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## Extending temporary protection: It seems most viable, but is it?

by Martin Wagner

*While the Temporary Protection Directive has been praised for its success in providing immediate assistance to millions, uncertainty remains about what will happen once it ends. One option that has recently gained attention is to further prolong temporary protection beyond March 2025. It may seem straightforward to simply extend temporary protection by another year, yet this may create some important challenges beyond deferring longer term decisions.*

The world has now witnessed two years of brave resilience and resistance from Ukraine and its people – the resilience of those who remained in their homeland as well as those who sought refuge elsewhere, many in one of the EU’s Member States. Both the decision to leave Ukraine and the decision to stay are undoubtedly difficult choices and ones that are marked by complexity, not only impacting individuals but also multiple generations of families. Those receiving protection in the EU wonder how long this protection will remain temporary.

The EU has repeatedly committed itself to supporting Ukraine for as long as it takes. This support has been demonstrated financially (peaking with the recently adopted [€50 billion Ukraine Facility](#)), but also by the fact that Ukrainians were – from the beginning of Russia’s invasion – granted a special form of protection in the EU (temporary protection). This status, deriving from the first-ever triggering of the Temporary Protection Directive (TPD), has operated efficiently and largely without bureaucratic hurdles, providing swift access to a broad range of rights and services. Also noteworthy, it allowed Ukrainians to essentially choose their host country, as well as to return to Ukraine for a certain amount of time without jeopardising their protection status.

### **What comes next?**

A common reading of the TPD suggests that we are nearing the final year of its maximum three-year duration, a perspective that has been shared by nearly all commentators. The 4 March 2025 deadline has thus loomed like the sword of Damocles over EU bureaucrats,

Member States, and above all, displaced Ukrainians themselves. Member States fear that a lack of a timely solution will potentially obstruct and overwhelm alternative national procedures such as those for international protection or other forms of legal residence (see [ICMPD's discussion paper](#), p. 10-13). A lack of clarity about what will happen as of 5 March 2025 also adds an additional layer of stress and uncertainty for those currently receiving from temporary protection.

However, a back door may now have opened via a creative and very broad interpretation of the TPD by the legal departments of the Commission and the Council. Considerations regarding post-temporary protection solutions came up – among others – at the 23 November 2023 SCIFA meeting and gained further traction at the informal JHA Council on 25 January 2024. Those discussions seemingly paved the way for the further prolongation of temporary protection beyond three years based on a broad interpretation of Article 4/2 of the TPD.

What does this mean? In essence, this broad interpretation suggests that temporary protection could be prolonged an indefinite number of times, an idea that has sparked debate among academics, with some expressing [doubts](#) and others in [agreement](#). However, this notion appears at odds with the temporary nature of the instrument and with the wording of Article 6/1/a. The latter article stipulates that reaching the maximum duration of temporary protection is a reason for temporary protection to end, which must be taken as a clear indication that the Directive does in fact apply a maximum duration.

However, discussions with Member States seem to indicate widespread support for such a solution – not because it unties the Gordian knot of identifying a solution beyond 2025, but because there is simply [no tangible solution](#) in sight.

### **If there is no other solution on the table, why not simply embrace the one-year extension and move on?**

Technically, the extension of temporary protection requires a Council decision based on a qualified majority. The most recent prolongation extended the [Council Implementing Decision from 4 March 2022](#) until 4 March 2025. To recap, the Council Implementing Decision from 4 March 2022 determined in essence the existence of a mass influx and defined the group of persons eligible for temporary protection. While it seems straightforward to simply extend temporary protection by one year, this may also create some important challenges beyond deferring longer term decisions:

- First, it may be risky to assume that EU Member States will maintain a unified stance on the provision of temporary protection – in general or more specifically in the same manner it decided in March 2022. This decision requires a qualified majority of 55% of Member States voting in favour representing at least 65% of the total EU population.
- Second, thus far, decisions to prolong temporary protection have been taken around October, nearly half a year before temporary protection would otherwise end. While six months can be considered early for such a decision, it is far too short if the decision is to end temporary protection, in which case Member States need to adapt their national systems amidst no common EU solution, leaving far too little time for people to make informed decisions on their future.
- Third, it seems highly likely that Member States would indeed wave through the extension of temporary protection each year, as done the first two years. However, they may start to question the content of the Implementing Decision and may propose adjustments (e.g. restricting eligibility for temporary protection). Some Member States may start to call for more solidarity within the EU. A handful of countries, notably Germany, Poland, and Czechia, continue to host a disproportionately high number of temporary protection beneficiaries.
- Fourth, mobility creates not only opportunities for people but also certain challenges for host governments (e.g., registration hurdles and increasing costs of welfare support due to onward movements). Member States may also question the agreement to lift Article 11 of the TPD (recital 15 of the Council Implementing Decision). Should Member States demand to apply Article 11 of the TPD, this would mean that the de facto freedom of movement for beneficiaries of temporary protection might end. In this case, the country where the person enjoyed temporary protection would remain responsible and would need to take back beneficiaries of temporary protection who enter or stay without authorisation in the territory of another Member State during the period covered by the Council Decision.
- Fifth, and probably most importantly, a continual prolongation of temporary protection would perpetuate the state of temporariness despite the, in reality, permanence of stay. This has serious implications for people's ability to integrate, as they remain in a perpetual state of limbo between the prospect of returning and the ability to stay long term. This impacts various aspects of life, such as career prospects – both employers and employees are hesitant to invest in training due to uncertainty regarding the end date of stay, and this might impact hiring decisions in the first place. Similarly, it affects housing and education, among other areas.

## **A delicate balancing act**

Meanwhile, some Member States are launching alternative pathways to remain via different statuses (e.g., based on employment or education) to offer greater stability for people under temporary protection, including Poland, Italy, and Denmark. However, interest among temporary protection beneficiaries remains relatively low, likely due to concerns regarding eligibility criteria or potential alterations in the rights and benefits associated with these alternative statuses.

How complex and difficult it is to find an appropriate solution beyond March 2025 was underscored at a [recent event](#) co-organised by ICMPD and the Ukraine Mission to the EU on 29 February 2024. The conversation highlighted the delicate balancing act between Ukraine's desire to receive back its citizens to participate in the reconstruction of the country and the legitimate desire of Ukrainians to build a new life in EU states and to move on with their lives. Above all, the voices raised by Ukrainians during the event also gave testimony that a prolonged period of temporariness makes it difficult for Ukrainians to gain a foothold in the housing or labour market – highlighting ways in which protection policies can help, or hinder, those wishing to settle in.

*This commentary draws on discussions during the conference “Between resilience and reconstruction of Ukraine: What is the role of human capital?” This event was co-hosted by ICMPD and the Ukraine Mission to the EU on 29 February 2024 at the Ukrainian civil society hub in Brussels. Read more [here](#).*

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