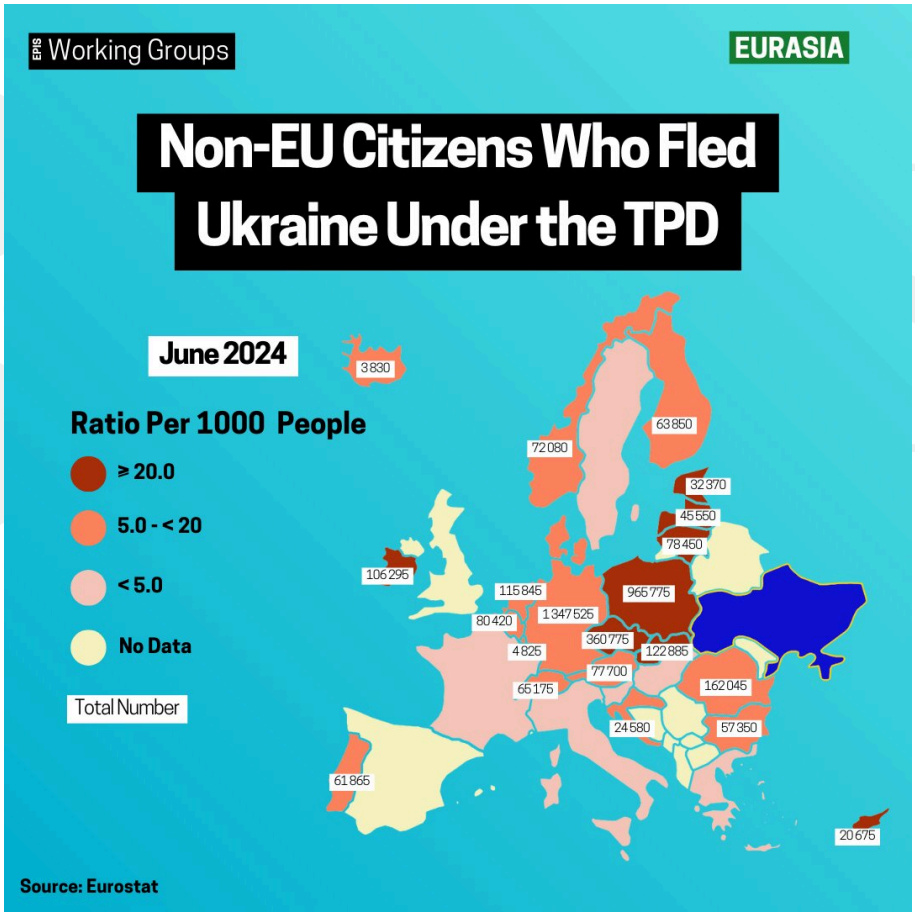
The Temporary Protection Directive vs. The Dublin Agreement

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The Russian invasion of Ukraine: A critical juncture for the EU's asylum policies

The Russian full-scale military invasion of Ukraine that started in February 2022 not only brought war back to Europe's immediate borders but also unleashed profound socio-economic repercussions. The invasion, ordered by President Vladimir Putin, has led to one of the worst refugee crisis

in Europe since World War II, with roughly 10 million Ukrainians being displaced, both internally (IDP) and externally, thus gaining refugee status under international humanitarian law. The so-called Dublin Agreement has long been the cornerstone of EU refugee policy, regulating the legal rights of refugees entering a European Union (EU) member state. However, the EU responded swiftly after the first non-EU citizens tried to flee from the armoured vehicles and tanks rolling over Ukraine's borders. On March 4th, 2022 the Temporary Protection Directive (TPD) was finally set in motion for the very first time after its adoption in 2001. While this action was widely welcomed and praised, it is relevant to note the shortcomings of this legal instrument, mainly its temporary dimension.

The TPD's origin and objectives: From Eurodac's fingerprints to personal agency

The TPD was initially implemented as a forceful reaction to the refugee crisis that was brought about by the dissolution of the former Yugoslavia and the wars that followed in the 1990s. The directive only comes into effect when a large number of displaced people from third countries enter a member state and are temporarily unable to return home. However, the Council is realistically the sole actor deciding what amounts to such a "mass influx" of refugees (Motte-Baumvol et al., 2022, p. 12). One of the most recent mass influx of refugees into the EU was the refugee crisis in 2015 which was managed through Eurodac's fingerprint application scheme under the Dublin Agreement. The latter system is a regulation that legally determines which EU member state is responsible for processing an asylum seeker's application, typically the country where the individual first enters the EU. Similar in its objective but widely different in its execution, non-EU citizens who fled from Ukraine after the Russian invasion in 2022 have had more freedom to choose where and under what circumstances to seek protection. The objectives of the TPD are twofold: firstly, it aims at setting minimum requirements for providing temporary protection. Secondly, it ensures balanced efforts among member states, thus creating a burden sharing mechanism. The ongoing conflict displaced many vulnerable people who sought refuge in neighbouring EU countries in search of political security and personal stability. These countries can be said to bear the greatest burden from the influx of migrants. The extensive dimension of the TPD can also be seen when looking at the amount of third-country nationals that have fled Ukraine and were protected under the TPD in June 2024. Especially Eastern European countries like Poland, Estonia, and Hungary have become key destinations for people fleeing Ukraine, where they are granted temporary protection under the TPD.

Nevertheless, its activation might be considered a significant success, since it established a precedent for migration-related issues and had most likely unforeseen consequences that have not been dealt with before. Its activation demonstrated the EU's ability to respond quickly and efficiently to large-scale emergencies. Yet, it also introduced challenges that hadn't been previously encountered, such as coherently coordinating resources, cooperating and respecting the legal agreed-upon guidelines, and the long-term management of displaced populations. However, this is just the tipping point of the Ukrainian refugee crisis, and the EU officials should not yet pat themselves on the back and consider this job done but insist on a long-term and proactive mechanism for future refugee crises and for the integration of current Ukrainian migrants. One aspect that should also be considered by current lawmakers is the ongoing crisis of climate change-induced migration that will most likely affect European countries in the upcoming decades. Because of the current limitation of the TPD regarding its effectiveness for current and future socio-political crises, the Union must focus on forward-looking policies by stressing the following aspects: (i) capacity-building; (ii) integration and social cohesion; and (iii) inclusive and consistent protection.

Critique of existing policies: The TPD is running out of time...

In order to understand what other policy options there are, it is important to look at the TPD more in depth. The purpose of this directive is, inter alia, to prevent overburdening a country's asylum registration and application system and to streamline bureaucratic procedures. Additionally, as the name already suggests, it is a temporary mechanism that will come to an end, eventually, under the following conditions laid out in Article 6(1) of the Directive: a) the maximum extension has lapsed; b) before the expiration deadline, the Commission submits a proposal that the Council shall approve through qualified majority voting. The Council has already done so and re-extended the TPD on the 25th of June 2024 to the fullest extent allowed. Thus, this system is set to end on the 4th of March 2026. Yet, the most important aspect is that the TPD, under no circumstances can last more than three years. Therefore, the European Union cannot and should not wait until the renegotiated length of the TPD expires. Hence, we recommend considering a more future oriented policy option that could even incorporate future migration movements caused by multifaceted crises.

The new pact on migration and asylum and the future of the TPD

The second option is for the European Union to terminate the TPD ahead of the deadline, contingent on the war's resolution or a sustainable cease-fire agreement between the parties, although additional conditions would need to be met. For instance, for the return of the person that received such temporary protection, the country of origin must be considered a safe destination, according to international accords, such as the European Convention on Human Rights or the Refugee Convention. Unfortunately, there are currently no indications that the necessary developments for activating the second clause will occur, nor is the political environment conducive to amending the TPD to extend it beyond its legal limit. This makes it all the more important for the EU to focus on the future sustainable integration of Ukrainian refugees and to legally apply the TPD coherently across all EU member states and prevent a system of national legal interpretation which may cause severe harm not only to refugees covered under the TPD but also to the EU asylum application scheme. Whether the EU will manoeuvre towards an updated version of an inclusive and coherently applied TPD will be seen in the upcoming months. Considering the recently adopted new pact on migration and asylum, as well as the ongoing shift towards a stronger right-wing and conservative bloc within major EU countries, the future of the TPD remains uncertain.