

Implementing the Temporary Protection Directive

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The lessons that have emerged from the implementation of the Temporary Protection Directive have implications far beyond the Ukraine refugee crisis.

The war in Ukraine has triggered unprecedented displacement, with millions of refugees recorded across Europe. The unanimous decision of EU Member States to implement – for the first time – the Temporary Protection Directive (TPD) in response to the mass influx of refugees from Ukraine has helped ensure swift access to protection and rights in a coordinated and efficient manner, avoiding an overload of national asylum systems. Amidst extraordinary levels of displacement not seen in Europe since the Second World War, more than three million beneficiaries of temporary protection were recorded in EU Member States in just the first half of 2022.¹

Temporary protection arrangements are pragmatic ‘tools’ of international protection, complementary to the international refugee protection regime. The TPD is a tool which allows the EU, in exceptional situations, to

provide immediate and temporary protection in the event of a mass influx of displaced persons from non-EU countries who are unable to return to their country of origin. UNHCR has been monitoring the implementation of the Directive through consultations with national and local authorities, civil society organisations and partners engaged in the refugee response, and refugee communities in EU Member States.² Findings have been made publicly available to help inform evidence-based decision-making and policies which incorporate the direct experiences and priorities of refugee communities.

The lessons to be drawn from the implementation of the TPD have three key applications. Firstly, they can be used to inform the kinds of tools and approaches the EU will need to have at its disposal to effectively respond to similar crises in the future. Secondly, several of the

innovative approaches employed by States to manage the huge demand for registration and services during the Ukraine refugee crisis have the potential to bring much-needed efficiencies to national asylum systems. Finally, the experience emphasises the importance of securing possible 'exit strategies' from temporary protection and transitions to other forms of legal status which respect the rights of refugees under international law, whilst preserving some of the most notable achievements of the whole endeavour – the extraordinary level of solidarity, cooperation and burden sharing demonstrated by EU Member States.

Gaps and challenges

UNHCR's findings indicate that the TPD is an efficient and practical tool for facilitating the efficient management of mass flows of displaced persons, providing immediate protection from refoulement, recognition of international protection needs, and swift access to safety, documentation and rights. The scale and complexity of the Ukraine refugee response has additionally demonstrated the value of temporary protection regimes more generally as effective tools of international protection, complementary to the international refugee protection regime.

The positive lessons learned from the application of the TPD, however, should not mask its challenges. UNHCR has identified the need for greater coherence in its application, citing a lack of harmonisation between Member States in their approach to some rights protected under the Directive.³ Increasing coherence in the way that the Directive is implemented is important both to preserve solidarity and burden sharing between States and to avoid unnecessary secondary movements (which would occur if refugees are unable to fully exercise their rights in all locations).

UNHCR has also identified a series of practical, administrative and legal barriers which impact the ability of refugees from Ukraine to access their rights under the Directive, with common challenges around a lack of information, language barriers, difficulties in securing a permanent address, limited child-care options and the inability to produce certain forms of identification.⁴ Addressing

these barriers will help support refugees from Ukraine to be included in national systems and could positively impact refugees from other countries who face similar challenges in accessing their rights in the EU.

Gaps and challenges in the implementation of the TPD were inevitable, as this is its first application. In UNHCR's view, these challenges are surmountable with innovation and resources, continued collaboration among States to share promising practices, and the political will to move forward.

Innovations and efficiencies

UNHCR has documented several innovative approaches deployed by States to address the demand for temporary protection – including scaling up registration capacities, frontloading data collection and data management, and allocating sufficient human and technical resources in the initial stages of procedures.⁵

Setting up integrated systems with multiple service providers (the 'one-stop shop' or 'under one roof' approach) at the moment of reception or registration is one method to maximise efficiency in information exchange and collaboration between different entities. This approach can include services such as registration, identification of specific needs and referral to appropriate services, issuance of documentation, provision of legal aid or assistance and legal representation, and information on services and assistance. For instance, a support centre was established in Latvia where all necessary services were provided in a single location. In the Czech Republic, a mass scale-up of registration capacities led to a network of assistance centres (KACPU) which facilitated the registration and documentation of over 350,000 people in approximately two months.

Several countries (including Greece, Croatia and Slovakia) also invested in online systems to facilitate registration, which helped prevent backlogs and enhanced communication with temporary protection claimants on the status of their application. The Ministry of Interior in Romania, in coordination with civil society and UN agencies, launched a dedicated multilingual web platform to support refugees from Ukraine with information about services,



Drawings by children from Ukraine that they made in a shelter in Krakow, December 2022. Credit: UNHCR/Anna Liminowicz

legal status (including how to apply for temporary protection and asylum), and the rights associated with residence in the country. The web platform also provides information about helplines and websites run by NGOs, UN agencies and other government entities.⁶

The global asylum system is currently facing charges that it is 'broken'. Protracted processing times for asylum claims can irreparably damage already fragile asylum systems. Delays can also erode public confidence in these systems and make it more difficult to repatriate or find other solutions for those found not to be in need of international protection. At the end of 2022, nearly 899,000 asylum applications were awaiting a decision in EU countries, an increase of almost one-fifth compared to a year earlier.⁷

UNHCR has previously recommended that effective processing of asylum applications can be achieved through better system design, innovative tools and measures, and practical responses to systemic challenges.⁸ Several of the approaches deployed in the context of temporary protection have the potential to bring efficiencies to national asylum systems, help alleviate backlogs and speed up processing times. UNHCR recommends that European

institutions and States build upon these experiences and, where applicable, extend them to asylum procedures. Faster and more efficient systems will help identify those in need of international protection more swiftly, and will improve opportunities to enhance self-reliance and inclusion, and reduce dependency on reception, relief and social protection systems. Such systems will also be more effective in better identifying those not in need of international protection and in supporting their return or other solutions.

Into the future

As part of the reflection process, important questions are being raised on possible 'exit strategies' from temporary protection. According to the Directive, the application of temporary protection will automatically cease after a maximum of three years. Refugees from Ukraine frequently report challenges with accessing accommodation and employment due to the 'temporary' nature of their stay. A transition, therefore, from temporary protection to an alternative and more durable form of legal status, could help facilitate the enhanced socio-economic inclusion of refugees in host countries.

In the post-temporary protection period, it is crucial that discussions on possible exit strategies recognise the refugee nature of the situation and the rights which refugees from Ukraine have under international law.

Those who continue to be in need of international protection must have effective access to it, without needing to transition to less secure forms of legal status or downgrading the rights to which they currently have access. Available options – once temporary protection comes to an end – also need to be inclusive of vulnerable groups within the refugee community (such as older persons, people with disabilities, minority groups and people at risk of statelessness) and of non-Ukrainians who have been granted temporary protection. The absence of a clear legal framework built into the TPD for the post-temporary protection period is a challenge. It creates a possible scenario where each Member State applies a different ‘formula’, with varying levels of legal status and rights available for former temporary protection beneficiaries.

The benefits of solidarity, cooperation and burden-sharing have been perhaps the most valuable lessons to be drawn from the approach taken by States towards the Ukraine crisis and the implementation of the TPD. It is crucial that a similar approach is applied to the post-TPD period. Without a coordinated and harmonised approach to the question of what happens when temporary protection

comes to an end, there is a risk of significant secondary movements, increased asylum applications which may overwhelm the capacities of national systems and premature decisions to return. Such outcomes risk undermining the gains currently enjoyed by both States and temporary protection beneficiaries alike.

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1. European Commission (2023) *Communication from the Commission to the European Parliament and the Council: Temporary protection for those fleeing Russia's war of aggression against Ukraine: one year on* bit.ly/temporary-protection-one-year-on
2. This responsibility is in line with UNHCR's global mandate and its specific role under Article 3(3) of the TPD.
3. See UNHCR (2022) *The Implementation of the Temporary Protection Directive – Six Months On* data.unhcr.org/en/documents/details/96266 and UNHCR (2023) *Displacement Patterns, Protection Risks and Needs of Refugees from Ukraine – Regional Protection Analysis #2* data.unhcr.org/en/documents/details/100191
4. *Ibid*
5. UNHCR (2022) *The EU Temporary Protection Directive in Practice* data.unhcr.org/en/documents/details/93633
6. Help for Ukrainians in Romania - Dopomoha
7. European Union Agency for Asylum (2023) *Asylum Report 2023* euaa.europa.eu/publications/asylum-report-2023
8. UNHCR (2022) *Effective processing of asylum applications: Practical considerations and practices* bit.ly/processing-asylum-applications