



Council of the European Union  
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**Interinstitutional files:**  
**2024/0143 (NLE)**

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**Brussels, 01 April 2025**

**WK 3811/2025 INIT**

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## **WORKING DOCUMENT**

From:	Presidency
To:	Working Party on Integration, Migration and Expulsion (Admission)
N° prev. doc.:	WK 3351/2025 INIT
Subject:	Temporary Protection Directive - Exit strategy - Discussion paper

In view of the WP IMEX (Admission) meeting of 4 April 2025 delegations will find attached the document on "Temporary Protection Directive - Exit strategy".

**Temporary Protection Directive - Exit strategy****Introduction**

More than 3 years ago, on 24 February 2022, Russia started an unprovoked and unjustified war of aggression against Ukraine that resulted in the highest migratory flows within Europe since World War II. Just a few days later, on 4 March 2022, in accordance with Article 5 of Directive 2001/55/EC<sup>1</sup>, the Council, working at an extremely high pace, unanimously adopted Implementing Decision (EU) 2022/382<sup>2</sup>. The Implementing Decision established the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, with the effect of introducing temporary protection (TP).

The decision allowed to ensure the same, harmonised standards of protection for millions of people fleeing the war in Ukraine to the EU. It also allowed for some extent of flexibility for the Member States, thus minimising the risk of overburdening the asylum systems.

The Temporary Protection Directive was adopted in 2001 as a measure to manage mass influx of persons and was based on the lessons learnt from hosting people fleeing the conflict in the former Yugoslavia. The Directive was therefore adopted more than 20 years before its first activation, at a very different stage of the EU integration. Considering these circumstances, it could not have taken into account the developments in the area of freedom, security and justice that have taken place since 2001. This is one of the reasons why its implementation has been challenging.

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<sup>1</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

<sup>2</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection

A decision to prolong this form of protection requires an assessment of the situation in Ukraine, which must allow for a safe and durable return with respect of fundamental rights. As the protection needs are related to displacement and the inability to return, the TPD foresees return to the country of origin as the main exit strategy when the TP ends. The preference is given to voluntary returns with a possibility of offering exploratory visits to make informed decision.

In accordance with Article 4(1) of Directive 2001/55/EC, temporary protection first applied for an initial period of 1 year, until 4 March 2023. It was then automatically extended for 1 additional year until 4 March 2024.

The Commission's communication of 8 March 2023<sup>3</sup> took note of the need for a smooth transition to alternative legal statuses that would allow access to rights beyond the duration of TP. An example would be the prolonging of residence and work permits or the creation of conditions to allow beneficiaries of TP to transit into other legal statuses.

### **Previous Council discussions**

During the Spanish Presidency, in the context of the informal SCIFA in July 2023, the Member States discussed possible future legal status of people displaced from Ukraine, if the TP scheme was to come to an end. The Spanish Presidency paper considered different possibilities, including transition to other legal migration statuses and their compatibility with maintaining temporary protection status, as well as transition to a new legal migration status at the end of temporary protection. However, at that stage, the discussion focused on the necessity to prolong the TP until 2025.

On 19 October 2023, in accordance with Article 4(2) of Directive 2001/55/EC, the Council unanimously adopted Implementing Decision (EU) 2023/2409<sup>4</sup>, extending the temporary protection introduced by Implementing Decision (EU) 2022/382 until 4 March 2025.

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<sup>3</sup> European Commission, 'Temporary protection for those fleeing Russia's war of aggression against Ukraine: one year on', COM(2023)140 final.

<sup>4</sup> Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382

In that context, the Commission noted that Article 4(2) of the TPD allows the Council to extend the temporary protection beyond 2025 for a period of up to one year, if the reasons for such protection persist.

At the informal meeting of Justice and Home Affairs Ministers during the Belgian Presidency, the political discussion on complementary/alternative avenues to temporary protection for beneficiaries of temporary protection (BTPs) underlined the need for an EU-coordinated transition towards other, more stable residence statuses allowing for a prolonged stay. The options considered included, inter alia, national legal migration channels and a special residence status / transitional status. Moreover, the ministers underlined the need for harmonisation at EU level, to avoid status shopping, and coordination between the EU and Ukraine to support future reconstruction efforts.

As a follow-up to the informal JHA Ministers meeting, on 1 March 2024, the Asylum Working Party discussed the extension of temporary protection beyond 2025 and the transition to complementary/alternative residence statuses. The delegations discussed the proposal for a new special residence status linked to the reconstruction of Ukraine, as proposed in the Asscher report<sup>5</sup>, and the prolongation of TP beyond 3 years. The possibility of voluntary return to Ukraine was considered by the Commission to fit more with the needs related to reconstruction rather than towards individual support.

Following the political agreement at the Justice and Home Affairs Council on 13 June 2024, temporary protection was extended until 4 March 2026.

The most recent Council discussion on the topic was conducted under the Hungarian Presidency, during the SCIFA meeting in September 2024. The SCIFA discussion focused on the main aspects and indicators that should be considered in order to make an informed decision with regards to shaping the transition out of temporary protection in order to ensure a coordinated approach.

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<sup>5</sup> INTEGRATION OF PEOPLE FLEEING UKRAINE IN THE EU. NOTE TO EUROPEAN COMMISSION Lodewijk Asscher, Special Adviser for Ukraine, May 2023

## **Latest exchange of views during the Solidarity Platform**

The Meeting of the Solidarity Platform, convened by the Commission on 27 March 2025, discussed three topics: 1) contingency planning and preparedness for the upcoming six months, 2) existing and potential measures for supporting Ukrainians in going back home, and 3) the future of temporary protection in relation to different possible scenarios for the upcoming months.

If the situation in Ukraine remains unchanged, the prolongation of temporary protection after March 2026 should be considered and a Council decision following a Commission proposal extending temporary protection should be adopted before summer break.

In case of a ceasefire, the scope and length of temporary protection may need to be amended. A *sui generis* EU residence permit is not possible due to the lack of a legal basis. However, further reflections on Article 21(3) of the TPD may be considered to find potential solutions. In order to avoid the overburdening of the asylum system and to limit onward movements, an EU coordinated approach on transitioning out of temporary protection should be ensured. This approach should also take into account the Ukrainian reconstruction needs. Therefore, further discussions at EU level are necessary.

## **Discussing exit strategies**

Taking into account current developments and different possible scenarios, the Polish Presidency believes that the aforementioned discussions should be followed up by an exchange of views between legal migration experts on the TP exit strategy. In order to prepare this point ahead of the IMEX (Admission) meeting on 4 April 2025, a questionnaire on the future of temporary protection beneficiaries was distributed among Member States. The responses provided by Member States offer an overview of the current situation in the EU and the expectations regarding future solutions. The Presidency would like to facilitate the exchange of experiences at the expert level. It will serve as the first step in the discussions in different Council preparatory bodies and as the basis for a discussion between Ministers during the JHA Council in June 2025.

The first step should be to understand the national legal migration alternatives to temporary protection that are available or planned in the near future in some Member States, as well as the reasoning for establishing them. Member States are also invited to present national policies that they may have adopted to allow for the transition of beneficiaries of temporary protection into EU legal migration statuses. We should take into consideration that the situation is not homogeneous in the Member States. There are various levels of integration and different initiatives are undertaken at national level. This should be taken into account when considering which residence permits and statuses may be considered as a part of exit strategy.

The Delegations are requested to share experiences and expectations of their respective Member States in this regard, including the procedural aspects and scope of the rights granted to permit holders.

### **Guiding questions for discussion**

- 1. Has your Member State adopted policies allowing for the transition out of temporary protection (i.e. national residence permit for work reasons, EU Blue Card, authorisation for study or research purposes, residence permit for humanitarian reasons)? If so, could you provide an estimate share of BTPs who transitioned from TP status to national schemes out of the total of beneficiaries of temporary protection in your Member State? If a person who transitioned to a national status is no longer entitled to such status (e.g. status based on employment and lost the job, person not in education anymore), would they be granted back temporary protection?**
- 2. What are the main challenges to transition out of temporary protection to alternative national or EU statuses (for example different rights provided, people are not interested, the transition is not yet encouraged, less clarity and stability compared to temporary protection)? If your Member States is not encouraging such a transition, could you please explain the rationale behind it?**
- 3. In the case of a coordinated approach at EU level of the transition out of the TPD status, what would that coordination entail (e.g. common denominators to avoid residence permit shopping/onward movements) and what other elements do you think should be included?**