

When EU temporary protection for displaced people from Ukraine ends

Possible scenarios

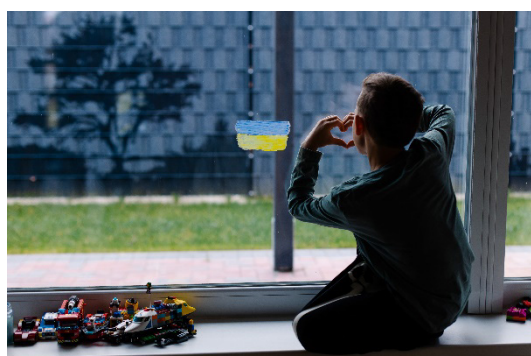
SUMMARY

With no end in sight to the war in Ukraine, the EU has started preparing for the post-March 2025 period, when temporary protection for displaced people from Ukraine ends. The Temporary Protection Directive – triggered for the first time ever in March 2022, shortly after Russia invaded Ukraine – has enabled EU Member States to offer assistance and rights to people in need of immediate protection.

In principle, once the temporary protection period ends, the general laws on protection and on non-EU nationals in Member States will apply, including on return. Yet, there is a general fear that when large numbers of beneficiaries of temporary protection suddenly start seeking international protection, asylum systems risk being overwhelmed. Moreover, uncertainty about temporary protection beneficiaries' legal status might place them in a legal limbo, with potential periods of irregular residence owing to slow processing of applications for international protection. Moreover, even if eligible for refugee or subsidiary protection status, beneficiaries will not enjoy the same rights as under the Temporary Protection Directive.

Academics and organisations dealing with migration management therefore agree on the urgency of finding a solution that would ensure a smooth transition out of the temporary protection regime and encourage eventual return to Ukraine. However, with the European elections taking place in June, the timing may not be ideal to amend existing EU legislation or craft new EU laws, as the legislative work in the European institutions will temporarily be put on hold. Moreover, a newly composed European Parliament and European Commission, as well as a new rotating presidency of the Council of the EU as from July, might also complicate decision-making.

This briefing provides an overview of the potential exit strategies discussed by experts in the field, including the pros and cons of the most widely discussed options.



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Introduction

Russia's unprovoked and unjustified invasion of Ukraine on 24 February 2022 has forced millions of people to flee Ukraine. To date, around [6.5 million](#) people have been **forced to seek refuge**, mostly in the EU and neighbouring countries.

Reacting swiftly, the EU decided to grant EU-wide temporary protection to people arriving from Ukraine. [Council Implementing Decision \(EU\) 2022/382](#) of 4 March 2022 – which entered into force the same day – took account of the mass arrival of displaced people from Ukraine and activated [Council Directive 2001/55/EC](#) of 20 July 2001 (the [Temporary Protection Directive](#), TPD) – for the first time ever. **The TPD enables EU Member States¹ to offer assistance and rights to people in need of immediate protection** (see box). [National-level legislation and policy](#) determine the exact scope of the entitlements of beneficiaries of temporary protection (BTPs). Temporary protection was granted initially for one year but has already been prolonged twice, until March 2025.

By the end of February 2024, there were [4.2 million](#) BTPs living in the EU. Over 98 % of them were Ukrainian nationals, and most were women (46 %) and children (32.9 %). Adult men represented 21.2 %. Although the [highest numbers](#) of BTPs were reported by Germany (1.3 million, or 30.4 % of total EU) and Poland (957 200, or 22.6%), the highest number of BTPs relative to the EU population were observed by Czechia (ratio of 35.6 per thousand people) and Lithuania (26.5). Temporary protection does not prevent BTPs from applying for international protection in the EU, although Member States may rule that the two legal statuses cannot be combined. Between March 2022 and December 2023, [34 000](#) Ukrainian nationals lodged asylum applications in the EU. The Member States have received [up to €17 billion](#) from the EU to cater for the needs of people fleeing the war in Ukraine.

Temporary protection

Temporary protection **waives the need to examine individual applications** and allows Ukrainian nationals – as well as other third-country nationals or stateless persons benefiting from international protection in Ukraine, as well as their family members – to enjoy **harmonised rights** across the EU. These rights include access to a residence permit, education, medical care, housing, the labour market and social welfare assistance. Once admitted onto EU territory, these people can **move freely within the EU**, choose the Member State in which they want to enjoy the rights attached to temporary protection, and join family and friends in the numerous diaspora networks across the EU.

Thanks to the rights they enjoy, and despite [differences](#) across EU Member States when it comes to [integration](#), many BTPs have found jobs, are enrolled in local schools or universities, and are learning the language of the Member State where they reside. Although refugees tend to be less likely to go back the longer they are out of their home country, surveys have indicated that most internally displaced persons from Ukraine do want to [return home](#) when it is safe to do so, and only 10 % of displaced Ukrainians have expressed a desire to [settle abroad permanently](#). Moreover, the Ukrainian authorities count on their people to go home eventually, as they are needed to help with the country's [reconstruction](#). People's willingness and ability to return will above all [depend on](#) the evolution of the war and the state of Ukraine's economy. With no indications that the war will end soon, Ukrainian and European authorities have started exploring the options available when temporary protection ends.

Temporary protection, an overall success

The European Commission, which coordinates cooperation and the exchange of information among the Member States through a 'solidarity platform', has produced [operational](#) and [other](#) guidelines to help them apply the directive. As this is the first time the directive has been activated, and given the speed with which it had to be implemented and applied, it has come under much scrutiny from day one. EU agencies, such as the EU Agency for Asylum ([EUAA](#)) and the Agency for Fundamental Rights ([FRA](#)), as well as the intergovernmental Organisation for Economic

Co-operation and Development ([OECD](#)) and the European Council on Refugees and Exiles ([ECRE](#)), a network of non-governmental organisations, are among those who have analysed the measures Member States have taken to address the arrival of displaced people from Ukraine. Despite the emergence of **divergent practices and policies owing to different interpretations of the TPD** (which are also due to Member States' leeway in devising their own laws on how to reach a directive's goals) – such as scope and eligibility; reception support; access to rights; freedom of movement in the EU; and how to deal with circular movements to and from Ukraine – **implementation has overall been assessed positively.**

The Commission, in its March 2023 [communication](#) on one year of temporary protection, qualified the TPD as 'the enabler of an unprecedented whole-of-society effort', praising the strong EU

Dual-intent integration

Given the fact that many BTPs intend to return to Ukraine as soon as the situation permits, the OECD pleads for working towards [dual-intent integration](#) of refugees from Ukraine. Whereas traditional integration policies focus on long-term residents and generally do not factor in the potential impact on the likelihood of return and reintegration, a dual-intent approach would prepare for both indefinite stay and possible return by deliberately seeking to minimise possible return barriers. Such an approach can be implemented by investing in Ukrainian refugees' [human capital](#).

coordinated approach. As the communication noted, such an approach will also be needed for any future action, in particular to ensure a smooth transition to alternative legal statuses that would allow access to rights beyond the maximum duration of temporary protection.

When the Commission presented its [proposal](#) for a crisis and force majeure regulation, as part of the 2020 [pact on migration and asylum](#), the TPD had not yet been activated and was meant to be replaced in the future by the new regulation. The TPD was adopted in the aftermath of the conflict in former Yugoslavia, when Europe

was confronted, for the first time since World War II, with mass displacements of people across the continent. Although the directive had been invoked several times, such as in response to the arrival of migrants from North Africa in [2011](#) and the migration crisis in [2015](#), it had never before been activated. However, when Russia invaded Ukraine, the Council considered that the scale of the influx would likely be such that there would be a clear risk that Member States would be unable to process the arrivals without adverse effects on their asylum systems, on the interests of the persons concerned and on those of others requesting protection.

In its communication, the Commission insisted that 'proper articulation with the Commission proposal for a crisis and force majeure regulation needs to be ensured'. Moreover, the TPD has proven to be an essential instrument for providing temporary protection, and **the Commission therefore wants it to remain part of the EU's asylum toolbox**. Enes Zaimovic, in the Croatian Yearbook of European Law and Policy, [stated](#) that the TPD's key positive features are the *prima facie* approach in granting protection – i.e. its application on a group basis, or [defined](#) by United Nations Refugee Agency (UNHCR) as the recognition by a state or the UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin – and the broad personal scope of temporary protection.

The Migration Policy Institute (MPI), however, [warns](#) that 'temporary [protection] approaches should not be used as a replacement for refugee status because, along with their benefits, they have inherent risks – in particular, their vulnerability to politicisation and termination and the practical and political difficulty of transitioning a large population from temporary to longer-term status as displacement crises continue'. The MPI therefore recommends, amongst other things, to provide the framework for and invest in integration from the beginning; embed decisions to provide temporary protection in larger regional approaches that facilitate burden and responsibility sharing; and build opportunities for displaced individuals to transition to long-term status.

The International Centre for Migration Policy Development (ICMPD) remarks in a [discussion paper](#) on options to remain when the TPD ends, that any transition into regular procedures will require a significant transition period, and believes that inspiration could be derived from the transition arrangements for United Kingdom (UK) citizens in EU countries and EU citizens in the UK post-Brexit. Such a transition period could envisage different durations across EU host countries, taking into account their respective national capacities and the numbers of displaced people from Ukraine residing on their territories.

Options available after March 2025

What the TPD says

In line with the common interpretation of the TPD, temporary protection has a maximum duration of two years (Article 4(1)) plus a one-year prolongation (Article 4(2)):

- 1 Without prejudice to Article 6, **the duration of temporary protection shall be one year**. Unless terminated under the terms of Article 6(1)(b), it **may be extended automatically by six monthly periods for a maximum of one year**.
- 2 Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to **extend that temporary protection by up to one year**.

According to Article 6 TPD:

'1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached; or

(b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.'

Moreover, **when the temporary protection period ends, the general laws on protection and on aliens in the Member States will apply** (Articles 17-19 TPD), **including on return** (Articles 20-23 TPD). This means they have the possibility to apply for asylum and – if accepted – stay as refugees or, where applicable, under another kind of international protection; apply for another status based on national law; or return to Ukraine (voluntary or forced return). The TPD does not include references to other EU legal migration and asylum instruments adopted after 2001, such as the [Long-term Residents Directive](#), the [EU Blue Card Directive](#) for highly qualified workers or subsidiary protection.

Potential exit strategies

The war in Ukraine does not show signs of being anywhere near its end. Most academics and organisations dealing with migration management therefore agree on the **urgent need to find a post-March 2025 solution** to ensure a smooth transition out of the temporary protection regime and encourage eventual return to Ukraine. Uncertainty about their future status may lead to legal limbo for BTPs, with potential periods of irregular residence owing to slow processing of applications for international protection. Even if eligible for refugee or subsidiary protection status, they would not enjoy the same rights as under the TPD.

Moreover, when large number of BTPs suddenly start seeking international protection, asylum systems risk being overwhelmed, something the TPD managed to avoid. However, with the European elections taking place in June, the timing may not be ideal to amend existing EU legislation or craft new EU laws, as the legislative work in the European institutions will temporarily be put on hold. Moreover, a newly composed European Parliament and European Commission, as well as a new rotating presidency of the Council of the EU as from July, might complicate decision-

making. Whatever exit strategy might be chosen, [ECRE](#), in a February 2024 policy paper, insists it should include the following four key principles:

- Ø make sure that the options provided **take into account the Ukrainian perspectives**, both from the people affected and from the Ukrainian government;
- Ø maintain a **range of options in parallel**, because the categories of BTPs are diverse;
- Ø **respect the human rights** of those affected; and
- Ø attempt to reach a **collective approach** from the EU Member States, ideally coordinated by the European institutions.

International protection

Once the temporary protection period ends, the general laws on protection and on aliens in the Member States will apply, including on return (Articles 17-23 TPD). Whereas Article 3(1) TPD states that temporary protection 'shall not prejudice recognition of refugee status under the Geneva Convention', Article 17(1) adds that BTPs may lodge an application for asylum at any time. Temporary protection may end because the war ends, or on expiration of the TPD regime. If the regime expires but the war is still ongoing, displaced Ukrainians in the EU would still need protection. The EU asylum procedure, by which **refugee or subsidiary protection status** are granted, is regulated by the [Qualification Directive \(recast\)](#). This directive lays down the qualifications needed for such international protection within the EU. The [Asylum Procedures Directive \(recast\)](#), on the other hand, states that responsible authorities should first determine whether applicants qualify as refugees and, if they do not, determine whether they are eligible for **subsidiary protection**. An individual assessment of all applications is needed for both types of protection, hence the general fear that this would over-burden national asylum systems, in particular in those Member States that have received most Ukrainians.

In an [analysis](#) for the Swedish Institute for European Policy Studies (Sieps), Meltem Ineli Ciger sees **recognition as a group on a *prima facie* basis** as a possible solution. She argues that EU law may follow a *prima facie* approach in individual status determination procedures as long as individual decisions are reasoned. This would allow asylum applications of Ukrainians previously under temporary protection to be decided through fast-tracked procedures, and prevent further backlogs in national asylum systems. ECRE, in its policy paper cited above, expresses worries about the rights to be afforded when BTPs transition to the asylum procedure, as becoming an asylum applicant in most EU Member States might imply losing simplified access to the labour market and assistance with private accommodation, which both are available under the temporary protection regime. Sandra Mantu, Karin Zwaan and Tineke Strik, in an [article](#) for Radboud University's *Centrum voor Migratierecht*, furthermore worry about the durability of residence, as it is unclear when the situation in Ukraine will allow for safe return. The latter is a principle of international refugee law, as is the loss of the refugee status when a refugee returns to his or her state of origin, even for a short period.

Protection statuses in national law

Most Member States' **national laws** provide for **other protection statuses**. These can be used when a person does not qualify for either refugee status or subsidiary protection status but is in need of protection or cannot be returned for family or health reasons. In its policy paper mentioned above, ECRE points out that, even though some of these statuses and mechanisms – which **often take the form of humanitarian protection statuses** – may be useful and relevant for displaced people from Ukraine, they complicate EU-wide coordination. Moreover, their use is often 'highly opaque', and the tendency in recent years has been to limit use of these statuses.

Return to Ukraine

According to Articles 21 and 22 TPD, general rules on **voluntary and forced return** apply to BTPs who have no legal reason to stay on the Member State territory when temporary protection ends. For temporary protection to end, the situation in the country of origin (i.e. Ukraine) should permit

the safe and durable return of BTPs with due respect for human rights and fundamental freedoms and Member States' obligations regarding *non-refoulement* (Article 6(2) TPD). According to the [explanatory memorandum](#) to the TPD, 'the concepts of safety and dignity in the case of returns **imply the cessation of the causes which led to the mass influx**, possibly a peace and reconstruction process, conditions guaranteeing respect for human rights and the rule of law'. As mentioned before, it does not seem that these conditions will be met anytime soon. In its above-mentioned policy paper, ECRE warns that a premature end of the TPD regime could lead to panic, causing people to move within the EU and apply for asylum.

Amending and extending the TPD

Article 31 TPD provides for the possibility to amend the directive. However, amending EU legislation, or passing new laws, in the field of asylum, subsidiary and temporary protection, as well as of common immigration, has to be done in accordance with the ordinary legislative procedure, whereby legislation is adopted on an equal footing by Parliament and the Council (Articles [78\(2\)](#) and [79\(2\)](#) of the Treaty on the Functioning of the EU, TFEU). The [ordinary legislative procedure](#) consists of up to three readings before agreement on a joint text can be reached, and **is a lengthy process**. Moreover, as mentioned earlier, an election year may not be the best moment to pass legislation.

Given the temporal and potential political constraints, and the fact that the current academic discourse focuses on 'the undesirability of a national response', Lia Gobiet [believes](#) that a response at EU level, by means of an extension of the TPD, would be the best option. She argues that **an alternative interpretation of Article 4(2) TPD allows for such an extension, without amendment of the TPD**, as 'the literal text of Article 4(2) TPD does not at all specify if such an extension is a one-time option only'. Therefore, nothing prevents the Council from prolonging the TPD's application on a yearly basis. The directive's 'temporary' nature is then accounted for by the maximum duration of each prolongation, rather than the number of prolongations the instrument allows for. Moreover, Gobiet insists that an extension would be proportionate if the beneficiaries' return to their home country remains impossible because of the continuation of the war or other unforeseen circumstances linked to that. BTPs would not be left in a legal limbo, and national authorities would not become over-burdened with large numbers of individual asylum applications.

Martin Wagner, for the International Centre for Migration Policy Development, [notes](#) that this 'creative and very broad interpretation of the TPD [...] appears at odds with the temporary nature of the instrument and with the wording of Article 6(1)(a)'. Even if the EU were to extend the TPD, Wagner sees several challenges, e.g. Member States seizing the opportunity to propose adjustments to the content of the implementing decision, such as restricting eligibility for temporary protection or free movement for BTPs, or calling for more solidarity within the EU. He warns that 'a continual prolongation of temporary protection would perpetuate the state of temporariness despite the, in reality, permanence of stay', which could have serious implications for BTPs' ability to integrate.

Re-activating the TPD

The ICMPD, in its discussion paper mentioned earlier, adds that – theoretically – the TPD could be triggered again by a new Council implementing decision based on a Commission proposal (Article 5 TPD). The Centre admits, however, that it is an open question whether this solution would meet with political endorsement and find – yet again – the necessary majority among EU Member States. The original decision to grant temporary protection to those fleeing the war in Ukraine was [taken by unanimity](#) in the Council on 4 March 2022. ECRE, cited above, warns that if the option of re-activating the TPD were to be used, **'it should be put in place with the goal of ensuring continuous access to legal status and rights while longer-term durable solutions for BTPs are developed'**.

Amending other EU legal migration and mobility legislation

The Meijers Committee, a group of experts, [recommends](#) amending EU law for it to provide a **common – not a national – solution** for BTPs who want to continue (**temporarily**) their residence in the EU; it believes, however, that durable solutions should be sought by means of including BTPs in the scope of EU legal migration directives, rather than amending the TPD. To this end, it looks at collective asylum based on the Qualifications Directive (see the section on international protection above), **long-term resident status** based on the [Long-term Residents Directive](#) (LTRD, [under revision](#)) and **free movement** based on the [EU Citizenship Directive](#). The Meijers Committee thinks that the three models are not mutually exclusive and could be used to complement each other. For this purpose, the Meijers Committee recommends deleting the current exclusion of BTPs in the LTRD and the [Single Permit Directive](#) (SPD), whose [recast](#) entered into force on 20 May 2024; reduce the period of required stay under the LTRD from five to three years; and accept the Commission's proposal that the LTR status is lost due to absence from the EU only if that absence exceeds 24 months, at least for beneficiaries of international protection and temporary protection.

The academics and international migration management organisations consulted for this briefing also mention other EU legal migration instruments and initiatives, including the [EU Blue Card Directive](#) for highly qualified workers, the [EU Talent Pool](#), residence rights based on a [student or researcher](#) status, and the SPD, which establishes a single permit for both the right to work and stay in the EU. In the March 2024 [agreement](#) reached on the SPD recast, BTPs remained excluded, even though the Commission had proposed their inclusion.

Conversely, Parliament's [mandate](#) on the LTRD recast considers that BTPs 'should be able to obtain EU long-term resident status in the Member State, which granted them such protection, subject to the same conditions as other third-country nationals'. Under the current LTRD, BTPs cannot apply for LTR without switching status first. The time spent on temporary protection, however, is counted as being part of the five years of required stay. Parliament's mandate on the LTRD recast proposes to lower the required stay to three years, not least in order to align it with the TPD.

Meltem Ineli Ciger remarks in an [article](#) in the Migration Policy Centre Blog that even if BTPs were included in the LTRD, as of March 2025, they would only have been staying in the EU for three years. The EU Agency for Fundamental Rights has [recommended](#) that BTPs be allowed to apply for EU long-term resident status already after three years. In their article cited above, Mantu, Zwaan and Strik add that, if the LTRD is not amended, the EU long-term resident status would reduce the current intra-EU mobility right BTPs enjoy. Any amendments to the LTRD would need to be addressed during interinstitutional negotiations. However, in early March 2024, the Belgian Presidency of the Council of the EU concluded that it would not be able to reach an agreement with Parliament on the recast of the LTRD before the end of the ninth parliamentary term, as several Member States had formed a blocking minority on the possible areas for compromise with Parliament. The file has therefore been left to be followed up by the new Parliament after the European elections.

Regarding the durability of residence, Mantu, Zwaan and Strik believe that assimilating BTPs into a free movement status, parallel to that of free movement of EU citizens, would provide the highest level of durability of residence available for third-country nationals in the EU, and would be consistent with the country's move towards EU membership. Moreover, this option would justify the particular treatment of BTPs in relation to others, and could be realised on the basis of Article 79(2)(a) and (b) TFEU, requiring only a qualified majority in the Council. They, however, acknowledge that this option would give rise to concerns both in Ukraine (e.g. risk of further loss of population) and in some EU Member States (e.g. fear of excessive numbers of Ukrainians arriving and unsettling labour markets).

Creating a new protection or residence status under EU law

Based on the assumption that forced return is not to be recommended after the war ends, the EU special adviser for Ukraine, Lodewijk Asscher, [suggested](#) the creation of a **reconstruction permit**,

to be launched after the TPD ends for the expected duration of the reconstruction of Ukraine, 'possibly ten years'. The Meijers Committee, cited above, advises against such a reconstruction permit, alleging it would obstruct the integration of former BTPs and would put them at a disadvantageous position compared with other legally residing third-country nationals. Moreover, as mentioned earlier, new legislation needs to pass through the – possibly lengthy – ordinary legislative procedure. Mantu, Zwaan and Strik note that the envisaged reconstruction permit might have some sort of status in EU law as an international agreement, or it could be an agreement with a third country under Article 79(3) TFEU, or a Commission proposal for a directive or a regulation under Article 79 TFEU. ECRE suggests a new type of **pre-accession permit** based on Article 67(2) TFEU that includes continuous free movement within the EU and to and from Ukraine and full access to socio-economic rights. Its validity would be linked to Ukraine's accession process.

Other national pathways

Member States could issue work visas for work or educational reasons, or could grant citizenship or residency to former BTPs, but this would depend on national laws and policies. Meltem Ineli Ciger, in her analysis for Sieps referred to above, considers that streamlining national residency and citizenship procedures 'would be difficult at best and impossible at worst', as Member States might invoke different criteria for regularising the stay of former BTPs. Furthermore, in her article in the Migration Policy Centre Blog, she notes that not all Ukrainians would likely be able to apply for educational or work visas. In an [opinion piece](#), ECRE adds that in some EU countries, there is very limited availability of other statuses in national law, while in others, extensive administrative barriers hinder the direct transfer from the TPD to national status. According to ECRE, 'placing the major emphasis on the national level in the management of the transitioning out of the TP regime would penalise those EU MS [Member States] that are hosting the largest numbers of persons displaced from Ukraine'.

MAIN REFERENCES

ECRE, [Transitioning out of the Temporary Protection Directive](#), February 2024.

ICMPD, [Responding to displacement from Ukraine: Options to remain when temporary protection ends](#), July 2023.

Luyten K., [One year of temporary protection for people displaced from Ukraine](#), EPRS, European Parliament, February 2023.

Luyten K., [Temporary Protection Directive](#), EPRS, European Parliament, 2022.

Mantu S., Zwaan K. and Strik T. (eds), [The Temporary Protection Directive: Central themes, problem issues and implementation in selected Member States](#), Centrum voor Migratierecht, Radboud University Nijmegen, 2023.

Mentzelopoulou M., [Reception and integration of displaced people from Ukraine](#), EPRS, European Parliament, April 2024.

ENDNOTE

- ¹ The exception is Denmark, which has an opt-out from the EU asylum acquis in accordance with Protocol No. 22 to the Treaty on European Union. Denmark, however, adopted the [Danish Special Act](#) on 16 March 2022. This national law is similar to the TPD but a few differences.

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epprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

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