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## **TEMPORARY PROTECTION DIRECTIVE: PECULIARITIES OF IMPLEMENTATION**

Temporary protection directive as a tool and legislative basis for establishing 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 (as it is precisely stated in its title) was adopted in 2001 but has been implemented only in 2022 as a response to one of the largest flow of Ukrainian refugees [1].

Despite all previous attempts to put its provisions into effect (for instance, for no less significant flow of refugees from Syria) [2, c.19], it used to be criticized as too «politically unrealistic» [3, c. 5]. However, to face the largest mass displacement in Europe since WWII [4], the TPD was implemented and even extended its force until 4 March 2026 [5].

In general, the Temporary Protection Directive establishes a comprehensive framework for providing immediate and temporary protection to displaced persons from non-EU countries. The key provisions of the directive include:

1. **Duration and Status:** The directive provides temporary protection for an initial period of one year, extendable up to three years. It grants beneficiaries a formal status without requiring individual asylum applications.

2. **Rights and Benefits:** Protected individuals are entitled to residence permits, employment authorization, access to housing, social welfare, medical assistance, and education for minors. The directive also ensures access to banking services and freedom of movement within the host country.

3. **Administrative Processing:** Member states must simplify administrative procedures, including visa facilitation and reduced formalities. The directive emphasizes expedited processing and minimal documentary requirements.

4. **Labor Market Access:** While beneficiaries have the right to engage in employed or self-employed activities, member states retain authority over labor market policies and professional qualification requirements.

5. **Family Unity:** The directive includes provisions for family reunification and maintains family unity during the protection period. This extends to immediate family members and other close relatives under specific circumstances.

6. **State Discretion:** Member states maintain significant discretion in implementing these provisions, particularly regarding the specific conditions of reception, residence, and employment access. This flexibility allows states to adapt the protection framework to their national contexts while maintaining minimum standards.

In order to illustrate such an implementation of TPD it is necessary to refer to those countries of the EU that have welcomed the most significant number of Ukrainian refugees. For instance, the Slovak Republic, which has granted temporary protection for more than 100,000 refugees, on February 25, 2022, introduced Act No. 55/2022 Coll. on certain measures in relation to the situation in Ukraine [6]. According to this Act, the procedure of granting protection begins with an application from an asylum seeker to the local police office regarding such protection.

Nowadays, temporary protection in the Slovak Republic can obtain Ukrainian nationals and their non-national relatives, namely wives/husbands of Ukrainian national minor children of Ukrainian nationals or minor children of their spouse parents of a minor child, who is a Ukrainian national dependent member of their households.

After receiving a decision on temporary protection, Ukrainian nationals can enjoy all core rights such as the right to employment, education, healthcare, etc. However, they are not provided with social housing [7].

What concerns employment, Ukrainian refugees have the right to access employment without any restrictions in accordance with the principle of equal treatment in employment relations and similar legal relations established by the anti-discrimination law. A citizen has the right to freely choose a job and perform it throughout the territory of the Slovak Republic or can secure employment abroad. However, a citizen has no legal right to mediate specific employment.

For the purposes of the law, suitable employment is employment that takes into account the state of health of the citizen, takes into account one of his qualifications, professional skills, or the type of work performed so far and in which the weekly working time is not shorter than half of the established weekly working time.

In comparison to such an order, in Hungary, Ukrainian nationals cannot freely access the labor market. In order to complete this, they have to obtain a work permit according to the same process as is established for other third-party nationals.

Regarding education, the Ministry of Education, Youth, and Sports of the Slovak Republic has created a specific web page operated in Ukrainian where it is stated that all Ukrainian children with temporary protection can access Slovak educational institutions from September 5, 2022. Furthermore, taking into account that children displaced from Ukraine are facing certain challenges it was announced that the Lex Ukraine 4 legislation package brings vital amendments to the laws governing state administration in education and school self-governance, explicitly addressing the needs of Ukrainian refugee children [8].

The new amendments create a legal framework for municipalities to temporarily maintain a register of refugees residing within their jurisdiction, specifically targeting those of school age who are required to attend compulsory or pre-primary education. This framework enables municipalities to collect and process data from relevant information systems, allowing for better oversight of and support for refugee children. Previously, the legal provisions only allowed for the registration of children with permanent residency, excluding refugees who do not have permanent residency status in Slovakia and, consequently, are not subject to compulsory schooling and pre-primary education requirements. The new legislation empowers municipalities to gather data on how many refugees of school age are enrolled in local schools, ensuring that their educational needs are met.

Additionally, the school law has been revised to outline the procedure for cases in which a refugee wishes to discontinue their education (due to permanently leaving Slovakia, for instance). A legal guardian or the refugee individual themselves (if they are of legal age) can notify the school principal of their intention to cease education. Following this notification, they will no longer be considered a student at the relevant preschool, primary school, or secondary school. The effective date for discontinuing education will be the day after the notification is received or the date specified in the notification (though not earlier than the day after receipt). If a minor refugee's legal guardian or the refugee themselves fail to notify the school principal about discontinuing their education and do not participate in the educational process, the refugee will cease to be considered a student at the preschool, primary, or secondary school after 30 days from their last attendance.

This new legal framework for refugee children from Ukraine in the laws governing state administration in education and school self-governance came into effect on 1 September 2024.

In comparison, in Poland, it was even emphasized on the cruciality of education by making school attendance mandatory for Ukrainian refugees according to new Polish law. In cases where the kids don't attend school, the government will enforce the law by withholding a monthly 800 zloty (\$200) bonus that all citizens and refugees receive for each child under 18 [9].

Additionally, we cannot omit the experience of Romania who have proposed another approach by letting Ukrainian children continue the distance learning in their national schools.

Another issue to highlight concerns social housing which is, unfortunately, not guaranteed in the Slovak Republic. However, in response to this issue, local authorities have taken the initiative in addressing housing needs. For instance, the Košice local authority introduced a one-time financial contribution of €500, funded by a transparent local authority account dedicated solely to Ukrainian refugee support. This scheme also includes flexible provisions for individuals deserving special consideration due to their life circumstances. It targets temporary protection holders residing in Košice, specifically parents or legal guardians with small children who are working part-time or earning a minimal wage, families with incomes up to 1.2 times the minimum subsistence level, and individuals or families requiring special consideration [10].

Other local authorities, for instance, Bratislava, are also exploring and implementing measures to improve housing accessibility and affordability (not only) for Ukrainian refugees. In the case of Bratislava, the approach involves broadening the criteria for accessing municipal rental housing, thereby expanding the range of potential recipients. This is complemented by an overall improvement in the municipal housing policy.

While these efforts do not serve to replace the need for an effective and comprehensive state-regulated mid- and long-term housing strategy for refugees and migrants in Slovakia, they aim to address the ongoing challenges and create more stable housing opportunities to support long-term integration and represent a step forward at the municipal level.

Nevertheless, it cannot be omitted to highlight certain peculiarities or, even to say, difficulties in its practical application.

To begin with, one of the possible issues that EU Member states have faced was the eligibility criteria of Ukrainian citizens who hold a dual nationality or a visa in another

country. Due to the presumption of a safe country effect, it was considered in many cases that a Ukrainian citizen cannot be subject to temporary protection if one simultaneously possesses, for instance, a Canadian visa where the individual can receive the same level of protection [11].

Another significant issue arose with the episodes of second (or better to say numerous) movements of persons holding temporary protection within the territory of the EU. Thus, the Swiss Federal Administrative Court ruled in June 2024 that a Ukrainian national who had previously obtained temporary protection in Poland could not be granted refugee protection status in Switzerland. The court determined that a Ukrainian national with existing protection outside Ukraine is not dependent on Swiss protection. The applicant held a PESEL registration number in Poland, granting access to financial assistance, medical services, and employment. Without evidence that Polish authorities had rejected or would not renew the PESEL registration, the court dismissed the appeal against the negative S protection status decision.

In fact, such abuse of protection has even led to the provision aiming at the prevention of irregular secondary movements of beneficiaries by restarting the calculation of the eligible period of legal residence required which is introduced in a new Pact on Migration and Asylum which was adopted in May, 2024 [12].

The same approach can be witnessed in the event of simultaneous requests for refugee protection in several Member States. Thus, in November 2023, the Czech Supreme Administrative Court sought clarification from the CJEU regarding two key questions. First, it asked about interpreting Article 8(1) of the TPD — specifically whether authorities can reject temporary protection requests as inadmissible when applicants have already applied for or received protection in another EU Member State. Second, it inquired about the right to judicial review of inadmissibility decisions under Article 47 of the EU Charter. The case involved a Ukrainian national who registered for temporary protection in Germany in July 2022 and later in Czechia in September 2022. While German authorities hadn't yet decided on the application, the Czech Ministry of Internal Affairs rejected it as inadmissible.

To sort out this issue, the Court of Justice of the European Union in its decision C-753/23 has made a conclusion that even though the TPD contained no exclusion clause for a simultaneous seeking of protection in several Member States, this doesn't permit multiple successive applications [13].

Last, but not least, an issue to highlight is the eligibility of third-country nationals residing in Ukraine prior to 24 February 2022. As far as Article 2 (3) of TPD refers mainly to an option (rather than obligation) of granting temporary protection to non-Ukrainian citizens seeking asylum in the EU, the solution to this question is quite ambivalent [1].

In the event of rejection to grant such protection, the justification was reduced to the lack of argumentation from a third-party national. To demonstrate this, one can refer to the Administrative Tribunal in Luxembourg ruling in July 2024 when an Eritrean national failed to prove residence and presence in Ukraine on February 24, 2022, by fabricating passport stamps [14].

In order to justify the eligibility, it is significant to overcome the «safe and durable return» criteria. This means that a third-country national seeking protection should justify the absence of likelihood of reintegration into society in the country of origin. Such an

approach was demonstrated by the Higher Administrative Court of Bavaria which stated that, even though TPD does not specify the assessment of a safe and permanent return, the operational guidelines of the European Commission mention that a return can be prevented if there is armed conflict or ongoing violence in the country of origin. In the exemplary case, the court concluded that the fact that the applicant only complained about not being able to continue his studies in Nigeria did not prevent a return. The court specified that the assessment is to determine the possibility of meeting the minimum basic needs and reintegrating into society upon return.

Furthermore, it is also necessary to highlight that according to numerous cases, the burden of proof lies on third-country nationals to demonstrate that a safe return and durable conditions are impossible. To illustrate this, it can be referred to the Administrative Tribunal in Luxembourg which found in May 2024 that a national of Senegal who had resided legally in Ukraine for over 9 years did not adduce any evidence to counter a safe return to Nigeria, where he had lived the majority of his life [15].

In conclusion, while the Temporary Protection Directive has proven to be an effective tool in managing the unprecedented influx of Ukrainian refugees, its practical implementation has revealed several challenges and complexities. The issues of dual nationality, secondary movements within the EU, simultaneous protection requests, and the status of third-country nationals have required careful judicial interpretation and policy adjustments. These challenges have led to significant case law development and legislative responses, such as the new provisions in the Pact on Migration and Asylum. Despite these difficulties, the TPD's implementation represents a crucial step in European migration policy, demonstrating both the EU's capacity for collective action in crisis situations and the need for continued refinement of protection mechanisms.

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### Резюме:

Директиву про тимчасовий захист як інструмент та законодавчу основу для встановлення мінімальних стандартів надання тимчасового захисту у випадку масового припливу переміщених осіб та заходів, що сприяють збалансованості зусиль держав-членів ЄС у прийнятті таких осіб (як це точно зазначено в її назві), було прийнято у 2001 році, але імplementовано лише у 2022 році як відповідь на один з найбільших потоків українських біженців.

Попри всі попередні спроби втілити її положення в життя (наприклад, для не менш значного потоку біженців із Сирії), документ критикували як надто «політично нереалістичний». Однак, зіткнувшись з найбільшим масовим переміщенням в Європі з часів Другої світової війни, Директиву було реалізовано і навіть продовжено її дію до 4 березня 2026 року.

Загалом Директива про тимчасовий захист встановлює рамки для надання негайного і тимчасового захисту переміщеним особам з країн, що не є членами ЄС.

Хоча Директива про тимчасовий захист виявилася ефективним інструментом в управлінні безпрецедентним напливом українських біженців, її практична реалізація виявила низку проблем і складнощів. Питання подвійного громадянства, вторинного переміщення в межах ЄС, одночасних запитів на захист і статус громадян третіх країн вимагали ретельного судового тлумачення і коригування політики. Ці виклики призвели до значного розвитку судової практики та законодавчих заходів, таких, як нові положення Пакту про міграцію та притулок. Незважаючи на ці труднощі, імplementація документа є важливим кроком у європейській міграційній політиці, демонструючи як здатність ЄС до колективних дій у кризових ситуаціях, так і потребу в постійному вдосконаленні механізмів захисту.