

Temporary Protection in International and EU Law: Historical Evolution, Legal Frameworks, and Contemporary Challenges

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Summary: This article provides a comprehensive analysis of the concept, history, and legal frameworks of temporary protection as a response to mass influxes of displaced persons. It traces the evolution of temporary protection from early international and national practices to the European Union's codified Temporary Protection Directive and its first operational activation because of the full-scale Russian invasion of Ukraine in 2022. The study compares temporary protection regimes in the EU, United States, and Turkey, highlighting their distinct legal bases, eligibility criteria, and practical challenges. Emphasis is placed on the balance temporary protection seeks between humanitarian needs, state capacity, and political considerations, as well as its role as a complement to traditional asylum. The article further explores ongoing implementation issues, including variation in national practices and the tension between temporary relief and longer-term solutions for displaced populations. By synthesizing legal, policy, and operational perspectives, the article enriches understanding of temporary protection's critical function in contemporary international refugee and migration law.

Key words: temporary protection, migration, asylum, refugee, non-refoulement, EU law, Directive 2001/55/EC.

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1. Introduction

Temporary protection has a long-standing historical presence as a legal mechanism for responding to mass influxes of displaced persons caused by factors such as armed conflicts, epidemics, and environmental disasters, which has been used multiple times. Throughout history, temporary protection has repeatedly emerged globally as states and international organisations sought practical frameworks to manage urgent displacement and uphold humanitarian principles.

Nonetheless, modern international law does not include a universal legal convention or act designed to govern temporary protection. Formalization and legal codification of temporary protection have evolved over decades in different states, including the United States, Turkey, and the member states of the European Union, each reflecting distinct political and social contexts.

The European Union encountered a similar predicament in the 1990s, when Bosnian refugees arrived in large numbers to EU Member States as a result of the armed war in the former Yugoslavia. This compelled the European Union to draft a specific directive in order to provide a uniform legal framework for all Member States. Nonetheless, the directive was never activated until 2022 when the Russian aggression against Ukraine began.

A decade earlier, in 2011 the same fate struck Turkey when millions of displaced individuals started arriving from Syria. Having started with no special legal background to cope with the mass influx, the Turkish government has managed to develop its legal framework and practice how to respond to such challenges.

The diversity of states' approaches to understanding temporary protection, its elements, the categories of people to whom it may be granted, as well as the lack of its definition and the identification of its role in the international protection and asylum system, have always been the subject of scholars' interest. The evolution of the concept of temporary protection at the international level and practical application of procedures of granting temporary protection at regional and national levels, have been scrutinised by numerous scholars, e.g., Black R., Brumat L., Carrera S., Coles G. J. L., Dalkiran M., Lipman L. K., Edwards A., Esen S., Ferris

E., Ineli-Ciger M., Kortukova T., Koser K., Küçük E., Selm van J., Vosyliute L., Yemets Ye, Zoetewij M. While some scholars draw attention to the temporary protection in its correlation with refugee protection and asylum (Fedorova A. in her paper “The main categories of displaced persons fleeing armed conflicts and their correlation in the context of russian invasion of Ukraine”¹) as well its limits and conditions of its application (Coles G. J. L. in his paper “Temporary Refuge and the Large Scale Influx of Refugees”² or Edwards A. in “Temporary Protection, Derogation and 1951 Refugee Convention”³), others analysed the national or regional approaches to introduction of temporary protection to displaced persons in case mass influx and their compliance with international law provisions (e.g. Ineli-Ciger M.’s article “A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?”⁴ or Ferris E.’ – “Syrian Refugees in Türkiye: Prospects for Return or Integration?”⁵).

The activation of the EU Temporary Protection Directive in March 2022, as well as the extension of temporary protected status until 2027, marked a new stage in the development of temporary protection and underscored the need to scrutinise its evolution, particularly regarding its extension beyond the national framework.

The main aim of this article is to evaluate operational challenges realised in recent applications of temporary protection, such as varying interpretations among EU member states, administrative hurdles, balancing humanitarian openness with security concerns, and managing transitions from temporary protection to long-term status or voluntary return. It further investigates comparative national policies, including the U.S. approach limited to nationals already present on its soil, Turkey’s open-border and large-scale reception policy, and the nuanced EU system tied to legal residence and nationality considerations.

The research relies on papers from the UN Human Rights Commission, the UN Refugee Agency, EU directives, national law of EU member states, as well as the legislation of the United States and the Republic of Turkey. The authors

¹ FEDOROVA, A. The main categories of displaced persons fleeing armed conflicts and their correlation in the context of russian invasion of Ukraine in (2022) *Ukraine in the system of modern international legal order and European integration: problems of doctrine and practice in the context of modern humanitarian challenges*: collective monograph / edited by authors. Chernivtsi, Ukraine: Yuriy Fedkovych Chernivtsi National University, 2022, pp. 333–363.

² Coles, G. J. L. Temporary Refuge and the Large Scale Influx of Refugees. *Australian Year Book of International Law*. 1983, vol. 7, pp. 189–212.

³ Edwards, A. Temporary Protection, Derogation and 1951 Refugee Convention. *Melbourne Journal of International Law*. 2012, vol. 13, pp. 5–6.

⁴ Ineli-Ciger, M. A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility? *International Community Law Review*. 2016, vol. 18, no. 3-4, p. 279.

⁵ Ferris, E. Syrian Refugees in Türkiye: Prospects for Return or Integration? *Rice University’s Baker Institute for Public Policy Briefs*. April 22, 2025. Available online at: <<https://www.bakerinstitute.org/research/syrian-refugees-turkiye-prospects-return-or-integration>>.

employ a historical technique to analyse temporary protection in the EU, the US, and Turkey, aiming to get a thorough comprehension of its inception, evolution, and the transformation of prevailing legal frameworks across various global locations. The techniques of legal analysis and comparison facilitated the identification of significant discrepancies and inconsistencies between EU requirements and current practices.

Ultimately, temporary protection emerges as a complex yet essential tool in modern refugee and migration law, offering a flexible, rights-based response to emergencies while navigating the persistent tension between temporary humanitarian relief and the need for sustainable, equitable solutions. This article aims to contribute a comprehensive conceptual and legal analysis, enriching scholarly and policy debates on the effective governance of forced displacement in diverse geopolitical contexts, especially in light of ongoing challenges exemplified by the mass influx of displaced Ukrainians due to Russia's full-scale aggression against Ukraine and global displacement trends.

2. Historical Context of Temporary Protection

The admission of foreign nationals for temporary protection during significant influxes of displaced persons is not a new phenomenon in the history of humanity. Throughout the centuries, this phenomenon has been the result of a variety of factors, including epidemics, climate change, and armed conflicts.

In the 20th century the need for temporary refuge was addressed on a global scale when, in 1971, the Indian government sought assistance from the United Nations to manage the influx of approximately 10 million refugees entering India from East Pakistan. India has asserted in global forums that these displaced individuals cannot remain as permanent residents, advocating for a six-month restriction on their stay and pushing the international community to develop programs to facilitate their voluntary repatriation to their country. In December of that year, the UN General Assembly adopted a resolution recognizing that voluntary repatriation was the only satisfactory solution. The resolution urged all Member States to intensify their efforts to create the necessary conditions for the speedy and voluntary return of the refugees to their homes. This was succeeded by the officially facilitated repatriation initiative, which involved the return of 10 million refugees beginning on January 1, 1972. This process was completed approximately 2.5 months later.⁶

⁶ Coles, G. J. L. Temporary Refuge and the Large Scale Influx of Refugees. *Australian Year Book of International Law*. 1983, vol. 7, p. 191.

A significant case emerged in Southeast Asia during the years 1975 to 1980. Almost a million Indo-Chinese people from Vietnam, Cambodia, and Laos fled their country during that time. This trend peaked in 1979, which caused serious issues for the majority of the first-refugee countries. Numerous nations were reluctant to offer sustainable solutions for even a small contingent of these refugees, apprehensive that their temporary admission would result in a significant number of refugees remaining without adequate international support in securing satisfactory durable solutions. Factors included a concern for national security and the desire to avert the challenges and risks associated with harbouring liberated members of conflicting factions from surrounding states. The entry of the bulk of Vietnamese and other Indo-Chinese refugees and displaced individuals into Southeast Asian countries has been predicated on the express understanding that such admission is temporary.⁷

The Conference of African States considered temporary asylum for the African continent in May 1979. The Conference emphasised the significance of the notion of temporary asylum in its recommendations regarding Asylum in Africa.

The United States first introduced the concept of “temporary protected status” in 1990 to defend illegal Salvadorans residing in the country from deportation. This was achieved by incorporating these provisions into the 1990 Immigration Act. The members of the United States Congress favoured the provision of temporary protection, such as respite from the prospect of deportation to individuals from specific at-risk nationalities. However, it would not grant these individuals formal refugee status.⁸

The issue of a massive influx of refugees and displaced individuals became a concern for the Turkish Republic in 2011, when Syrian refugees began to arrive in Turkey following the outbreak of the Syrian civil war. By early 2019, more than 3.6 million individuals had sought refuge in Turkey⁹. Prior to the enactment of special legislation, temporary protection was administered in accordance with Regulation No. 1994/6169, which outlined the Procedures and Principles concerning Potential Population Movements and Aliens Arriving in Turkey, whether individually or in groups, seeking asylum in Turkey or requesting

⁷ Ibid, p. 193–194.

⁸ Dalkiran, M., Lipman, L K. ‘But we have to be realistic’: examining the origins of temporary protection in the USA and European Union. *Journal of Refugee Studies*. 2025, vol. 38, no. 1, pp. 181–196.

⁹ Ayhan K. The World’s Leading Refugee Host, Turkey Has a Complex Migration History. *The Online Journal of the Migration Policy Institute*. November 1, 2023. Available at: <<https://www.migrationpolicy.org/article/turkey-migration-history#:~:text=Turkey%20is%20the%20world's%20leading%20refugee%20hosting%20country%2C,of%20the%20Republic%20of%20Turkey%20in%201923.>>

residence permission to pursue asylum in another country¹⁰. As Turkish scholar M. Ineli-Ciger indicated under this regime protection was provided to all Syrians, Palestinian refugees, and stateless individuals residing in Syria. The scope and legal foundation of the temporary protection regime were first ambiguous. In response to a parliamentary question, the Turkish Disaster Emergency Management Presidency (AFAD), an agency of the Ministry of Interior, characterised the legal foundation of the temporary protection regime as a “Guideline concerning the reception and admission of stateless and Syrian nationals.”¹¹ In 2013, Turkey adopted the Law on Foreigners and International Protection (the 2013 Law)¹², which came into effect in April 2014, followed by implementing Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883) in October 2014¹³. Thus, prior to the events in Ukraine in 2022, Turkey welcomed the largest number of refugees worldwide, showcasing its remarkable experience in providing temporary protection and support in everyday circumstances, especially amid the challenges posed by global events.

The history of temporary protection regulation in Europe dates back to the first half of the 20th century. M. Ineli-Ciger references the work of M. J. Gibney, noting that this history begins with England and France providing temporary refuge to Spanish individuals fleeing the Spanish Civil War in the 1930s. Additionally, Austria granted temporary refuge to Hungarian and Czech refugees in 1956 and 1968, respectively¹⁴.

The concept of temporary protection first emerged in Europe in the early 1990s amid the turmoil in the former Yugoslavia. During this preliminary stage, European countries regarded temporary protection as a restrictive measure rather than an extensive protection system. Upon the arrival of Croatian refugees in European Community member states, they faced systems intended to impede

¹⁰ Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country. Temporary protection has gained a legal basis firstly with Law on Foreigners and International Protection. <<https://www.refworld.org/legal/decrees/natlegbod/1994/en/64501>>.

¹¹ Ineli-Ciger, M. Protecting Syrians in Turkey: A Legal Analysis Protecting Syrians in Turkey: A Legal Analysis. *International Journal of Refugee Law*. 2017, vol. 29, no 4, pp. 555–579. doi:10.1093/ijrl/eex042

¹² The Republic of Turkey. Ministry of Interior. Directorate General of Migration Management. Law No. 6458 on Foreigners and International Protection of 2013. <<https://www.refworld.org/legal/legislation/natlegbod/2016/en/114283>>.

¹³ Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883). <<https://www.refworld.org/legal/decrees/natlegbod/2014/en/108062?prevPage=/node/108062>>.

¹⁴ Ineli-Ciger M, A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility? *International Community Law Review*. 2016, vol. 18, no. 3-4, p. 279.

rather than promote protection¹⁵. Governments perceived interim protection as a means to circumvent the provision of complete refugee status as stipulated by the 1951 Geneva Convention. Temporary protection was intentionally designed to provide a shorter duration of stay and fewer rights than traditional asylum during this period. The standards regarding rights, residence permits, and reception conditions were inconsistent across European countries, resulting in a significant variation in the approach. Essentially, temporary protection communicated the following message: “you are present, we are unable to evict you, but you are not welcome”¹⁶. This restricted policy reflected the hesitance of European governments to recognise war-displaced individuals as Convention refugees and their concerns about the increase in asylum applications.

As the conflict escalated in Bosnia and Herzegovina throughout the mid-1990s, temporary protection transformed into a state of “reluctant acceptance”. Croatia, for example, provided temporary protection to almost 400,000 Bosnian refugees.¹⁷ Thus, European governments established a rather standardised methodology, albeit functioning on a national rather than a coordinated European scale. Temporary protection has assumed a subordinate status relative to Convention refugee status, which continues to be rigorously confined to explicitly delineated circumstances.

The strategy for Bosnian refugees demonstrated a fundamental inclination to limit displacement near the area of origin. European governments suggested that displaced individuals “ought to have remained in their original locations or nearer to home,” frequently in allegedly “safe areas” that subsequently revealed themselves to be perilous, or in neighbouring non-EU countries. The Security Council was engaged during this period, adopting Resolution 752 in 1992¹⁸ concerning the situation in Bosnia and Herzegovina, which indicated international apprehension but failed to implement coordinated protection measures.

Displaced individuals were subjected to a “legal limbo” as a result of the ad-hoc nature of these measures. During the Kosovo crisis, Amnesty International documented that Macedonia’s refusal to admit refugees without third-country

¹⁵ Selm van, J. Temporary Protection for Ukrainians: learning the lessons of the 1990s? ASILE: Global Asylum Governance and the European Union’s Role. Forum on the EU Temporary Protection Responses to the Ukraine War . 22 April 2022. Available at: <<https://www.asileproject.eu/temporary-protection-for-ukrainians-learning-the-lessons-of-the-1990s/>>.

¹⁶ Ibid.

¹⁷ Womack H., Kapic J., Benic Belavic, K. UNHCR on Regional Housing Programme in Croatia: Refugees of 1990s conflicts come home to some comfort. Croatia, Zagreb. 2019. 28 March. Available at: <<https://regionalhousingprogramme.org/unhcr-on-regional-housing-programme-in-croatia-refugees-of-1990s-conflicts-come-home-to-some-comfort/>>

¹⁸ Security Council resolution 752 (1992) [Bosnia and Herzegovina] Available at: <<https://www.refworld.org/legal/resolution/unsc/1992/en/82248>>

relocation agreements resulted in the displacement of thousands of individuals into transit shelters. These individuals were subjected to coercive evacuations and fragmented family reunification efforts.¹⁹ These methods prioritised containment over dignity, with host countries such as the United Kingdom and Germany providing minimal rights under transitory statuses that prohibited access to asylum procedures.²⁰

The war in Kosovo revealed the inadequacies of disjointed national responses. As NATO forces established camps in Macedonia, the host nations implemented diverse temporary protection measures. Australia confined evacuated refugees to military camps without employment rights, whereas Norway issued renewable residence permits but retained the authority to enforce repatriation after four years. The UK's "exceptional leave to remain" granted one year of residency but lacked clarity regarding long-term protection.²¹ The amalgamation of these experiences and the insights gained from previous methods concerning Croatian and Bosnian refugees led to an increasing acknowledgement of the necessity for a more systematic, EU-level strategy.

Enacted in 2001, Council Directive 2001/55/EC introduces minimum standards for granting temporary protection during mass influxes of displaced persons and promotes equitable distribution of responsibilities among Member States in accommodating these individuals and managing the associated repercussions, thereby establishing a unified European framework for immediate and temporary protection in such scenarios.²²

The Temporary Protection Directive (hereinafter, TPD) signified a new era in the comprehension of temporary protection. Rather than serving as a substitute for refugee status, as it did in the 1990s, it was designed to be "an administrative prelude to the application of the 1951 Refugee Convention." This represented a significant shift in temporary protection from a restrictive model to a complimentary one that could operate alongside traditional conventional asylum systems.

However, for more than two decades, the directive went largely unnoticed in the European Union, even amid major displacement crises like the migration crisis

¹⁹ Amnesty International. FYROM: The protection of Kosovo Albanian refugees. AI Index: EUR 65/03/99. Available at: <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur650031999en.pdf>>.

²⁰ Temporary Protection Germany 2023 Update. Available at: <https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-DE_Temporary-Protection_2023.pdf>.

²¹ Ibid.

²² Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23 Available at: <<https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng>>.

of 2015-16. This dormancy raised concerns regarding the directive's practical efficacy and political commitment to implement it. Several factors contributed to this lengthy implementation gap. The first reason was lack of political will. Despite displacement issues, it was commonly considered that the European Commission and Council lacked the political will to implement the provisions of the Directive. Secondly, the activation mechanism is quite complex. The directive can only be activated if proposed by the European Commission and agreed by the Council with a qualified majority vote. This procedural complexity made it unsuitable for use in urgent displacement occurrences. Moreover, many member states believed that their asylum systems could handle significant numbers of people without triggering the directive, depending on existing asylum procedures and EU institutional support rather than a temporary protection regime. Lastly, although the directive includes a system for sharing the reception load among member states, the lack of precise criteria or indicators to establish each state's capacity has produced implementation doubts and difficulties in administrative collaboration.

All Member States, apart from Denmark, which has an opt-out provision, were mandated to incorporate the Directive into national legislation. Ireland initially had an opt-out but subsequently opted in; however, by 2016, it had not achieved total transposition. Germany enacted the order under Section 24 of its Residence Act, which defined the status, exclusions, distribution regulations, and rights of protection applicants²³. The UK included temporary protection measures into its immigration regulations (part 11A)²⁴, defining the grounds for the deployment of such protection. Nonetheless, in the absence of EU-level activation, these regulations remained mostly theoretical.

States favoured bilateral accords or ad-hoc solutions in the following crises. During the 2015 Syrian refugee flow, Germany circumvented the Temporary Protection Directive by citing national humanitarian provisions to accept over one million asylum applicants, apprehensive that the directive's redistribution mechanism would undermine political unity.

The EU's hesitation to activate the TPD was criticised by academics and non-governmental organisations, who said that its non-use resulted in fragmented reactions. For instance, the authors of the legal essay "Temporary protection in the European Union: a legal analysis"²⁵ point out that the EU has not used the Directive because of ambiguous definitions of "mass influx" and political

²³ Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet . 30.07.2004. <https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html>.

²⁴ Immigration Rules archive 13 February 2025 – 17 February 2025. <https://assets.publishing.service.gov.uk/media/67b5c3e6b56d8b0856c2fec5/Immigration_Rules_-_Archive_13-02-25.pdf>.

²⁵ Kortukova, T., Yemets, Y. Temporary protection in the European Union: legal analysis. *Legal Horizons*. 2024, vol. 21, no. 2, pp. 36-45. <https://doi.org/10.54477/LH.25192353.2024.2>. pp. 36-45.

resistance on the part of states to use it in previous crises. They highlight the structural issues and political will that underlie the immobility. Meltem Ineli-Ciger asserted that the directive's need for unanimous Council adoption resulted in an impasse, since nations such as Hungary and Poland opposed obligatory refugee quotas²⁶. And Esin Küçük discussed that temporary protection for a long time was more theoretical than operational²⁷.

The Temporary Protection Directive was activated for the first time upon the Russian invasion of Ukraine on February 24, 2022, which resulted in an unprecedented displacement crisis in Europe. The European Commission proposed the activation of the directive on March 2, 2022, in response to requests from EU home affairs ministers. On March 4, 2022, the Council unanimously enacted the decision, which provides temporary protection to individuals who are escaping the conflict in Ukraine. This historic activation was a direct response to the significant volume of arrivals from Ukraine, which posed a clear risk of overloading national asylum systems and humanitarian catastrophe for Europe. Standard asylum processes, as designated by the European Commission, would likely be unable to process applications within the required deadlines, potentially jeopardising the rights of those seeking protection.

3. Legal Concept of Temporary Protection

There is no universal international legal instrument specifically related to temporary protection or an internationally recognized definition of it. Furthermore, this concept has acquired various meanings depending on the context and the involved state or institution.

The concept of “temporary protection” is usually used to refer to a prompt response to large flows of refugees, which is defined as “mass influx”. But as A. Edwards indicated, “temporary protection has also been applied in situations where it is difficult to distinguish between asylum seekers and others moving in mixed flows, as well as to broader categories of persons who fall outside the 1951 Refugee Convention definition of a ‘refugee’²⁸”.

Considering the various approaches taken by scholars, it becomes evident that there are various terms used to define the same concept: ‘temporary protection’,

²⁶ Ineli-Ciger, M. Towards Temporary Prolonged Protection? EU Migration Law Blog, June 10, 2025. Available at: <<https://eumigrationlawblog.eu/towards-temporary-prolonged-protection/>>

²⁷ Küçük, E. Temporary Protection Directive: Testing New Frontiers? *European Journal of Migration and Law*. 2023, vol. 25., no. 1, pp. 1–30. <https://doi.org/10.1163/15718166-12340142>.

²⁸ Edwards, A. Temporary Protection, Derogation and 1951 Refugee Convention. *Melbourne Journal of International Law*. 2012, vol. 13, pp. 5–6.

‘temporary refuge’, or ‘temporary asylum’. At the beginning of the 1980s, the senior legal advisor of the UN Refugee Agency, G. J. Cole, considered this issue and gave preference to the term ‘temporary refuge’ in comparison to ‘temporary asylum’. He contended that it prevents confusion with the term “asylum,” which he acknowledges is not universally accepted, while also incorporating the concept of protection. He characterised ‘temporary refuge’ as protection defined by the principle of non-refoulement, granted to an individual and lasting temporarily until a permanent solution is secured.²⁹

Edwards A. also refers to another scholar, J. F Hartman, who argued that a concept of temporary refuge exists in customary international law, even though it is not formally codified in a treaty, and made a compelling connection between ‘temporary refuge’ and the fundamental principle of refugee law known as non-refoulement, which protects civilian war victims from forced repatriation. J. F Hartman emphasized that the length of this ‘temporary refuge’ often mirrors the duration of the armed conflict, which can vary significantly. Excitingly, Hartman asserts that this concept has evolved into a customary international norm, backed by consistent practices in granting sanctuary to those affected by war. This practice reflects widespread acceptance and compassion. While Hartman focuses on the vital non-refoulement obligations, it’s important to note that many contemporary temporary protection arrangements also emphasize the enjoyment of various rights, fostering a hopeful environment for those in need.³⁰

According to A. Edwards, the terminology of temporary protection originated in the 1990s. The shift in terminology from ‘refuge’ to ‘protection’ seems to have aligned with the evolution of the concept of ‘international protection’ that occurred during this period. This change in concepts marked transit from an emphasis on ‘diplomatic protection’ to a more expansive notion of international protection, the latter encompassing human rights or surrogate protection. Likewise, temporary protection seems to extend beyond Coles’ or Hartman’s non-refoulement duty to further, restricted human rights.³¹

The 1994 “Note on International Protection”, a critical annual document submitted by the UN High Commissioner for Refugees to the UN Executive Committee of the High Commissioner’s Programme, summarised developments in the field of refugee protection and recommended methods to address the needs of persons of concern. The document also addressed the challenges posed by situations such as mass influx, highlighting the necessity to address the requirements of refugees beyond conventional definitions and underscoring the significance

²⁹ Coles, G. J. L. Temporary Refuge and the Large Scale Influx of Refugees. *Australian Year Book of International Law*. 1983, vol. 7, pp. 200–202.

³⁰ Ibid p. 6

³¹ Ibid p.6

of international solidarity and equitable burden-sharing. Paragraph 45 of the Note endeavours to define ‘temporary protection’ as a mechanism for offering refuge to groups or categories of individuals acknowledged to require international protection during instances of mass outflow, without initially resorting to individual refugee status determination. It encompasses respect for fundamental human rights; however, as it is designed as a temporary emergency protection measure, a narrower scope of rights and benefits is provided initially compared to those typically granted to refugees under the 1951 Convention and the 1967 Protocol. Thus, the primary concerns in 1994 were “hopefully short duration,” indicating a transitory character of temporary protection, and “limited range of rights and benefits” relative to asylum status.³²

Then, later in 2001, refocusing on the inflow, the UNHCR reaffirmed its belief that temporary protection is best understood as a workable solution to urgent protection requirements during major influx events. It has been shown to be beneficial in guaranteeing protection against deportation and human rights-compliant basic minimum treatment without placing an undue burden on the processes involved in determining an individual’s status. In this definition, the UNHCR allowed the suspension of the whole spectrum of Convention rights as well as the status determination processes, recognising that temporary protection may be provided to Convention refugees in emergency situations. However, the UNHCR has never explained the legal justification for such a suspension, as opposed to the humanitarian or practical one.³³

The Temporary Protection Directive defines ‘temporary protection’ as a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.³⁴

Taking into account these definitions, the main features of the temporary protection can be drawn:

³² Note on international protection / submitted by the High Commissioner for Refugees. 1994. UN Doc A/AC.96/830. < <https://digitallibrary.un.org/record/161945?ln=ru&v=pdf> >.

³³ Global Consultations on International Protection/Third Track: Protection of Refugees in Mass Influx Situations: Overall Protection Framework. 2001. UN Doc EC/GC/01/4. < <https://www.refworld.org/policy/strategy/unhcr/2001/en/21073> >.

³⁴ Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23. < <https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng> >.

3.1. Group coverage

In comparison to the refugee and asylum status, which is provided individually, temporary protection is granted to the representatives of a certain nationality or group. Temporary protection is a type of group protection that minimizes the burden on the national asylum systems of receiving states, reducing the need for financial resources, time, and staff efforts.

If we examine the current models of temporary protection in the USA, the EU, and Turkey, we can see how this is implemented in practice.

In the United States, the Immigration Act (amended in 1990) specifies the details of “Temporary Protected Status” in Section 244³⁵. This provision allows the Secretary of US Department of Homeland Security to designate countries whose nationals are eligible for temporary protected status based on ongoing conflict, environmental disasters, epidemics, or other extraordinary temporary conditions. To qualify for temporary protected status, an individual must be a national of a designated country, have maintained continuous presence in the U.S. since a specified date, and submit their application during the designated registration periods. As of September 2025, nationals from 14 countries were designated for temporary protected status in the USA, covering 1.2 million people, with Venezuelans being the largest group.

The 2021 United States Supreme Court case *Sanchez v. Mayorkas*³⁶ confirmed that temporary protected status was not equivalent to lawful admission into the country and only provided legal status for the purpose of remaining in the country. Consequently, immigrants who entered the country illegally but were granted temporary protected status are ineligible to petition for permanent resident status for the simple reason that they were granted temporary protected status.

In comparison to the US model, the Republic of Turkey’s “Law on Foreigners and International Protection” (No. 6458) defines temporary protection in Art. 91 as follows: “Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country they left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.”³⁷

³⁵ Immigration and Nationality Act of June 27, 1952; Chapter 477 of the 82nd Congress; 66 STAT. 163; 8 U.S.C. 1101 et seq.1] [As Amended Through P.L. 119–21, Enacted July 4, 2025. <<https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>>

³⁶ *Sanchez v. Mayorkas*, 593 U. S. (2021) <<https://supreme.justia.com/cases/federal/us/593/20-315/>>

³⁷ The Republic of Turkey. Ministry of Interior. Directorate General of Migration Management. Law No. 6458 on Foreigners and International Protection of 2013. <<https://www.refworld.org/legal/legislation/natlegbod/2016/en/114283.>>

The Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883) widens this definition, indicating in Art. 7 that temporary protection shall be granted to foreigners who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed Turkish borders in masses to seek urgent and temporary protection, and whose international protection requests cannot be taken under individual assessment. On the other hand, temporary protection shall not cover persons who arrived in Turkey from the country or region, where events constituting a basis for the temporary protection announcement take place, prior to the effective date of the temporary protection announcement, unless the Council of Ministers decides otherwise. Temporary protection shall not be also granted to individuals and temporary protection status shall be cancelled if there are reasons to believe that these persons have committed serious crime in their country of origin or in Turkey, took part in armed conflicts in his or her country and did not permanently ceased such activities, who are identified as having committed, planned to commit or participated in acts of terrorism or those who are considered to be a threat to public due to being convicted of a serious crime and those who are considered to pose danger to national security, public order, or public security etc. (Art. 8 of the Regulation)³⁸. The decision on granting the temporary protection to specific group or nationals of specific states is made by the Council of Ministers of the Republic of Turkey.

As of April/May 2025, Turkey accommodates nearly 3.1 million registered Syrian refugees, in addition to approximately 1.1 million unregistered refugees, but these figures are subject to variation. The Turkish government projected over 2.7 million Syrians under temporary protection by early May 2025³⁹.

Unlike the US, where temporary protection is granted only to foreign nationals already present in US and is not intended to provide legal admission, Turkey offers this status to those who have “arrived at or crossed the borders of Turkey.” As of today, all Syrians, Palestinian refugees, and stateless individuals who were residing in Syria throughout the civil war are eligible for temporary protection status in the Republic of Turkey.

In the European Union, the Council Implementing Decision (EU) 2022/382⁴⁰ of 4 March 2022 establishing the existence of a mass influx of displaced persons

³⁸ Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883). <<https://www.refworld.org/legal/decrees/natlegbod/2014/en/108062?prevPage=/node/108062>>

³⁹ Ferris, E. Syrian Refugees in Türkiye: Prospects for Return or Integration? *Rice University's Baker Institute for Public Policy Briefs*. April 22, 2025. Available online at: <<https://www.bakerinstitute.org/research/syrian-refugees-turkiye-prospects-return-or-integration>>.

⁴⁰ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive

from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection indicated the list of persons eligible for temporary protection (Art. 1 (1)). That included:

- a) Ukrainian nationals residing in Ukraine before 24 February 2022;
- b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and,
- c) family members of the persons referred to in points (a) and (b).

In accordance with Art. 2 (2) of the Council Decision, temporary protection as outlined in Directive 2011/55/EC or adequate protection under the national laws of Member States shall be afforded to stateless individuals and nationals of third countries, excluding Ukraine, who can substantiate legal residence in Ukraine prior to 24 February 2022 through a valid permanent residence permit issued under Ukrainian law, and who are unable to return safely and sustainably to their country of origin (Art. 2 (2)).

Despite the apparent clarity of these provisions, during the initial weeks of the full-scale aggression, as 3 million persons from Ukraine began to arrive in EU Member States, it became evident that each Member State interpreted these provisions differently, resulting in significant discrepancies in the reception of displaced persons from Ukraine.

So, the European Commission was forced to adopt in March 22, 2022 the Operational guidelines for the implementation of the Council implementing Decision 2022/382⁴¹. The Commission selected certain matters on which it deemed it beneficial to offer assistance to Member States, based on enquiries on the implementation of the Council Decision and the Temporary Protection Directive. The guidelines addressed these concerns, including the scope (individuals included/excluded by the Council Decision, family members).

The categories of people mentioned in Art. 2 (1) and (2) were granted temporary protection due to the provisions of the Council Decision. Under national law, there is no application procedure for either temporary or sufficient protection. Therefore, the individual in question only needed to provide proof of nationality, international protection or equivalent protection status, residence in Ukraine, or a family connection as appropriate when presenting themselves to the authorities

2001/55/EC, and having the effect of introducing temporary protection < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022D0382>.>

⁴¹ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2022_126_I_0001>

to be granted the rights associated with temporary protection or adequate protection. The entitlement to short-term protection was deemed to be instantaneous. However, the Member State could choose to meet specific conditions, such as completing a registration form and providing documentation as specified in the Council Decision, in order to guarantee appropriate administration and registration of the individual in question.

One of the goals of temporary protection is to minimise paperwork in order to guarantee a quick process. According to the Council Decision's recital 12, individuals who wished to take advantage of the protection should be able to demonstrate to the appropriate authorities in the Member State in question that they were entitled to either temporary or adequate protection under national law by presenting the necessary documentation. This could encompass documented proof that helped to verify identification and domicile, or to affirm familial relationships, unity, and reliance with close relatives.

Member States were encouraged to regard expired documents as evidence of the identity or residence status of the individual concerned. If Member States had concerns regarding the authenticity of the documents, or if the individual lacked the aforementioned documents, they were allowed to reach out to Ukrainian authorities within those Member States for assistance or to verify, if feasible, the individual's Ukrainian nationality or residence status in Ukraine.

In instances where an individual could not provide the necessary documentation and Member States were unable to quickly ascertain the individual's eligibility for temporary protection or adequate protection under national law, the Commission recommended redirecting the individual to the asylum procedure. Individuals asserting an inability to safely return to their country or region of origin, coupled with an overly complex process for determining eligibility for temporary or adequate protection under national law, should have been directed to the asylum procedure.

In order to maintain family unity and prevent divergent statuses among members of the same family, the Council Decision also applies to family members of individuals referred to in Art. 2 (1) (a) and (b) who had been already residing in Ukraine prior to February 24, 2022.

In accordance with the stipulations of the Guidelines and considering the 2014 Communication from the Commission to the European Parliament and the Council regarding the application of Directive 2003/86/EC on the right to family reunification⁴², the following categories of individuals are recognised as family members for the purposes of the Council Decision:

⁴² Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification. Brussels, 3.4.2014 COM(2014) 210 final. < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0210>>.

- a) the spouse of the individual receiving temporary protection, or the unmarried partner in a stable relationship, in cases where the relevant Member State's laws or customs treat unmarried couples similarly to married couples under its national law pertaining to foreign nationals; this can be demonstrated by pertinent registry documents and certificates, or by any other document issued by Ukrainian authorities, including attestations from the nation's representation in that Member State;
- b) the minor unmarried children of the aforementioned individual, covered by temporary protection, or of their spouse, regardless of whether they were born in or out of wedlock or adopted, as evidenced by birth certificates or similar documentation;
- c) other close relatives who resided together as part of the family unit during the circumstances surrounding the mass arrivals of displaced persons and were wholly or mainly dependent on the individual who was covered by temporary protection. This could be demonstrated through residence documents, family registers, and proof of relevant care payments. The margin of appreciation should be utilised in the most humanitarian manner by Member States.

The Commission emphasised that, in the event of stateless individuals and nationals of third countries other than Ukraine who could demonstrate that they had been legally residing in Ukraine prior to February 24, 2022, on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and were unable to return to their country or region of origin in safe and durable conditions, their family members are not entitled to temporary protection or adequate national protection under the Council Decision. Although the Council Decision does not mandate that family members of individuals referred to in Art. 2 (2) receive temporary protection as outlined in Directive 2001/55/EC or adequate protection under the national law of the Member States, the Commission urged Member States to extend the application of temporary protection or adequate protection under national law to members of their families.

The Commission also indicated the group of individuals who are not entitled to the temporary protection. These are as follows:

- Ukrainian nationals resident in Ukraine who were displaced from the country before 24 February 2022, or who were outside Ukraine before that date due to employment, studies, vacations, family visits, medical reasons, or other circumstances;
- Stateless individuals or nationals from countries other than Ukraine, who were receiving international protection status or equivalent Ukrainian refugee protection in Ukraine prior to 24 February 2022, and who were displaced from Ukraine before that date, or who were outside Ukraine due to work, study, holidays, family, medical visits, or other reasons before that date.

- Stateless individuals and nationals from third countries, excluding Ukraine, who could demonstrate legal residence in Ukraine prior to 24 February 2022, based on a valid permanent residence permit issued in accordance with Ukrainian law, and who may be able to return safely and sustainably to their country or region of origin.

Member States may exclude a displaced individual from temporary protection if there are substantial grounds to believe that the individual has committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime outside the Member State of reception prior to their admission as a person entitled to temporary protection, or if the individual is convicted of actions that contravene the objectives and principles of the United Nations.

Member States may reject a displaced individual from temporary protection if there are justifiable reasons to consider that individual is a threat to the security of the host Member State or to its community. The Commission advised Member States to consult pertinent international, EU, and national databases, particularly the alerts regarding individuals and documents in the Schengen Information System (SIS), prior to granting residence permits to beneficiaries of temporary or adequate protection under national law, thereby facilitating essential security checks.

According to Eurostat data from 31 July 2025, 4.34 million non-EU citizens who fled Ukraine due to Russia's war of aggression were granted temporary protection in the EU. By the end of July 2025, the EU nations with the largest numbers of beneficiaries of temporary protection from Ukraine included Germany (1,203,715 individuals; 27.7% of the EU total), Poland (993,665; 22.9%), and the Czech Republic (380,680; 8.8%).

As of the end of July 2025, the ratio of individuals under temporary protection to the EU population was 9.6 per 1,000 individuals. The highest ratios among EU countries were recorded in the Czech Republic (34.9 per 1,000 people), followed by Poland (27.2) and Estonia (25.3).⁴³

Taking into account all the above mentioned, we can conclude that there are several approaches currently existing in the world to deciding which groups of people may obtain temporary protection status. According to the US model, temporary protection status is provided to those foreign nationals who are already present within the US borders, and it does not envisage admission to the USA for those who are beyond American frontiers. As for the Turkish and EU model, it allows for the temporary protection to be granted to those who are at their borders but also to those who are already in Turkey and EU Member States.

⁴³ Temporary protection for persons fleeing Ukraine – monthly statistics (Data extracted on 5 September 2025). <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Temporary_protection_for_persons_fleeing_Ukraine_-_monthly_statistics>

The specifics of the activation of the Temporary Protection Directive lie in the fact that displaced persons from Ukraine can be admitted to temporary protection based on the timeframe and country where this person was present or resided on the date of the start of full-scale aggression against Ukraine.

3.2. Exceptional character

Temporary protection is seen as very appealing to certain governments as it establishes a legal framework for swift responses in rare circumstances that may adversely impact the safety and security of the nations.

Situations to which temporary protection could be applied were delineated in the Discussion paper of the Roundtable on Temporary Protection, which was conducted by the UNHCR on July 19–20, 2012. These include humanitarian evacuation and emergency resettlement, as well as the context of natural disasters, sudden onset environmental disasters, and human-made disasters (e.g. nuclear accidents). Additionally, severe socio-economic deprivation accompanied by political instability (e.g. the economic situation (market collapse, high inflation) in conjunction with poor political and economic governance, conflict, and drought) are among the causes of flight. The Discussion paper explicitly stated that temporary protection is generally deemed inappropriate in situations that are rooted in long-standing conflicts or events and where the short-term return to the country of origin (or transition to alternative solutions) is unlikely.⁴⁴

According to Section 244 of the US Immigration Act, the Secretary of the U.S. Department of Homeland Security can designate a foreign state for temporary protected status for its nationals under specific conditions: (A) If there is ongoing armed conflict in the state, making it unsafe for nationals to return; or (B) If the Secretary finds that: (i) An environmental disaster has caused substantial disruptions in living conditions; (ii) The state is temporarily unable to handle the return of its nationals; and (iii) The state has officially requested such designation; or (C) If extraordinary and temporary conditions prevent safe return, as long as allowing the nationals to remain is not against US national interest. This legislation clearly defines the grounds for granting temporary protection to nationals from specific states.⁴⁵

⁴⁴ Concept Paper. Roundtable on Temporary Protection. International Institute of Humanitarian Law, Italy. San Remo. 19-20 July 2012. < <https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/506d8ee49.pdf>>.

⁴⁵ Immigration and Nationality Act of June 27, 1952; Chapter 477 of the 82nd Congress; 66 STAT. 163; 8 U.S.C. 1101 et seq.1] [As Amended Through P. L. 119–21, Enacted July 4, 2025. <<https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>>.

In Turkey, the existing legislation does not indicate certain circumstances that may require individuals to evacuate and seek temporary protection. The legislation in force stipulates that individuals must be those “who have been compelled to leave their country and cannot return to the country they have departed”. Consequently, it can be inferred from this provision that the conditions in the applicants’ country of origin must be unsafe for them to remain or return. The Council of Ministers of the Republic of Turkey shall have the authority to designate individuals eligible for temporary protection in its temporary protection decision (Art.10).⁴⁶

The EU’s Temporary Protection encompasses a list of circumstances that may compel the Council of the European Union to invoke the Directive. Art. 2 stipulates the definitions of language pertinent to this legal act. “Displaced persons” refers to third-country nationals or stateless individuals compelled to leave their country or region of origin, or who have been evacuated, particularly in response to requests from international organisations. They are unable to return safely and sustainably due to the prevailing conditions in their home country and may be covered under Art. 1A of the Geneva Refugee Convention or other international or national frameworks providing international protection. This includes: (i) individuals fleeing areas of armed conflict or endemic violence; or (ii) individuals at significant risk of, or who have suffered from, systematic or widespread violations of their human rights. Ultimately, the decision about the scenario that may prompt the Council of the EU to invoke the Directive’s provisions is contingent exclusively upon a proposal from the European Commission and a unanimous majority within the Council.⁴⁷

As previously stated, despite the Directive’s adoption in 2001, it remained inactive until March 2022. Proposals to activate the Directive during the 2015 Migration Crisis were not executed by the Commission and were never subjected to a vote in the Council. The Council Division enacted in 2022 faced criticism for its perceived double standards for displaced individuals from Syria, Iraq, and Afghanistan⁴⁸. In order to substantiate the actions of the Commission and

⁴⁶ Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883). <<https://www.refworld.org/legal/decrees/natlegbod/2014/en/108062?prevPage=/node/108062.>>.

⁴⁷ Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23 . <<https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng>>.

⁴⁸ CARRERA, S., INELI CIGER, M., VOSYLIUTE L., BRUMAT, L. The EU grants temporary protection for people fleeing war in Ukraine. Time to rethink unequal solidarity in EU asylum policy. *asileproject.eu*, March 2022. Available at: <<https://www.asileproject.eu/suleyman-demi-rel-university-3/>>

the Council's decision, it is important to recall that the EU Member States in the western region of Ukraine were the closest safe havens for Ukrainian displaced persons to evacuate when the full-scale war in Ukraine finally broke out. On the other hand, the Russian Federation and Belarus, which instigated this aggression against Ukraine, are located on the eastern and northern borders of Ukraine. The majority of Ukrainian exiled individuals were unwilling to voluntarily travel to the countries that had sparked hostilities against their homeland.

3.3. Mass influx of displaced persons

The definitions of the terms “mass influx” and “imminent mass influx” were addressed by the international community starting from the 1980s.

But firstly, the issue of “massive exoduses” was considered as the concept interconnected with the mass influx. In 1981 the UN Commission on Human Rights prepared the Study on Human Rights and Massive Exoduses⁴⁹ where the Special Rapporteur of the Commission Sadruddin Aga Khan indicated that the choice of terminology can lead to misunderstanding, and nomenclatural issues have hindered comprehension of the mass migration phenomena. In order to produce the appropriate definition in the meaning of its study, he applied several criteria:

- i. “In *quantitative terms*, if the number of persons leaving is very high in relation to the country of origin or the country of asylum. It is difficult to establish a percentage vis-à-vis the national populations, since the size of the two (or more, in the case of there being more than one country of asylum) is bound to be different, just as the loss of manpower of the one or absorptive capacity of the other is bound to be at variance. ... it will be seen that some of the situations selected have involved a loss of population amounting to more than a quarter of the national population. However, a flow of even one per cent or less in a country with, say, 40 or 50 million people could well constitute a mass influx for a receiving country.
- ii. In *qualitative terms*, a situation may be considered one of mass exodus despite the number of people leaving being relatively low, if they should belong to a particular minority, such as a religious or ethnic group. If events or circumstances prevailing in a given country and affecting in particular a certain minority or group leads to the departure of a high proportion of them, this could be qualified as a mass exodus.”⁵⁰

⁴⁹ Commission on Human Rights. Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories: Study on Human Rights and Massive Exoduses. E/OT.4/150. 1981. 69 P. <<https://docs.un.org/en/E/CN.4/1503>>

⁵⁰ Ibid, p. 17.

This approach was applied in 1983 by the UN Economic and Social Committee in its Report to the UN Secretary General “Human Rights and Mass Exoduses”⁵¹ where the term “mass influx” was also applied regarding the receiving states. This resulted in the UN General Assembly adopting its resolutions on December 4, 1986 (44/148)⁵² and December 15, 1989 (44/164)⁵³ “Human Rights and Mass Exoduses” where it urged the Commission on Human Rights to continue to consider the issues of mass influxes and exoduses and their consequences for the human rights protection.

However, in 2004 Executive Committee of the High Commissioner’s Programme as the governing body of the UNHCR (ExCom) noted in its Conclusion No. 100 (LV): International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations “that mass influx is a phenomenon that has not been defined, but ... mass influx situations may, inter alia, have some or all of the following characteristics: (i) considerable numbers of people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers.”⁵⁴

Moreover, the UNHCR emphasised in the 2000 Commentary on the Draft Directive on Temporary Protection in the Event of a Mass Influx that the notion of a “mass or large-scale influx” cannot be absolute; it must be contextualised according to the resources of the host nation. The term denotes a substantial influx of individuals from the same nation into a country within a brief timeframe, who have been displaced under conditions suggesting that they are eligible for international protection, and for whom, due to their volume, individual refugee status determination is procedurally unfeasible⁵⁵.

It is evident that the primary criterion for defining a “*mass influx*” should be the recipient state’s ability to accommodate the number of displaced persons and asylum seekers. This is why it is unnecessary to establish specific figures, as this

⁵¹ UN Economic and Social Committee. Report to the UN Secretary General. “Human Rights and Mass Exoduses”. A/38/538. 1983. 21 p. <https://digitallibrary.un.org/record/57285/files/A_38_538-EN.pdf>

⁵² Resolution 44/148 “Human Rights and Mass Exoduses”, 9th plenary meeting, 4 December 1986. <<http://www.worldlii.org/int/other/UNGA/1986/196.pdf>>

⁵³ Resolution 44/148 “Human Rights and Mass Exoduses”, 82nd plenary meeting, 15 December 1989. <<https://docs.un.org/en/A/RES/44/164>>

⁵⁴ Conclusion No. 100 (LV): International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations – Adopted by the Executive Committee (2004). <<https://www.refworld.org/policy/exconc/excom/2004/en/42049>>

⁵⁵ UNHCR Commentary on the Draft Directive on Temporary Protection in the Event of a Mass Influx (2000). <<https://www.refworld.org/legal/intlegcomments/unhcr/2000/en/35448>>

could potentially impede the states from activating the temporary protection if the circumstance is not representative of a mass influx. The UNHCR also determined that “in large-scale situations on a group basis,” it is still feasible to implement asylum procedures in accordance with the 1951 Convention, provided that the states can accommodate the volume of refugee claimants who arrive at their frontiers⁵⁶.

The EU Temporary Protection Directive defines “*mass influx*” as “arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example, through an evacuation programme”.⁵⁷

In 2022, when Russia launched a massive invasion of Ukraine, the Council of the EU, in its Implementing decision, concluded that more than 650,000 displaced persons had entered the Union from Ukraine via Poland, Slovakia, Hungary, and Romania as of March 1, 2022. It was anticipated that those figures would rise. The Council assumed that the Union would be confronted with a significant number of displaced persons, potentially between 2.5 million and 6.5 million, as a result of the armed conflict, depending on the course of the conflict. It was anticipated that between 1.2 million and 3.2 million of these individuals would have sought international protection. At that time, UNHCR estimated that, in the worst-case scenario, up to four million individuals could have fled Ukraine. The data indicated that the Union was confronting a scenario marked by a substantial influx of displaced individuals from Ukraine, who were unable to return to their homeland due to the Russian military assault. The magnitude of the influx would likely pose a significant risk that the asylum systems of the Member States would be unable to process the arrivals without detrimental effects on their operational efficiency and the interests of both the individuals involved and others seeking protection. The Council concluded that “the existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict is hereby established” (Art. 1)⁵⁸ and activated the Temporary Protection Directive based on the aforementioned. The choice to implement

⁵⁶ Global Consultations on International Protection/Third Track: Protection of Refugees in Mass Influx Situations: Overall Protection Framework. EC/GC/01/4. (2001). <<https://www.refworld.org/policy/strategy/unhcr/2001/en/21073>>

⁵⁷ Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23 . <<https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng>>.

⁵⁸ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022D0382>.

proved prescient, as about 4.4 million Ukrainian migrants entered the European Union and neighbouring European countries during the opening three months of the full-scale war against Ukraine (from late February to late May 2022).

This significant displacement became one of the most extensive and rapid refugee migrations in the history of contemporary Europe.

3.4. Limited time

The term “temporary protection” suggests that it is not permanent and should be restricted in time. The UNHCR framework emphasises that temporary protection must be both flexible and time-limited in order to immediately address crises, providing fundamental rights and protection during an emergency phase, and “it is considered generally inappropriate in situations that have their roots in long-standing conflicts or events and where return to the country of origin (or transition to other solutions) is not likely in the short-term⁵⁹.

The Discussion Paper of the Roundtable on Temporary Protection conducted by the UNHCR in 2012 provided that “temporary protection is return-oriented and not seen as a long-term commitment” and indicated that various methods exist for determining the parameters of temporary protection. The initial step might involve establishing a preliminary timescale, subject to extension if necessary. An alternative approach is to refrain from stipulating a minimum length of stay, allowing States to exercise discretion based on the prevailing circumstances (for instance, the Libya crisis did not inherently necessitate a one-year stay, as numerous individuals were swiftly evacuated or returned shortly after hostilities ceased). However, maximum restrictions should be established to facilitate individuals’ transition to other alternatives. The duration of these constraints varies from three to five years.⁶⁰

There are two options when temporary protection ends: termination or expiration. Termination would tie the end of temporary protection to the achievement of objective requirements in the country of origin, whereas expiration would connect the end of temporary protection to the expiration of the specified period of stay. Regarding the latter, a “maximalist approach” would be to utilise the same criteria as those envisioned in the 1951 Convention’s “ceased circumstances” sections (Article 1C). A “minimalist approach” can just call for a shift to alternative arrangements and solutions (see VII) or a change in circumstances that permit a return to safety and dignity. When termination is scheduled before

⁵⁹ UNHCR, Expert Meeting on International Cooperation to Share Burden and Responsibilities, 27–28 June 2011, Amman, Jordan: Summary Conclusions, Annex 1, paragraph. 5, p. 8. <<https://www.refworld.org/en/download/83174>>

⁶⁰ Concept Paper. Roundtable on Temporary Protection. International Institute of Humanitarian Law, Italy. San Remo. 19–20 July 2012. <<https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/506d8ee49.pdf>>.

the agreed period of stay expires, the latter may need to enlist an independent decision-making body or arrangement to make this conclusion. Beneficiaries of temporary protection should be permitted to request judicial review of the decision in question if the termination decision is an administrative decision.⁶¹

The drafters of the Discussion paper assert that, despite the widespread belief that temporary protection is of brief duration, it is a violation of international law for an individual to be returned to an unsafe location or to pursue a return if it is not feasible or respectful (e.g., if the individual would be required to traverse perilous territory). These factors may not be applicable to the group as a whole, and a fixed end of transitory protection is unable to account for them. Objective criteria, on the other hand, may be more suitable for this purpose. It is also not advisable to have an open-ended status, as one of the primary benefits of granting temporary protection is that it is time-limited. This prevents States from perceiving it as a pathway to permanent migration or asylum, thereby diminishing its appeal. Concurrently, there will be circumstances that necessitate transitioning to alternative statuses. A dual approach was recommended, in which maximal limits are established, but any early termination would necessitate justification based on objective criteria, subject to independent review. However, the attainment of utmost limits does not necessarily indicate a return; it may also indicate a transition to alternative solutions or statuses. The prohibition on *refoulement* must always be adhered to.⁶²

The 2014 UNHCR Guidelines on Temporary Protection or Stay Arrangements (TPSAs) specifically provide that TPSA's are time-limited. Accordingly, "temporary protection/stay ends when:

- a. it is determined – on the basis of an objective assessment based on clear indications, that the situation causing the displacement has ended, and voluntary return is reasonable and can be carried out in safety and dignity;
- b. the TPSA has been replaced by another form of protection, including transition to refugee status, as appropriate;
- c. an individual has transitioned to an alternative status (including, for example, residency status, work visa, or another migration status); or
- d. an individual has been admitted to a third State on a humanitarian basis or through resettlement.

The decision to end the applicability of a TPSA overall would need to be taken, preferably collectively, by all relevant States, to prevent onward movements caused by the premature ending of stay in one country"⁶³.

⁶¹ Ibid.

⁶² Ibid.

⁶³ UNHCR Guidelines on Temporary Protection or Stay Arrangements (2014) <<https://emergency.unhcr.org/sites/default/files/Guidelines%20on%20Temporary%20Protection%20or%20Stay%20Arrangements%2C%20February%202014.pdf>>

Pursuant to the provisions of the Art. 4 of the EU Temporary Protection Directive the temporary protection shall last for 1 year. It may automatically be renewed by six monthly periods for a maximum of one year unless discontinued early. The Council may extend temporary protection by up to one year upon a proposal from the Commission, which shall also evaluate any request from a Member State to submit a proposal to the Council, if the reasons for temporary protection persist. This decision will be made by qualified majority.⁶⁴

According to Art. 6 of the Directive temporary protection ends when the maximum duration has been reached; or 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. The Council Decision will be predicated on the determination that conditions in the country of origin allow for the secure and sustainable repatriation of individuals granted temporary protection, while upholding human rights, fundamental freedoms, and Member States' non-refoulement obligations. The European Parliament shall be notified of the Council Decision.⁶⁵

As mentioned above, on March 4, 2022, Council Implementing Decision (EU) 2022/382⁶⁶ formally activated the Temporary Protection Directive. It was initially in effect for a year, ending on March 4, 2023, and was then automatically extended for another year, ending on March 4, 2024. Temporary protection was extended until March 4, 2025, by Council Implementing Decision (EU) 2023/2409⁶⁷. Finally, temporary protection was extended for an additional year, until March 4, 2026, by Council Implementing Decision (EU) 2024/1836⁶⁸. On July 15, 2025, the Council of the European Union adopted its new decision⁶⁹

⁶⁴ Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23. <<https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng>>.

⁶⁵ Ibid.

⁶⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. <https://eur-lex.europa.eu/eli/dec_impl/2022/382/oj/eng>.

⁶⁷ Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. <https://eur-lex.europa.eu/eli/dec_impl/2023/2409/oj/eng>.

⁶⁸ Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. <https://eur-lex.europa.eu/eli/dec_impl/2024/1836/oj/eng>.

⁶⁹ Council Implementing Decision (EU) 2025/1460 of 15 July 2025 extending the temporary protection introduced by Implementing Decision (EU) 2022/382. <https://eur-lex.europa.eu/eli/dec_impl/2025/1460/oj/eng>.

extending the regulation on temporary protection for Ukrainians in the European Union until March 4, 2027.

The temporary protected status is now scheduled to end in 2027, despite the Directive's original design as a short- to medium-term emergency solution.

The Commission stated that the proposal to extend protection until March 2027 was completely compliant with the EU asylum law, as the Temporary Protection Directive is an important pillar of the Common European Asylum System. The extension was justified by the Commission on four grounds: the need to protect those who continue to require protection, the risk of overwhelming asylum systems if temporary protection is abruptly terminated, the persistence of the original conditions that triggered the Directive's activation in 2022, and the ongoing hostilities in Ukraine. Nevertheless, academics like M. Ineli Ciger and S. Peers heavily criticize this Decision. For instance, M. Ineli Ciger argued that Art. 4 (2) does not provide the Commission and the Council with the legal basis to extend the temporary protection to displaced persons for more than 3 years⁷⁰ what may undermine the legality of the temporary protection status of displaced persons from Ukraine and sets dangerous and undesirable precedent of “temporary” becoming long-term or permanent without appropriate legal background and is contrary to the obligations of all EU Member States according to the 1951 Refugee Convention⁷¹.

But the case of Syrian refugees in Turkey is proof that temporary protection can be granted on a long-term basis. As mentioned above, according to the Turkish Government, over 2.7 million Syrians still have an active temporary protection status. However, the process has become more restrictive, with a decrease in the number of new registrations and apprehensions regarding the arbitrary deactivation of statuses. With a few exceptions (family reunion, therapeutic access, work permit, vulnerable groups), no new temporary protection registrations have been granted since 2022⁷². Therefore, the circumstances in Turkey demonstrate that “temporary protection” may be extended for a long period – for more than 15 years.

⁷⁰ Ineli-Ciger, M. Towards Temporary Prolonged Protection? *Eumigrationlawblog*, June 10, 2025. Available at: <https://eumigrationlawblog.eu/towards-temporary-prolonged-protection/>.

⁷¹ Ineli-Ciger, M. Legal landmine: the risky proposition of extending the application of the EU Temporary Protection Directive beyond March 2025. *Eulawanalysis*. May 31, 2024) Available at: <<https://eulawanalysis.blogspot.com/2024/05/legal-landmine-risky-proposition-of.html>>.

⁷² Overview of main changes since the previous report update – Türkiye. (29/07/2025). <<https://asylumineurope.org/reports/country/turkiye/overview-main-changes-previous-report-update/>>

3.5. ‘Open borders’ policy

The open border policy is the general rule for temporary protection, which applies to the decisions of the recipient states to permit the admission of displaced persons to their territory while simultaneously eliminating the majority of restrictions during border control. This may encompass simplified visa and entry procedures for individuals who require protection.

The approaches to open border policy currently existing globally are very different.

For instance, the US, while providing temporary protection status, is not a country with an open border policy; however, it offers procedures for credible fear interviews and asylum applications to assist asylum seekers and other individuals who are escaping peril⁷³.

Conversely, Turkey, despite often not awarding refugee status to asylum seekers from outside Europe, has implemented an open-door policy for refugees entering from Syria since 2011. Initially, all Syrian nationals, stateless persons, and refugees who entered Turkey, whether individually or as part of a large inflow due to armed conflict in Syria, were granted entrance without visas or further authorisations. However, subsequent to 2016, Turkey began requiring visas from Syrians entering the country by air or sea from a third nation⁷⁴. Discriminatory methods were developed wherein persons arriving straight from Syria by land are permitted admission without authorization, but those arriving from third countries are entirely prohibited from temporary refuge⁷⁵. Over the past decade, Turkey has been compelled many times to block its border with Syria to manage the substantial influx of displaced individuals from Syria.

As for the European Union, the Council implementation decision which activated the Directive 2001/55 mentions that Ukraine is listed in the Annex II of the Regulation 2018/1806 as a third country whose citizens are exempt from visa requirements⁷⁶.

Ukrainian nationals possessing biometric passports are exempt from the short-stay visa requirement for entry into the Union and are entitled to unrestricted

⁷³ American Immigration Council. Asylum in the United States. Fact Sheet. May 2025. <https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/05/asylum_in_the_united_states_may_2025.pdf>.

⁷⁴ Ineli-Ciger, M. A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility? *International Community Law Review*. 2016, vol. 18, no. 3–4, pp. 278–316.

⁷⁵ European Council on Refugees and Exile. Country Report: Turkey. July 2025. <<https://asylumi.neurope.org/reports/country/turkiye/>>

⁷⁶ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

movement within the Schengen area for a duration of 90 days within a 180-day timeframe following their admission into the territory. Consequently, individuals could go to the Member State where they chose to use the rights associated with temporary protection and reunite with their family and friends within the extensive Ukrainian diaspora networks already present throughout the Union.

According to the European Commission Guidelines at the beginning of war Ukrainian national could enter the EU territory holding one of the following documents even if the period of validity expired: passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports); national identity cards (including temporary and provisional); military service books and military service cards; citizenship certificates; and other official documents that mention or indicate citizenship. As for the individuals who were entitled to temporary protection or adequate protection under national law and were not visa exempt (e.g., due to the absence of a biometric passport) and did not possess a short-stay visa, long-stay visa, or residence permit issued by a Member State, that in accordance with Article 8(3) of Directive 2001/55/EC, Member States were required to provide all necessary facilities for the acquisition of visas, including transit visas, in order to be admitted to their territories. Due to the urgency of the circumstance, formalities had to be minimised. If an individual wished to exercise their rights in a Member State other than the initial entry point, the Commission advised that the initial Member State had to issue a visa at the border crossing or an inland location to mitigate congestion, valid for 15 days, in accordance with Article 35(3) of the Visa Code. This would have enabled the individual in question to traverse the Schengen region. Visas granted at the border or near border crossing points pursuant to Art. 35 of the Visa Code, valid for 15 days, could be subsequently extended if necessary (Art. 33 of the Visa Code). Information pertaining to the application and issue of the visa should have been recorded in the Visa Information System (VIS) in accordance with relevant regulations. The Commission advised that visas should be complementary, or their fees minimised⁷⁷.

Stateless individuals and nationals from countries other than Ukraine, who can demonstrate legal residency in Ukraine prior to 24 February 2022 through a valid permanent residence permit (e.g., family members), were also permitted to cross EU borders and receive temporary protection.

⁷⁷ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2022_126_I_0001>

Such derogations from the general provisions for Ukrainians entering the territory of the EU Member States were cancelled when the mass influx of individuals on the borders returned to the pre-war numbers. As of 2025, all Ukrainian nationals must possess a valid biometric travel passport in order to travel visa-free in the EU or apply for an appropriate type of visa.

The concept of non-refoulement is a key tenet incorporated in several global international treaties and legal practices. This principle prohibits States from repatriating displaced individuals to their countries of origin or other nations where they may encounter threats to their life, torture, or severe human rights abuses, such as harsh, inhuman, or degrading treatment or persecution, or where there is a risk of it⁷⁸. Human rights jurisprudence elucidates that the principle of non-refoulement necessitates states to evaluate the impact of return procedures on the medical condition⁷⁹ and overall health situation of individuals⁸⁰, including mental health⁸¹, in addition to prohibiting ill-treatment and torture⁸².

⁸² ECtHR Grand Chamber judgement. Case of Saadi v. Italy. Application no. 37201/06. 28.02.2008. <<https://hudoc.echr.coe.int/fre?i=001-85276>>

In addition, the principle of non-refoulement prohibits states from deporting individuals when there is a risk of human rights violations, such as protracted solitary confinement⁸³, degrading living conditions⁸⁴, and severe forms of gender-based violence⁸⁵.

This policy applies universally to all persons, irrespective of their migratory or refugee status, and is an unequivocal, non-derogable responsibility under international human rights, refugee, and humanitarian law.

The concept of non-refoulement is articulated, among other provisions, in Art. 33 (1) of the 1951 Convention pertaining to the Status of Refugees and its 1967 Protocol. Reservations to Art. 33 of the 1951 Convention or any other non-refoulement provisions under international law are not allowed. Moreover, States are prohibited from suspending the application of the principle of non-refoulement during periods of war or national emergency. Article 33(2) of the 1951 Convention permits two specific exceptions to the norm of non-refoulement: when there are reasonable grounds to consider the refugee a danger to the national security of the host country and if the individual was convicted by a final judgement of a particularly serious crime and constitutes a danger to the community of the country of origin. Nonetheless, non-refoulement responsibilities under international human rights law remain applicable without exception.⁸⁶

The United States acknowledges and incorporates the concept of non-refoulement into its domestic immigration and refugee legislation, chiefly via the 1967 Protocol Relating to the Status of Refugees, approved by the US in 1968. This inclusion signifies that the US is compelled to refrain from repatriating persons to nations where they encounter dangers to their life or liberty due to persecution, as delineated by international refugee law.

Although the US Immigration and Nationality Act does not explicitly incorporate the non-refoulement principle for temporary protected status, Section 244(a)(1)(A) clearly states that “the Secretary of the Department of Homeland Security, in accordance with this section – (A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United

⁸³ UN Human Rights Committee (HRC). CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment). <<https://www.refworld.org/legal/general/hrc/1992/en/11086>.>

⁸⁴ ECtHR Grand Chamber judgement. Case of M.S.S. v. Belgium and Greece. Application no. 30696/09. 21. 1. 2011. <[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-103050%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-103050%22]})>

⁸⁵ UN Committee on the Elimination of Discrimination against Women. General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. 5.11.2014. <<https://www.refworld.org/legal/general/cedaw/2014/en/102146>>

⁸⁶ UNGCR Emergency Handbook. Access to territory and non-refoulement. <<https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement>.>

States during the period in which such status is in effect.”⁸⁷ Thus, individuals having temporary protected status must not be removed or deported from the United States where their return would pose a danger to their safety.

In practice, non-refoulement protections are implemented via the delay of removal processes. Asylum applicants and individuals with temporary protection must establish a credible fear of persecution to be eligible for protection from deportation. The delaying of removal requires a more stringent level of evidence but guarantees protection from deportation. Nevertheless, recent US policies, particularly during the first and second Trump presidential terms, imposed constraints that hindered the execution of non-refoulement.⁸⁸ Policies prohibiting asylum claims for individuals traversing between ports of entry, mandating that asylum seekers remain in Mexico during the adjudication process (the Migrant Protection Protocols), and imposing limitations on third-country asylum claims have incited legal challenges centred on adherence to non-refoulement obligations.⁸⁹ Judicial bodies have examined these policies for conformity with international law, occasionally recognising the nation’s obligations and at other times granting injunctions against enforcement actions considered inadequate in safeguarding against refoulement.⁹⁰

In Turkey the Law on Foreigners and International Protection in Art. 4 explicitly recognizes the principle of non-refoulement: “No one ... shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion”⁹¹. Prof. Elin Esen discusses that, differently from the 1951 Convention, under Article 4, the principle of non-refoulement not only covers refugees but also others who enjoy international protection, and other

⁸⁷ Immigration and Nationality Act of June 27, 1952; Chapter 477 of the 82nd Congress; 66 STAT. 163; 8 U.S.C. 1101 et seq.1] [As Amended Through P. L. 119–21, Enacted July 4, 2025 <<https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>>

⁸⁸ Ramji-Nogales J. Non-Refoulement under the Trump Administration.. / American Society of International Law Insights. 2019. Volume 23. Issue 11. 3. 12. 2019. <<https://www.asil.org/insights/volume/23/issue/11/non-refoulement-under-trump-administration.>>

⁸⁹ Luquerna, A. Biden’s Proposed Asylum Policy does not Fulfill U.S. Treaty Obligations. *Opinio Juris*. March 22, 2023. Available at: <<https://opiniojuris.org/2023/03/22/bidens-proposed-asylum-policy-does-not-fulfill-u-s-treaty-obligations/>>

⁹⁰ Baker, K. Revival of Measures to Expel Asylum-Seekers from the United States: Implications for Non-Refoulement Obligations. *Oxford Human Rights Hub*. August 25, 2025. Available at: <<https://ohrh.law.ox.ac.uk/revival-of-measures-to-expel-asylum-seekers-from-the-united-states-implications-for-non-refoulement-obligations/>>

⁹¹ The Republic of Turkey. Ministry of Interior. Directorate General of Migration Management. Law No. 6458 on Foreigners and International Protection of 2013. // <https://www.refworld.org/legal/legislation/natlegbod/2016/en/114283>.

aliens who entered into Turkey legally or illegally. Yet, in contrast to the 1951 Convention, Art. 4 does not stipulate any exception clause. Accordingly, this provision is consistent with the standards set by the European Court of Human Rights. She stipulates that the Turkish legislation establishes certain rules regarding the exclusion of expatriates from deportation and the deportation process. Art. 55 specifies the categories of foreigners who will not be deported. These categories include those who are at risk of being subjected to the death penalty, torture, cruel or degrading treatment or punishment in the country to which they will be deported, who are unable to continue treatment for a life-threatening health problem in the country to which they will be deported, who are victims of human trafficking and are receiving victim support, or who are currently being treated as victims of psychological, physical, or sexual violence.⁹²

Persons who have been granted temporary protection in Turkey are guaranteed protection against *refoulement* under Art. 6 of the Temporary Protection Regulation.

An exemption was established by Emergency decree in 2016⁹³ and formalised by Law No. 7070 in 2018, permitting the deportation of temporarily protected individuals if they threaten public order, public health, or have affiliations with terrorist organisations⁹⁴. Certain exceptions essentially authorise the deportation of asylum seekers, recipients of international protection, and beneficiaries of temporary protection, provided they meet certain criteria. The Decree significantly eliminates the automatic suspensive impact of appeals concerning deportation judgments, allowing removal to occur even while appeals are unresolved. Judicial redress generally involves filing petitions with the Constitutional Court, which frequently issues temporary measures to suspend deportations and enforce non-*refoulement* protections in practice.⁹⁵

In the European Union the principle of non-*refoulement* is enshrined in Art. 78 (1) TFEU which stipulates: “The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-*refoulement*. This policy must

⁹² Esen, S. The Principle of Non-*Refoulement* as a Constitutional Right of Asylum Seekers in Turkey, *VerfBlog*, 2016/7/26, <<https://verfassungsblog.de/the-principle-of-non-refoulement-as-a-constitutional-right-of-asylum-seekers-in-turkey/>>, DOI: 10.17176/20160802-094330.

⁹³ Emergency Decree 676 of 29 October 2016. // <https://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>.

⁹⁴ Zoetewij, M. The State of Emergency, Non-*Refoulement* and the Turkish Constitutional Court, *VerfBlog*, 2018/5/09. <<https://verfassungsblog.de/the-state-of-emergency-non-refoulement-and-the-turkish-constitutional-court/>>, DOI: 10.17176/20180509-084012.>

⁹⁵ Turkey: Constitutional Court Pilot Judgment on Protection from *Refoulement*.. // ECRE Weekly Bulletin. 26. 10. 2018. <<https://mailchi.mp/ecre/ecre-weekly-bulletin-26102018>>

be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.”⁹⁶ Art. 19 (2) of the Charter of Fundamental Rights of the European Union provides that “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”⁹⁷

In Art. 3 (2) of the 2001 Temporary Protection Directive, it is mandated that Member States must implement temporary protection in a manner that is consistent with their obligations regarding non-refoulement and human rights and fundamental freedoms. It also provides that termination of the temporary protection by Council Decision “based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States’ obligations regarding non-refoulement”.⁹⁸

The concept of returning to the country or region of origin in safe and durable conditions is not specified in Directive 2001/55/EC or in the Council Decision. The Commission regarded it as a unique concept in the Directive.

Furthermore, Art. 6 (2) of Directive 2001/55/EC stipulates that the cessation of temporary protection is contingent upon conditions in the beneficiaries’ country of origin that allow for a safe and sustainable return, while ensuring adherence to human rights, fundamental freedoms, and the obligations of Member States concerning non-refoulement.

The inability to ‘return in safe conditions’ may arise from significant risks to the individual’s safety, including armed conflict, endemic violence, documented threats of persecution, or other forms of inhuman or degrading treatment or punishment.

For the return to be considered ‘durable’, the individual must be able to exercise active rights in their country or region of origin, ensuring that basic needs can be met and facilitating reintegration into society.

Member States should assess the return’s safety and durability based on the overall conditions in the country or region of origin. However, the individual must demonstrate *prima facie* evidence at the personal level indicating an

⁹⁶ Consolidated text: Consolidated version of the Treaty on European Union. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016M%2FTXT-20200301>>

⁹⁷ Charter of Fundamental Rights of the European Union. <https://eur-lex.europa.eu/eli/treaty/char_2012/oj/eng>

⁹⁸ Council Directive 2001/55/EC of 20 July 2001 on 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 and bearing the consequences thereof. Official Journal. 2001. L 212. 7.8., pp. 12–23. <<https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng>>.

inability to return safely and sustainably to their country or region of origin. In this context, Member States should consider whether the individual maintains a significant connection to their country of origin, taking into account factors such as the duration of residence in Ukraine or familial ties in their country of origin. Attention must be directed towards the specific needs of vulnerable individuals and children, particularly unaccompanied minors and orphans, in accordance with the principle of prioritising the best interests of the child.⁹⁹

Therefore, the termination of temporary protection (which is scheduled for March 2027, as previously mentioned) does not necessitate the immediate return of Ukrainian citizens and other individuals who received temporary protection as a result of the full-scale aggression in Ukraine to their country of origin. For the past three years, academics and practitioners have deliberated on the necessity of transferring temporary protected persons to other statuses within the EU. Several alternatives were proposed, including the application for asylum, the return to Ukraine, and the transfer to permanent residence in the EU Member States.¹⁰⁰ The final alternative is the most advantageous for the following reasons: the majority of temporary protected persons from Ukraine will have been residing in the EU Member States for five years, which qualifies them for permanent residence as of March 2027. Additionally, many of them are already employed and integrating into the receiving Member States.

In September 2025, on the proposal of the European Commission, the Council of the EU adopted a Recommendation on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine¹⁰¹. The Recommendation urges the Member states to provide displaced Ukrainians with national residency permits, granted on the basis of job, training, education, or familial connections, contingent upon the fulfilment of specific criteria. Individuals benefiting from temporary protection should be permitted to apply for statuses under EU legislation, such as those pertaining to highly qualified work. Simultaneous possession of statuses under EU law while benefiting from temporary protection is not permissible.

⁹⁹ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2022_126_I_0001>

¹⁰⁰ Ineli-Ciger M. Beyond Temporariness: Policy Options for Ukrainians Under EU Temporary Protection in 2025. *College of Europe Policy Brief*. 2025. # 2 (June). Available at: <https://www.coleurope.eu/sites/default/files/research-paper/%C4%B0neli-Ciger_CEPOB_2-2025.pdf>

¹⁰¹ Council Recommendation on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine. 12015/25. Brussels, 8 September 2025. <<https://data.consilium.europa.eu/doc/document/ST-12015-2025-INIT/en/pdf>>

Additionally, member states should establish voluntary return programs that are applicable for a specified duration and coordinate the terms of these programs with the Ukrainian authorities and other member states. Moreover, they should extend the provisional protection rights (e.g., those related to shelter, medical care, and education) to individuals who are in voluntary return programs. Member states can assist displaced individuals from Ukraine in returning and reintegrating into Ukrainian society by permitting them to conduct exploratory visits to Ukraine. The parameters for these exploratory trips must be harmonised throughout the EU nations.

Displaced Ukrainians should also be informed by member states about the opportunities to apply for a different legal status, the impact on their rights and advantages, and the support available for their return to Ukraine. EU countries should establish information systems and campaigns regarding voluntary return programs. Additionally, they have the option of establishing Unity Hubs, which can be funded through EU programs. Unity Hubs can aid displaced Ukrainians in a member state by serving as points of contact, providing employment advice in the host country and Ukraine, and assisting with documents.

4. Conclusions

Temporary protection has been implemented for decades as a humanitarian, exceptional, and adaptable measure in international and national law to address urgent displacement situations. When the situations of mass exodus and mass influx of displaced persons were to be addressed, it was considered as an alternative to the lengthy and bureaucratic asylum procedures.

In the 1980s, this concept was regarded as a temporary refuge. However, it was later transformed into temporary protection as a result of the growing recognition that displaced persons who arrive in large numbers should be provided with a minimum standard of rights and benefits to facilitate the acquisition of employment and decent living conditions.

At present, there are numerous methodologies in place at both the national and international levels to establish the definition of transitory protection and the rights and benefits that should be granted to temporary protected persons. These include the approaches to define the groups covered, situations of mass-influx, conditions of entry, terms of temporality of protection, and the principle of non-refoulement.

The United States' strategy is somewhat restricted. It limits the transitory protection status to individuals who are already present within the United States' frontiers. Additionally, the most recent ruling of the United States Supreme Court clarified that temporary protection status does not grant the right to enter the

United States, but rather the right to remain and not be returned to the country of origin. This is since the situation that prompted the introduction of temporary protection status for nationals of specific states continues to exist.

Beginning in 2011, the civil unrest in Syria forced millions to seek asylum in Turkey, leading to a significant influx of displaced refugees into the country. This necessitated the enactment of specific legislation and regulations governing the material and procedural dimensions of providing temporary protection to all displaced individuals who arrived at Turkish borders or were already inside its territory. As of 2025, Turkey remains the nation with the highest number of temporary protected persons globally.

The EU legislative framework for granting temporary protection emerged as a result of the 1990s war in the former Yugoslavia, during which over 500 000 Bosnians sought refuge in EU Member States. Discrepancies in country legislation and practices resulted in varying levels of protection being provided to such persons, harming their basic needs and human dignity. The EU responded by adopting the Temporary Protection Directive in 2001 and establishing standard procedural guidelines for its implementation in cases of mass influxes of displaced individuals. Nonetheless, the Directive was not activated even during the Migration Crisis in the mid-2010s due to the requirement for a proposal from the European Commission and a unanimous majority in the Council.

The Directive was activated by the EU only after the beginning of the full-scale Russian aggression against Ukraine in 2022, which illustrated the effectiveness of collective action that was supported by binding standards. Nonetheless, the directive's activation marks a watershed, proving that temporary protection can balance immediate humanitarian needs with long-term integration prospects when grounded in solidarity and shared responsibility. Displaced individuals of Ukrainian descent who were displaced at the outset of the conflict were permitted to traverse the frontier with EU Member States through simplified procedures that utilised various forms of documentation. It was permissible for their family members who were citizens of other third countries and those who were under international protection to enter the EU territory as well. The procedures for granting temporary protection were also simplified, and it only took a few hours to several days to obtain temporary protection status and begin utilising all of the rights and benefits that this status provides.

A highly contentious topic in scholarly discourse is the duration of temporary protection within the EU. The Temporary Protection Directive empowers the Council of the EU to prolong temporary protection for a maximum of three years. In July 2025, on the European Commission's proposal, the Council extended this time until March 2027, referring to its powers provided in the Directive allowing displaced individuals from Ukraine who arrived in 2022 to transfer for permanent

residence status in EU Member States in 2027. This signifies the shift in the EU's strategy from providing temporary protection for Ukrainians to implementing more sustainable solutions that are preferable for all stakeholders concerned.

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