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## Temporary protection: 18 months in force, 18 to go - and then?

by [Martin Wagner](#)

*The EU Temporary Protection Directive (TPD) has now been activated for 18 months, providing immediate assistance to millions who fled the war in Ukraine. While it has been praised for its success, uncertainty remains about what will happen once it ends. Discussions have put forth ideas ranging from EU-wide approaches to individual national solutions. The urgency of this matter, however, has yet to fully resonate with policymakers and commentators, even as we reach the halfway point of the directive's maximum duration. Just 18 months remain to forge a plan for what will come after.*

As of today, 4 September 2023, the TPD has been activated for 18 months, which means it has reached the halfway point in its maximum duration of three years. Temporary protection was triggered as a consequence of Russia's invasion of Ukraine, which forced millions to flee the resulting war. The vast majority of people displaced by the war arrived in EU countries and the TPD provided for their immediate reception and their temporary protection, which granted beneficiaries with a status, access to labour markets, and education, as well as some social services. This instrument has been widely praised (see for example the [European Commission](#), [academia](#), civil society [here](#) and [here](#), etc.) as a success due to its largely unbureaucratic provision of far-reaching rights for those it covers. This success also came as a surprise, as this piece of law had previously been declared dead (see [here](#) and [here](#)) due to its two-decade-plus dormancy since its adoption in 2002 and because the Common European Asylum System has since developed further.

As successful as the directive has been in providing answers on the temporary protection of those fleeing the war, uncertainty remains as to what will happen once it reaches its maximum duration – the expected date being 5 March 2025. There are still 18 months to go, yet [the clock is ticking](#), as some solutions that are being discussed might require legislative action at the EU and Member State levels. At the same time, EU elections are soon to come, with many Member States also preparing for national elections in the near future. At the very least, practical arrangements such as information and outreach campaigns to beneficiaries of

temporary protection to inform them about any transition arrangements or – should the situation in Ukraine allow for it – a coordinated return will require time and preparation.

### **What options are on the table?**

At ICMPD, we started already in October 2022 to [discuss with ICMPD and IGC Member States](#) the possible solutions for 5 March 2025. In a [first discussion paper](#) from March 2023, ICMPD laid out the broad policy options for states once the TPD ends. These mainly circled around the solutions also mentioned in Art 20 and 21 of the TPD, namely return if the situation allows for it or applying the general national laws on migration and asylum. A review of past experiences with temporary protection granted to Bosnians in the context of the war in former Yugoslavia illustrated that, when it comes to post-temporary protection policies, patchwork national solutions can generate uncertainty among the concerned group and secondary movements to EU countries that offer presumably better solutions. For that reason, the authors of ICMPD's discussion paper argue rather for a concerted, EU-wide approach. This could either consist of a special status for Ukrainians or a concerted mainstreaming into regular migratory channels. However, stakeholders stressed, more importantly – irrespectively of the approach – people concerned should not find themselves with fewer residence rights than under the TPD, and there should be a long-term residence option.

Following further exchanges with governmental and non-governmental institutions, academia, and international organisations, ICMPD published a [second discussion paper](#) in July 2023 with the aim of showcasing what mainstreaming beneficiaries of temporary protection into asylum or regular migration statuses would mean for national system capacities. The calculations derived from the assumption that either 25% or 50% of temporary protection beneficiaries would remain in EU countries where they are currently staying. The calculations illustrated that even a 25% remain rate would stretch national asylum or migration procedural capacities well beyond their limits – especially in those countries that host large relative shares of people. The paper concluded that, should temporary protection beneficiaries be mainstreamed into one of these regular procedures, preparations (i.e. building up national processing capacities) would need to start soon, also with respect to reaching out to those who will be affected by the policy change. Looking at outreach options, the paper alludes to the experiences gained in the Brexit context, when close to 1 million UK citizens residing in EU Member States needed to be informed about the post-Brexit arrangements and procedures that would enable them to stay.

Beyond the abovementioned papers, there are not many publications that discuss what will happen when temporary protection ends. A notable exception, however, comes from Lodewijk Asscher, Special Advisor for Ukraine for the European Commission, who proposed in May 2023 a [special reconstruction permit for Ukrainians](#). With the purpose of gaining time for a coordinated exit from temporary protection, the proposed reconstruction permit would last for 10 years and is intended to be tightly connected with reconstruction efforts in Ukraine as a precondition for orderly and safe return.

A renewal or ‘re-triggering’ of the TPD has also come up in discussions. Some stakeholders see this option as one that should remain on the table. An extended duration of a temporary status – while not new (see the examples in [ICMPD’s discussion paper](#), chapter 3.3) – would indeed be a pragmatic solution, but also poses serious obstacles to integration because of the perceived temporality of stay. In the end, it would also mean postponing, rather than solving, the transition into long-term residence for those who wish to remain. Ultimately, return after a long-term ‘temporary’ stay seems a rather illusory prospect.

A July 2023 [paper by the Meijers Committee](#) takes a different approach and proposes to use solutions in existing EU law, such as the Qualification Directive, Long Term Residence Directive, and EU Citizenship Directive. According to the authors, these offer a more secure and durable status than temporary protection. While the Committee suggests not to generally reuse or renew temporary protection status, it suggests keeping it only for temporary protection beneficiaries with three years of residence who are unable to switch immediately to another more permanent residence status. Evidently, these proposals would require changes in EU law, in particular, the Long Term Residence Directive, as this currently excludes beneficiaries of temporary protection (see [Meltem Ineli Ciger](#)). The latter author also suggested group-based recognition for an international protection status to avoid overburdening individual procedures. However, this pathway seems the least likely to be taken up by Member States, and it remains uncertain whether Ukrainians could indeed be granted any form of international protection in the future (see comments on their eligibility for international protection in [ICMPD’s discussion paper](#), p 12).

### **18 months to go, but action is needed soon**

Today, the TPD has been in force for 18 months. The EU and its Member States have another 18 months to rely on this instrument – but they will soon need to come forth with ideas on what shall happen afterwards. Close to 4 million people depend on this decision. The fact that

yet only a handful of publications are addressing this important topic clearly indicates that the urgency has been recognised but has yet to lead to concrete plans.

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