



Council directive 2001/55/EC and its application.

Recommendations to the European Commission and the European Council

May 31st 2022

Following Russia's invasion and military aggression against Ukraine, the European Union, in implementing its founding principles of solidarity, decided to implement Directive 2001/55/EC establishing temporary protection.

This protection instrument can be activated by the European Union 'in the event of a mass influx or imminent mass influx of displaced persons from third countries who cannot return to their country of origin' to guarantee 'immediate and temporary protection to displaced persons'. Therefore, temporary protection aims to provide as quickly as possible a form of protection for people who are forced to flee a country in large numbers without having to initiate an application for international protection and wait for its outcome. But it also aims, as a European instrument, at allowing immediate reception in the various countries of the Union in a balanced way.

With Council Implementing Decision (EU) 2022/382 of 4 March 2022, the existence of a mass influx of displaced persons from Ukraine was established, and, consequently, temporary protection was introduced for the first time since 2001.

Following the Council Decision, the persons displaced from Ukraine on or after 24 February 2022 were quickly granted access to temporary protection. More specifically, access was given to:

- Ukrainian nationals residing in Ukraine before 24 February 2022;
- stateless persons and nationals of third countries other than Ukraine who were benefiting from refugee status or equivalent protection in Ukraine before 24 February 2022;
- family members of these persons (spouses, partners in a stable relationship, minor children, other close relatives who lived together as part of the family unit, and wholly or mainly dependent on the family member).

The Council also decided to extend this protection to stateless persons or nationals of third countries other than Ukraine who hold a permanent residence permit in Ukraine and cannot return in safe and durable conditions to their country or region of origin.

Finally, the Council reminded the Member States of the possibility of granting temporary protection to other nationals of third countries other than Ukraine who, on 24 February 2022, were legally residing there and are unable to return in safe and durable conditions to their country or region of origin.

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We share the solidarity shown and the choice of the European Union to provide immediate protection to displaced persons from Ukraine following the outbreak of the armed conflict. However, in our role as Organisation, we cannot help but reflect on the lack of such solidarity in other equally serious and urgent situations, and we noticed specific critical issues encountered in the implementation of temporary protection.

First, we believe it is important to emphasise that Directive 2001/55/EC can be applied not only in cases of wars and armed conflicts but also in relation to all the situations existing in a country, i.e., severe, repeated, and systematic violations of human rights, pushing large numbers of people to flight, therefore, generating displaced persons.

As it was conceived and produced, the Directive does not require the occurrence of a specific situation within a country, such as an armed conflict, for example, but only the presence of a mass influx or imminent mass influx of displaced persons from that country. Recent history, at least since 2001, has unfortunately witnessed many crisis situations that have forced large numbers of people to flee their countries: the wars in Afghanistan and Iraq, those in Syria and Yemen, and the indiscriminate violence during and after the collapse of the Gaddafi regime in Libya in 2011, the serious violations of human rights recently occurred in Afghanistan, to name but a few.

In all these cases, the European Union could have used the instrument of temporary protection, which unfortunately did not happen. What cannot fail to point out that, although faced with situations similar to the one currently ongoing in Ukraine, the European Union has decided to implement different, restrictive, closure, and externalisation policies that have forced thousands of asylum seekers and refugees to resort to illegal journeys. Whether by land or sea, these journeys share the same characteristics: violence, abuses, violations of human rights, and lack of assistance. Journeys that have caused thousands of deaths over the last 20 years alone.

We also believe that the Council's Decision of 4 March 2022 is limited in its scope. It fosters citizenship-based discrimination, treating differently displaced people fleeing the same kind of violence going on in Ukraine.

First, it is impossible not to notice how the Decision fails completely and unreasonably to include the 'family members' of third-country nationals other than Ukraine who hold a permanent residence permit from temporary protection.

Secondly, in light of the emergency and the ongoing violence, the exclusion from temporary protection of thousands of men and women and their family members from third countries fleeing Ukraine, holding ordinary and non-permanent residence permits, appears unjustified and discriminatory.

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The possession of a regular residence permit does not always match with lower stability or shorter permanence allowed on the territory compared to those who hold a permanent permit, making the distinction completely unjustified. Furthermore, in several Member States, the recognition and issue of a permanent residence permit, above all, requires the possession of certain economic resources for oneself and one's family, thus discriminating against the poorest people who, like others, are fleeing the war in Ukraine. On this point, therefore, we believe that the choice made by the Council with paragraph 3 of Article 2 of the Decision is entirely insufficient.

Leaving the choice on whether to extend the instrument of temporary protection to third-country nationals holding ordinary permits (i.e., study, work, or family reasons) other than Ukraine to the individual Member States translates, in the worst case, to the absence of any form of protection towards displaced persons. At best, it is a protection provided by only a few states, with consequent differentiated protections according to the state welcoming the displaced, in stark contrast to the principles of solidarity, balance, and equity enshrined in Directive 2001/55/EC.

Recommendations

Due to the critical issues highlighted, we believe it is essential to address the following recommendations to the European institutions, in particular, the Commission and the Council:

- 1.enforcing specific decisions of the Council to implement Directive 2001/55/EC without any distinction across all those situations, conflicts, or serious and systematic violations of human rights, current and future, that generate a massive influx of displaced persons from third countries unable to return to their country of origin;
- 2.extending the temporary protection to family members of third-country nationals other than Ukraine who hold a permanent residence permit;
- 3.providing for the application of temporary protection across all Member States and beyond Article 7 of Directive 2001/55/EC to third-country nationals other than Ukraine who are holders of an ordinary residence permit, even for a short period, and to their family members;
- 4.extending the scope of temporary protection to the categories of displaced persons provided under the Council Decision of 4 March 2022 and recommended in this document. Namely, people who, even before or close to 24 February 2022, were temporarily in and continue to be in a Member State and cannot return to Ukraine due to the armed conflict.