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1,000 Days of War: National judiciaries important in defining eligibility for temporary protection, EUAA report finds



The EUAA recently published the first comparative analysis of how national courts refined Member States' interpretation of eligibility under the Temporary Protection Directive. The analysis comes as the EU marks 1,000 days since Russian military forces began their full-scale invasion of Ukraine, forcing over 4.4 million Ukrainians to seek safety in the EU.

The European Union Agency for Asylum (EUAA) recently published a report on the different judgments, decisions and interim measures ordered by national courts in the implementation of the Temporary Protection Directive[1] by EU Member States. The report includes a comparative analysis, the first of its kind, and shows that national judiciary bodies **were instrumental in defining** which third-country nationals **were eligible for temporary protection**.

With the different Council of the EU decisions leaving room for interpretation, national courts were called upon to clarify the criteria for being eligible for temporary protection, and did so by looking at several circumstances:

- **Residence in Ukraine on, or after, 24 February 2022** – Courts in **Austria** and **Belgium** concluded that an individual's temporary absence from Ukraine, coinciding with the start of the Russian invasion in February 2022, should not impact their fulfilment of the residence requirement under the Directive.

- **Secondary movements of temporary protection beneficiaries** – Courts in **Switzerland** made clear that beneficiaries under the Directive are not able to benefit from temporary protection simultaneously in more than one EU+ country and approved the refusals by national authorities which were issued to individuals seeking to do so.
- **Eligibility of non-Ukrainian third-country nationals** – Despite representing just around 1% of registrants, annually, between 2022-2024, refusals to grant temporary protection to asylum seekers from Ukraine and some stateless individuals were upheld by courts in **Austria**, **France** and **Hungary**. However, a court in **Belgium** overturned a refusal to grant protection to an individual with permanent residency in Ukraine, based on the-then **impossibility of a safe and durable return**.
- **Exclusion from temporary protection** – While not a major focus, the report also examines exclusion from temporary protection, as well as the interplay with asylum procedures. Courts in **Bulgaria** and **Iceland** concluded that the asylum procedure should be suspended until temporary protection expires; while a **Dutch** court concluded the opposite, noting that an asylum application by a beneficiary of temporary protection must be examined within the time limits set out in the recast Asylum Procedures Directive.

Background

On 4 March 2022, following a proposal from the European Commission, the Council of the EU activated the Temporary Protection Directive for the first time, in response to a mass arrival of third-country nationals from Ukraine. In October 2023, the Council extended the activation of the Temporary Protection Directive to March 2025, before doing so again earlier this year. As a result, eligible individuals are currently able to benefit from temporary protection in the EU until March 2026.

Download the analysis Jurisprudence on the Application of the Temporary Protection Directive.

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Temporary Protection, European Commission

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