

CCBE statement on the application of the Temporary Protection Directive to certain persons displaced by the Russian invasion of Ukraine

13/05/2022

Executive summary

In this statement, the CCBE welcomes the historic decision of the Council of the EU to give protection to Ukrainians fleeing the war in their country, by activating the Temporary Protection Directive. At the same time, the CCBE points to several issues that have been identified in the first two months of the application of the Directive and that require clarification or raise concerns.

Amongst others, the CCBE provides its opinion on how certain provisions of the TPD should be interpreted, for example, regarding free movement of beneficiaries of the temporary protection. Moreover, the CCBE points to problems, such as the limited scope of the directive.

Finally, the CCBE stresses that access to adequate legal information and assistance is essential to ensure the procedural and substantive benefits of the Directive are actually made available to those persons in need. It is also necessary that advice be given by qualified and experienced asylum law practitioners. Therefore, the CCBE urges the EU and national authorities to make adequate resources available to Bars and lawyers and encourages its members to address their authorities in this regard.

General observations

The CCBE welcomes the decision taken by the Council¹ on 4 March 2022 to activate the Temporary Protection Directive (TPD) for the first time as a result of the unlawful invasion of Ukraine by the Russian Federation and notes the publication by the Commission of operational guidelines for the implementation of the Council's Decision.²

The CCBE further appreciates the immediate concrete steps taken by EU Member States and in particular the frontline Member States in the face of the current crisis to ensure the provision of emergency assistance for the 5 million or so persons who have now fled Ukraine due to the conflict. The actions taken so far indicate that the EU and the Member States have to date acted both collectively and individually in a compassionate and humanitarian manner in relation to the current intake of displaced persons. It is to be hoped that this solidarity and generosity will continue to apply to the victims of the conflict already with us and to future arrivals recognising fully the challenges involved for the education, housing and healthcare systems of the Member States.

¹ Council Implementing Decision (EU) 2022/382, 04.03.2022, available [here](#).

² Communication from the Commission on operational guidelines for the implementation of Council decision of 4th March, 21.03.2022, available [here](#).

Since the beginning of the current crisis the CCBE has engaged in a process of consultation through its Migration Committee with experts amongst its member Bars as regards the application and implementation of the TPD by the Member States. This consultation has revealed that a number of issues and deficits have already arisen in this regard which the CCBE urges should be addressed forthwith at both EU and national levels.

Issues requiring clarification and/or improvement and raising concerns

In the first place given the scale of the crisis and the nature of the aggressor and of the aggression, **the scope of the beneficiaries of the Council's Decision is too limited.** Ukrainian nationals who were resident in the territory of the EU in advance of 24 February 2022 for work or study reasons should not be excluded from the scope of the Council's Decision upon the expiry of their immigration permissions. Furthermore, Ukrainian nationals who were irregularly present in the EU before 24 February 2022 and who cannot return to Ukraine because of the armed conflict should also receive the protection conferred by the Directive. The right to respect for family life protected by Article 7 of the EU Charter of Fundamental Rights requires in the current unprecedented circumstances that the Council Decision should also apply to third country national family members of these categories of persons to include persons who are in a durable relationship with the Ukrainian nationals concerned. The necessity in the Council's Decision for the family to have been present and residing in Ukraine before 24 February 2022 should be removed where a genuine basis exists for the family not to have been residing together in Ukraine at that point in time. In addition, the linkage by the Council's Decision regarding an 'unmarried partner' in a stable relationship to the treatment of such relationships under national law should be revised in the current circumstances.

Moreover, any unaccompanied child arriving from Ukraine should be granted temporary protection immediately.

All persons arriving from Ukraine not having Ukrainian citizenship but who were habitually resident in Ukraine whether lawfully or otherwise and who cannot safely return to their country of origin should also be included in the scope of the Council's Decision without prejudice to the Member States' entitlement to require such persons to apply for international protection within a reasonable period. As a decision whether a safe return is possible will take some time, as each case must be individually assessed, non-Ukrainians habitually residing in that State before the 24th of February 2022 should receive temporary protection for at least six months.

Attestation requirements and the formalities imposed by the Member States at this juncture should not be excessive recognising at the same time the necessity to ensure that all appropriate measures to prevent people trafficking should be in place.

Whilst certain Member States have extended the scope of the beneficiaries referred to in the Council's Decision in their national rules to some of these categories of persons, **the Decision itself should be amended to provide the same protection across the European Union (EU)** as a matter of EU law.

The CCBE is also concerned that different standards are applied by different Member States to third country nationals based on their origin as people fleeing conflict in countries other than Ukraine are denied access to asylum procedures.³

In the second place, **there should be no bar on free movement** throughout the EU for persons displaced from Ukraine who have applied for temporary protection and no obstacles to such persons applying for temporary protection in more than one Member State. Persons who are recognised beneficiaries of the Directive should also be able to apply subsequently to another Member State for the same protection.

³ See for example "Europe's refugee double standard leaves it vulnerable", Politico, 31.03.2022, available [here](#).

Thirdly, the Council Decision should specify that the provision of temporary protection initially shall be **for a one-year period** from 24 February 2022 as is required by the Directive and not for a lesser period or until the end of the 2022 calendar year.

Fourthly, there should be no restrictions placed by the Member States on the beneficiaries of the TPD from **engaging in commercial activities other than employment**. The beneficiaries concerned should be entitled to be engaged in lawful business or trade as they see fit for themselves. They should also be able to **access the labour market immediately**.

Fifth, protection for the victims of the conflict necessitates not simply the immediate requirements of food and shelter but also **access to adequate legal information and assistance** to ensure the procedural and substantive benefits of the Directive are actually made available to those persons in need. Indeed, Article 29 of the Directive recognises that persons denied the benefit of temporary protection or family reunification by a Member State shall be entitled to mount a legal challenge to such denial. The CCBE notes that the European Union Agency for Fundamental Rights ('FRA') in its recent first field observations⁴ stated that: *"There was limited legal information concerning temporary or international protection schemes provided directly at the border crossing points..."*. In concrete terms, this means that **resources must be deployed to ensure that sufficient legal information and advice is provided** to all persons arriving from Ukraine as regards their rights and entitlements under EU law. This is also the position of the FRA which has said *"Statutory national human rights bodies, international organisations and civil society actors, as well as law faculties and bar associations should be encouraged and specifically resourced, and facilitated, to provide legal advice."*

The CCBE notes **the necessity for advice to be given by qualified and experienced asylum law practitioners**. Past experience has shown that migration crises in the EU have attracted non-EU lawyers to provide inadequate legal assistance to the detriment of migrants. In this regard, the CCBE welcomes the initiative undertaken by the Council of Europe - Asylum/Migration HELP eDesk.⁵ The necessity for expertise amongst legal practitioners in the field is heightened by the dearth of jurisprudence on the issue of temporary protection, a status that millions of persons now hold in the EU.

The CCBE will continue to monitor the application of the Directive by the Member States as well as the increasing complexity of the legal needs of the displaced persons concerned especially as regards access to the protection systems of the Member States, access to lawyers, provision of free legal aid and resourcing for assistance and training provided by the bar associations. Protection whether temporary or otherwise cannot be secured effectively in the absence of concrete support and resourcing for all of these matters. Accordingly, **the CCBE:**

- **Urges the Commission to establish an emergency legal services fund for the direct and immediate resourcing of bar associations** to ensure that adequate assistance in terms of legal information, advice and where necessary representation can be provided to persons displaced by the conflict in Ukraine.
- **Calls on the governments of Member States to make emergency legal assistance funds available to Bars and Law Societies and encourages its members to address relevant national authorities in this regard.**

Finally, the CCBE also notes the steps taken by non-EU Member States whose legal professions are members of the CCBE as regards the reception of persons displaced by the war in Ukraine and encourages those States to accelerate the removal of restrictive visa requirements, to ensure access to at least minimum social assistance supports upon arrival and to secure family reunification for those persons displaced from Ukraine who are on their territory.

⁴ FRA, EU-Ukrainian border check points: First field observations, 23.03.2022, available [here](#).

⁵ The Council of Europe HELP Programme set up virtual Asylum/Migration HELP eDesks for lawyers assisting people fleeing the war in Ukraine.