This protection remains temporary in nature. Moreover, any further extension of the TPD would do little to non-Ukrainians who fled Ukraine but who do not benefit from temporary protection.

Secondly, non-Ukrainian refugees and asylum seekers with temporary protection may seek to access national legal statuses in the Member States, including visas and temporary or permanent resident permits (e.g. on the basis of work or study). Asylum seekers and refugees are unlikely to be able to access work or study permits, and thus risk being excluded from protection and rights. The same can be said for other vulnerable groups, such as elderly people, people with disabilities, people with mental health concerns, and minors. Though humanitarian permits are possible at national level, this would create a potentially vast range of different protections and permits from state to state. Moreover, currently holders of temporary protection enjoy a wide range of rights under Council Directive 2001/55/EC. The standard of protection and rights offered by national legal statuses may be lower than that offered by temporary protection. Further, non-Ukrainian refugees and asylum seekers face poor recognition of their Ukrainian documents by some Member States, and people who lack the passports of their countries of origin may be unable to prove their right to reside (e.g. Germany and the Netherlands have required passports, despite the fact that the Ukrainian authorities retain the passports of many asylum seekers and refugees).

A third, more coherent option, would be to amend the Long-Term Resident's Directive (Council Directive 2003/109/EC), as has already been proposed by European Council on Refugees and Exiles (ECRE). ECRE calls on the EU co-legislators to make the long-term residence status accessible after three years of legal and continuous residence (as opposed to the current five-year requirement) and to recognize the time spent as a temporary-protection right holder. This would offer non-Ukrainian refugees and asylum seekers who hold temporary protection, along with all people who fled Ukraine to the EU, access to full integration and equal treatment with nationals in access to rights. The negotiating mandate agreed by EU Member States on 23 November 2023 however does not promote access to status for TP holders. Whereas the European Parliament supported a three-year waiting period, the Council remains set on five years. Further, "the text is silent on how to count time spent on the territory for people who have obtained or applied for temporary protection". The co-legislators should rectify these issues and make it clear that TP holders can access Long-Term Residence. They must ensure also that there is no gap between the end of temporary protection and the entry into force of LTRD provisions that may offer durable status for people who fled Ukraine. Currently, a gap of 13 months or more risks leaving people in limbo. Even if the LTRD is amended to include TP holders, it

should be noted that it is not an option for non-Ukrainians who did not obtain temporary protection.

A fourth, and perhaps most promising option, could be to offer *prima facie* refugee status to holders of temporary protection. This option is the most politically feasible and would provide a good scope of protection (unlike national statuses, which are likely to exclude many people) and a decent standard of protection. A *prima facie* approach is used in situations where individual status determination is unnecessary or impossible, for instance, in cases of large-scale displacement. By taking a collective approach (a new EU act or internal act of EU Member States), states could simultaneously avoid the collapse of asylum systems and the harmful effects of long waits for asylum decisions. Further, it could avoid the risk of detention (that non-Ukrainian asylum seekers are particularly likely to face) by bypassing individual refugee status determination procedures and the associated verification of documents and identities. This option would provide status to those asylum seekers and refugees who were granted temporary protection: however, we have noted throughout this piece that some third-country nationals have not received temporary protection. It is unlikely that collective asylum could be granted to everyone who has fled Ukraine, given the challenges in proving status in Ukraine. Rather, we foresee that a *prima facie* approach would equate to the “transfer” of TP holders to refugee status. Thus, non-Ukrainians who fled Ukraine would be subject to individual assessment.

Conclusion

Finding durable solutions for people who fled Ukraine after the expiry of temporary protection is a complex and pressing puzzle to solve. Refugees and asylum seekers who fled Ukraine to the EU find themselves in a situation of heightened vulnerability and risk falling through the gaps as new statuses are determined. These people are already at risk of being denied status, protection, rights and services, as many find themselves on the margins of the temporary protection offered by the EU. The end of the temporary protection regime risks thrusting them into legal limbo and exposing them to detention and deportation.

When temporary protection expires in 2025, national permits will be offered to regularise the stay of people who fled Ukraine. Yet, vulnerable groups – including asylum seekers and refugees – are unlikely to be eligible for work or study-based permits, and humanitarian statuses will differ from state-to-state. If statuses for former temporary protection holders are determined at the discretion of Member States, we predict that asylum seekers and refugees will be either redirected to the asylum procedure or left undocumented, and thus exposed to uncertainty, precarity, exploitation, and even

trafficking. We propose that a harmonised, EU-wide approach would help to prevent fragmented and divergent practice across the EU, and to ensure the protection of vulnerable groups.

Assessing all of the possible options for legal stay, with a focus on harmonised, EU-wide solutions, should be a priority for the current Council Presidency trio – Spain, Belgium and Hungary – the Commission, and all protection actors, such as international and national NGOs. Decision-makers in the EU must act to avoid fragmentation of statuses that would put vulnerable groups, including refugees and asylum seekers who fled Ukraine, at risk. In this blog, we assessed protection via the recast Council Directive 2003/109/EC and a collective approach to asylum as two possible favourable outcomes. Yet, a range of options might be used to protect people beyond 2025. The focus should be on ensuring (at least) the same standard of rights and entitlements as offered by the Council Directive 2001/55/EC and covering the same groups as now.