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FROM TEMPORARY TO PROLONGED PROTECTION: STRUCTURAL GAPS IN EU LAW AND THE MISSING TRANSITION BEYOND EMERGENCY REGIMES

OD DOČASNEJ K PREDĹŽENEJ OCHRANE: ŠTRUKTURÁLNE MEDZERY V PRÁVNÝCH PREDPISOCH EÚ A CHÝBAJÚCI PRECHOD ZA RÁMEC NÚDZOVÝCH REŽIMOV

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Autorka pôsobí ako interná doktorandka na Fakulte práva Paneurópskej vysokej školy v Bratislave, na Katedre medzinárodného práva. Vo svojom výskume a dizertačnej práci sa venuje problematike dočasnej ochrany v práve Európskej únie, spoločnému európskemu azylovému systému a právnym aspektom vysídlenia osôb v dôsledku ozbrojených konfliktov.

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Abstract

The prolonged application of temporary protection following the Russian invasion of Ukraine raises questions concerning the temporal limits of Directive 2001/55/EC and the absence of transition mechanisms beyond temporary protection within EU law. This article examines the legality of prolonged temporary protection, the potential role of prima facie recognition, the limitations of long-term residence under Directive 2003/109/EC, and the emergence of migration-based and national transition pathways. It further analyses the implications of the EU Pact on Migration and Asylum, including the abandonment of proposed mechanisms of “immediate protection” and prima facie recognition in favour of procedural crisis management within the asylum system. The article argues that the current EU framework lacks a coherent mechanism capable of ensuring continuity of protection beyond the temporal limits of the

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Temporary Protection Directive and evaluates possible pathways towards durable protection and residence.

Key words: temporary protection, CEAS, prima facie, long-term residence, EU Pact on Migration and Asylum, transition mechanisms, durable protection

Abstrakt

Predĺžené poskytovanie dočasnej ochrany po ruskej invázii na Ukrajinu vyvoláva otázky týkajúce sa časových limitov smernice 2001/55/ES a absencie riešení umožňujúcich prechod k trvalejším formám ochrany v práve Európskej únie. Článok skúma právne aspekty predĺženia dočasnej ochrany, potenciálnu úlohu prima facie ochrany, limity postavenia dlhodobo pobývajúcich rezidentov podľa smernice 2003/109/ES, ako aj vznik migračných a vnútroštátnych riešení pre osoby požívajúce dočasnú ochranu. Zároveň analyzuje dôsledky Paktu EÚ o migrácii a azyle vrátane opustenia navrhovaných mechanizmov „okamžitej ochrany“ a prima facie ochrany v prospech krízového manažmentu založeného na procedurálnych nástrojoch v rámci azylového systému. Článok argumentuje, že súčasný rámec EÚ neobsahuje koherentný mechanizmus schopný zabezpečiť kontinuitu ochrany po uplynutí časových limitov smernice o dočasnej ochrane a hodnotí možné cesty smerujúce k trvalej ochrane a pobytu.

Kľúčové slová: dočasná ochrana, SEAS, prima facie, dlhodobý pobyt, Pakt EÚ o migrácii a azyle, prechodné mechanizmy, trvalá ochrana

Introduction

The activation of Council Directive 2001/55/EC in response to the Russian invasion of Ukraine marked a significant development in the evolution of the Common European Asylum System (CEAS). By Council Implementing Decision (EU) 2022/382, the Council established the existence of a mass influx of displaced persons and triggered a regime of immediate, collective protection for persons fleeing Ukraine (Council of the European Union, 2022). Long regarded as politically dormant, the Temporary Protection Directive (TPD) thus became the central legal instrument governing the reception and protection of displaced persons from Ukraine.

The prolonged nature of the conflict has, however, raised broader legal questions concerning the functioning of the TPD within the EU legal framework. Originally conceived as a temporary emergency instrument, the regime has been successively extended until March 2027 (Council of the European Union, 2025), prompting debate concerning the temporal limits of protection under Directive 2001/55/EC and the relationship between temporary protection and more durable forms of protection and residence within EU law.

The prolonged application of temporary protection has also exposed the absence of a harmonised transition framework for beneficiaries whose protection needs persist beyond the temporal horizon of the TPD. Academic and policy discussions have increasingly focused on two potential responses: forms of prima facie international protection and reform of long-term residence under Directive 2003/109/EC. At the same time, current developments increasingly point towards migration-based residence pathways at Member State level and renewed reliance on individual asylum procedures.

These developments coincide with reforms introduced through the EU Pact on Migration and Asylum. Earlier legislative proposals envisaged forms of “immediate protection” and prima facie recognition in situations of mass influx (European Commission, 2020; European Parliament, 2023a). The final framework adopted through Regulation (EU) 2024/1359, however, retained the TPD while strengthening crisis procedures within the asylum system without introducing a specific transition mechanism beyond temporary protection.

Against this background, the article examines the legal implications of the prolonged application of temporary protection within the EU legal order. It analyses the temporal framework of the TPD, the available pathways beyond temporary protection, emerging transition approaches at both EU and Member State level, and the evolving relationship between collective protection mechanisms and individual asylum procedures within the reformed CEAS.

Prolongation of Temporary Protection: Limits of the Legal Framework

The Temporary Protection Directive 2001/55/EC is normatively anchored in temporariness. Its duration regime, codified in Article 4, establishes a finite and internally coherent framework: an initial one-year period, followed by limited extensions, culminating in a maximum overall duration of three years. This temporal limitation is not merely technical but constitutive of the Directive’s function as an emergency instrument designed to alleviate immediate pressure on asylum systems pending return or transition (European Union, 2001, Arts. 1, 2, 4; Zaimović, 2023, p. 138).

The binding nature of this framework is confirmed by Article 6(1)(a), which mandates termination once the maximum duration has been reached. Read together, Articles 4 and 6 define a closed temporal system, within which extension is permissible only up to a fixed ceiling (European Union, 2001, Art. 6). The Directive therefore does not leave the duration of protection open-ended, but instead imposes a definitive normative limit.

The extension of temporary protection until March 2027 departs from this structure. Through successive implementing decisions, the Council prolonged the regime beyond the cumulative three-year limit (Council of the European Union, 2024; 2025). While formally grounded in Article 4, these measures operate beyond the temporal parameters it establishes, thereby raising a question of legal compatibility rather than mere policy discretion.

This development may be understood as a functional transformation of the instrument. What was designed as a short-term emergency mechanism now operates as a medium-term protection regime. This evolution has been conceptualised in the literature as “prolonged temporary protection”, denoting a system that formally retains its temporary label while substantively departing from its original temporal logic (INELI-CIGER, 2025).

Two interpretative approaches may be distinguished. A teleological reading emphasises the persistence of the underlying mass influx and treats continued extension as consistent with the Directive’s protective purpose. By contrast, a textual and systemic reading highlights the normative constraint embedded in Article 6(1)(a), viewing extensions beyond the three-year ceiling as exceeding the legal framework established by the legislature. The latter position is supported by doctrinal analysis, which stresses that the Directive does not provide a legal basis

for indefinite or repeated prolongation absent formal amendment (Ineli-Ciger, 2023; BILOUSOV, WOOLRYCH, 2023).

The Commission has justified the extensions by reference to the continuing need for protection, the absence of conditions for safe return, and the risk of overwhelming national asylum systems, while simultaneously acknowledging the lack of a structured transition to alternative legal statuses beyond the duration of temporary protection (European Commission, 2024, pp. 1, 7). These considerations are compelling at the level of policy. However, they do not resolve the interpretative tension arising from the Directive's wording. Notably, the Commission has not addressed the relationship between Article 4 and Article 6(1)(a), nor proposed legislative modification under Article 78(2) TFEU.

An interesting doctrinal silence emerges in the recent case-law of the Court of Justice. Both the Advocate General's Opinion in Cases C-244/24 and C-290/24 and the judgment itself refer to the extension of temporary protection until March 2026 as a matter of fact. However, neither the Advocate General nor the Court engages with the question of whether such an extension is compatible with Article 4 of the TPD (Court of Justice of the European Union, 2024, paras 27–34, 65–66, 112). While the continued application of temporary protection is acknowledged, its legal basis remains unexamined.

At the same time, the Court's reasoning offers a possible explanation for this approach. Whereas the Advocate General emphasised the safeguarding of the proper functioning of national asylum systems, the Court framed the objective of the TPD more broadly as preserving the proper functioning of the system of international protection within the Member States (Court of Justice of the European Union, 2024, para 125). From this perspective, the prolongation of temporary protection may be understood as functionally justified, insofar as it prevents a sudden shift of beneficiaries into the ordinary asylum system that could undermine its capacity and coherence. In this sense, the continued application of temporary protection can be seen as aligned with the Directive's underlying objective, even if it stretches its explicit temporal limits. Nevertheless, this functional reading does not eliminate the normative tension with the Directive's wording, and the absence of explicit judicial engagement with this issue leaves the question of legality unresolved.

This practice blurs the distinction between implementation and amendment. Implementing decisions are intended to apply existing law, not to redefine its structural limits. Extending temporary protection beyond its maximum duration therefore risks amounting to a de facto alteration of secondary law, raising concerns regarding institutional competence and legal certainty within the CEAS. The TPD presupposes that displacement is temporary and that return or transition will occur within a defined timeframe. The Ukrainian case demonstrates that this assumption does not hold in situations of protracted conflict. In the absence of legislative recalibration, the continued reliance on temporary protection risks undermining the internal coherence of the Directive and blurring the boundary between emergency protection and long-term status (INELI-CIGER, 2025).

A normative choice is therefore unavoidable. Either the Union adheres to the Directive's temporal limits and develops effective transition mechanisms, or it formally revises the legal framework to accommodate prolonged displacement. Without such clarification, temporary

protection risks evolving into an indeterminate legal construct, detached from its original purpose and operating beyond the limits envisaged by the legislature.

Pathways Beyond Temporary Protection: Fragmentation and Structural Limits

The prolonged application of the TPD has exposed not only the limits of its temporal framework but also the absence of a structured transition to durable forms of protection. While the Directive provides an effective mechanism for immediate, group-based protection in situations of mass influx, it does not regulate the legal position of beneficiaries once displacement becomes protracted (European Parliament, 2024). As a result, the current framework does not provide a coherent pathway from temporary protection to more stable statuses within the CEAS.

In the absence of such a transition mechanism, several alternative legal avenues may be identified, each addressing different aspects of the problem but none providing a comprehensive solution. These include the possibility of group-based recognition of international protection and the acquisition of long-term resident status (INELI-CIGER, 2023, p. 40). The following sections examine these pathways.

Prima Facie Protection and the Limits of Individualised Determination

Prima facie recognition provides a viable and underutilised solution to this structural deficiency, enabling a direct transition from temporary protection to durable forms of international protection. Within international refugee law, it constitutes a well-established mechanism for the group-based grant of protection in situations where the risk of harm is evident from the general conditions in the country of origin. In such contexts, individual status determination is not only impracticable but often unnecessary, as protection needs can be inferred from objective circumstances affecting an entire category of persons (UNHCR, 2015, p. 2).

Despite its practical and doctrinal relevance, prima facie recognition remains absent from the EU asylum acquis. Protection under the Qualification Directive 2011/95/EU is firmly anchored in individualised assessment, requiring applicants to demonstrate a well-founded fear of persecution or a real risk of serious harm. While the Directive recognises situations of indiscriminate violence—most notably through Article 15(c)—it fails to translate this recognition into a procedural or substantive framework capable of accommodating group-based protection (INELI-CIGER, 2018; European Union, 2011).

This insistence on individual determination reflects the broader architecture of the CEAS, which prioritises procedural guarantees and case-by-case evaluation. In situations of mass influx, however, this model becomes structurally inadequate. Large-scale displacement places considerable strain on administrative capacity, rendering individual processing both resource-intensive and, in many instances, redundant where protection needs are widely acknowledged (INELI-CIGER, 2025).

The displacement from Ukraine illustrates this limitation with particular clarity. The scale of movement and the nature of the conflict—characterised by widespread and indiscriminate violence—clearly justify a presumption of protection needs at the group level. In this context, prima facie reasoning would not only support the initial grant of protection but should also serve as a mechanism for exiting temporary protection. Granting prima facie refugee or subsidiary protection status to individuals already benefiting from temporary

protection would enable a direct transition from a time-limited emergency regime to a stable and durable legal status, without requiring full individualised determination in each case. This approach would reconcile procedural efficiency with legal certainty, transforming temporary protection into a bridge towards long-term protection (INELI-CIGER, 2023, p. 40; BILOUSOV and WOOLRYCH, 2023).

EU law, however, does not provide such a mechanism. Instead, it maintains a rigid separation between temporary protection and international protection, with the consequence that beneficiaries may move from collective protection to individual procedures despite unchanged conditions in the country of origin. The non-incorporation of *prima facie* recognition into EU law therefore reinforces the disconnect between emergency protection and durable status. While the TPD provides an effective entry mechanism in situations of mass influx, it does not resolve the longer-term legal position of beneficiaries (INELI-CIGER, 2023, p. 506; LUYTEN, 2024, p.3).

Properly understood, *prima facie* recognition does not require a departure from EU law. It can be implemented within existing procedures through simplified and accelerated individual decisions based on widely acknowledged country conditions, thereby preserving the requirement of reasoned determinations while avoiding administrative backlogs (LUYTEN, 2024, p. 5). In this sense, *prima facie* recognition represents a realistic and legally compatible adaptation of the current framework rather than a departure from it. Its absence within EU law therefore reveals a structural gap between emergency protection and long-term status, underscoring the incomplete nature of the current framework.

Long-Term Residence: Doctrinal Constraints and Reform

Long-term residence constitutes a formally available pathway beyond temporary protection within Union law, offering a harmonised framework for access to a more stable legal status. However, its applicability in this context presupposes a degree of adaptation of the existing legal framework, as its current design does not accommodate the specific situation of beneficiaries of temporary protection. Without such reform, the regime remains ill-suited to function as an effective transition mechanism.

Under Directive 2003/109/EC, access to long-term resident status requires five years of legal and continuous residence, combined with conditions relating to stable resources, health insurance, and, where applicable, integration requirements. Periods spent under temporary protection do not count towards this threshold, and beneficiaries are effectively excluded *ratione materiae* from the scope of the regime (European Union, 2003).

The European Commission has sought to address this limitation by proposing that all forms of legal residence be counted towards the five-year requirement, including periods spent under temporary protection, which are currently excluded, as well as periods under refugee status and subsidiary protection, which already qualify under the existing framework (European Commission, 2022). While this reform represents a step towards greater harmonisation, it does not alter the integration-based logic of the regime.

Even if adopted, substantial barriers would remain. Conditions relating to stable and regular resources, comprehensive health insurance, and integration continue to presuppose a level of socio-economic stability that is often incompatible with situations of displacement. As

these requirements apply equally to beneficiaries of refugee status and subsidiary protection, they reflect a broader structural limitation of the long-term residence regime rather than a challenge specific to temporary protection.

In this context, long-term residence is unlikely to be accessible to all beneficiaries of temporary protection, particularly those in vulnerable situations or with limited labour market participation (INELI-CIGER, 2025). Broader analyses of post-temporary protection scenarios show that reliance on existing legal categories, including long-term residence, does not provide a clear or structured transition pathway, as it primarily benefits those who are already socio-economically integrated, while leaving more vulnerable beneficiaries exposed to continued legal uncertainty (BILOUSOV, WOOLRYCH, 2023).

The case law of the Court of Justice reinforces this limitation. In *Case C-579/13 P and S*, the Court confirmed that Member States may impose integration conditions for access to long-term residence, but such conditions must comply with the principle of proportionality and must not render the acquisition of the status excessively difficult (*Case C-579/13 P and S*). Similarly, in *Case C-502/10 Singh*, the Court emphasised that decisions concerning long-term residence must take into account individual circumstances and respect proportionality (*Case C-502/10 Singh*). This suggests that, in principle, where applicants are close to meeting the required conditions, their situation—particularly where shaped by displacement—may be taken into account and could prove decisive in the assessment. While this jurisprudence limits excessive national discretion and safeguards the fairness of the system, it operates within the existing legal framework and does not address the prior exclusion of temporary protection beneficiaries or the structural conditions attached to the status. Judicial intervention therefore mitigates excessive restrictions but leaves the underlying structural barrier intact.

This is further corroborated by policy analyses at Union level. ECRE notes that, while long-term residence may form part of the range of possible post-temporary protection solutions, it does not constitute a comprehensive or generally accessible transition mechanism. Crucially, access to long-term residence depends on conditions that are not adapted to the realities of displacement, as the regime is premised on individualised and gradual socio-economic integration (European Council on Refugees and Exiles, 2024, pp. 10–11).

It must be emphasised that long-term residence does not constitute a form of international protection. While it provides a stable residence status, it is not designed to address ongoing protection needs arising from situations of conflict, but instead reclassifies beneficiaries under a different legal basis of stay. This distinction is particularly significant in contexts of protracted displacement, where beneficiaries of temporary protection may continue to require protection over an extended period.

This misalignment is rooted in the historical development of the EU legal framework. Directive 2003/109/EC was not conceived to respond to situations of mass or protracted displacement. Beneficiaries of international protection were only incorporated into this regime through the amendment introduced by Directive 2011/51/EU, applicable from 2013 (European Union, 2011). By contrast, temporary protection beneficiaries were never envisaged within its scope. This reflects not only the original design of the Directive, but also the fact that, although the TPD was adopted in 2001, it remained unused for over two decades and therefore did not influence the development or practical application of the long-term residence regime. The first

activation of temporary protection in 2022 has thus exposed a structural lag between the evolution of displacement realities and the existing EU legal framework.

While more systemic solutions—such as mechanisms enabling a direct transition to international protection—would better address this gap, incremental reform of the Long-Term Residence Directive remains a conceivable, albeit inherently limited, response within the current legal framework. Accordingly, long-term residence can operate only as a conditional and selective pathway beyond temporary protection. While its reform may provide a viable route for beneficiaries who achieve a sufficient degree of socio-economic integration, it cannot operate as a comprehensive transition mechanism. In the absence of a broader Union-level mechanism—particularly in situations of protracted displacement—more vulnerable beneficiaries would remain without a clear and reliable pathway to durable status. This ultimately points to a systemic deficiency within the EU framework: the absence of a harmonised mechanism capable of transforming temporary protection into a stable and durable group-based protection status.

Transition Beyond Temporary Protection: What is actually happening?

EU-Level Transition Strategy

EU policy developments demonstrate that the transition out of temporary protection is being actively structured as an exit rather than as a continuation of protection. Although framed as a “gradual, sustainable and well-coordinated transition” (Council of the European Union, 2025b, p. 2), the emerging framework prioritises access to national and EU migration statuses - particularly employment, study and family-based residence - alongside voluntary return as the principal avenues for beneficiaries (European Commission, 2025, pp. 5–8). These pathways are conceived as replacing temporary protection and cannot be held concurrently, thereby formalising a shift away from the collective protection model (Council of the European Union, 2025a, p. 5).

This design reflects a clear doctrinal repositioning. Rather than extending protection, the EU approach reclassifies beneficiaries under migration law, making continued residence contingent upon individual eligibility within national systems. The explicit requirement to consider the “individual situation” of beneficiaries confirms the reintroduction of individualised assessment (Council of the European Union, 2025b, pp. 3–4), marking a departure from the core rationale of temporary protection as a collective mechanism intended to suspend such procedures in situations of mass influx.

At the same time, voluntary return is elevated to a central pillar of the transition strategy, supported through coordinated reintegration measures and cooperation with Ukrainian authorities (European Commission, 2025, pp. 7–9). The resulting framework is thus structurally limited to two outcomes: migration-based stay or return. No protection-based pathway is envisaged at Union level.

The treatment of vulnerable groups further illustrates the limits of this approach. While EU-level guidance acknowledges “persons with special needs” and allows for certain flexibilities - such as extended timelines or continued access to support - these safeguards remain discretionary and temporary (Council of the European Union, 2025b, pp. 6–7). Although reference is made to “other national residence permits”, humanitarian or discretionary

statuses are neither defined nor integrated into a coordinated transition framework (European Commission, 2025, pp. 5–7). As a result, potential fallback mechanisms remain implicit and dependent on national legal systems.

Notably, the Commission recognises that, where transition into migration-based residence or return is not feasible, beneficiaries may rely on existing international protection procedures as part of the broader legal framework governing their status, a shift which may entail different procedural conditions and forms of access to rights compared to temporary protection (European Commission, 2025, pp. 3–4).

If the underlying conflict persists beyond the current temporal horizon of temporary protection, the EU framework provides no clear legal solution for beneficiaries whose protection needs continue but who are unable to access migration pathways or to return safely. The transition strategy therefore does not resolve the question of long-term protection, but displaces it into national systems without establishing a harmonised legal response.

National Pathways and Fragmented Implementation

In the absence of a harmonised Union-level transition mechanism, Member States have increasingly developed national pathways for beneficiaries of temporary protection. These include bridging permits, conversion into labour migration channels, study-based residence, family reunification, and, in some cases, humanitarian or discretionary statuses. While such measures respond pragmatically to the protracted nature of displacement, they operate within national migration frameworks and result in divergent legal approaches across the Union.

Recent developments illustrate both the diversity and the conditional nature of these pathways. Poland has introduced the CUKR permit² as a three-year bridging residence status providing continuity of stay beyond temporary protection (Act of 15 May 2024, Journal of Laws 2024, item 854). Italy, by contrast, relies on conversion into existing migration categories, particularly work-based residence permits, thereby linking legal status directly to labour market participation (Legge di Bilancio 2024, n. 213/2023, art. 7). The CUKR scheme offers a renewable bridging permit beyond 2027 with broadly defined eligibility and no formal income or language requirements. By contrast, Italy's model enables beneficiaries in regular employment to convert their status into renewable work permits, thereby ensuring continuity of stay, but inherently excludes those outside the formal labour market (European Council on Refugees and Exiles, 2026, pp. 9–13).

The Czech Republic has adopted a more restrictive model, introducing a special long-term residence scheme contingent upon cumulative requirements such as continuous residence and economic self-sufficiency, which only a limited proportion of beneficiaries are likely to meet (PICUM, 2025, pp. 5–6). Similar approaches can be observed in other Member States, including Austria, where transition is largely facilitated through existing migration channels rather than through a distinct protection-based status (WAGNER and GRAMA, 2025).

² “CUKR” is a designation used in Polish practice to refer to a specific national residence scheme for beneficiaries of temporary protection from Ukraine, providing a time-limited pathway to continued lawful stay under national law.

These models demonstrate that access to post-temporary protection status is closely linked to the ability to satisfy the criteria of national migration regimes. As a result, transition outcomes vary significantly between Member States and across beneficiaries. Those able to integrate into labour markets or meet administrative requirements may secure stable residence, while others face limited or uncertain options.

In practice, this leads to differentiated and, in some cases, precarious outcomes. Individuals who are unable to access migration-based pathways may be redirected towards asylum procedures or rely on residual forms of protection. This reintroduces individual status determination and may entail both procedural delays and a reduction in rights compared to temporary protection, particularly in relation to labour market access, housing support and social assistance (European Council on Refugees and Exiles, 2024, pp. 6–8; BILOUSOV and WOOLRYCH, 2023).

Humanitarian or discretionary residence permits may serve as a fallback in certain cases, but their role remains limited. Such statuses are typically temporary, granted on a case-by-case basis, and vary significantly across Member States. They therefore do not provide a stable or predictable transition pathway, but rather form part of a fragmented and uneven landscape of national responses (European Council on Refugees and Exiles, 2024, pp. 7–9).

Temporary protection operates as a uniform, collective mechanism at the point of admission, but its termination is governed by divergent national approaches. This fragmentation produces unequal outcomes for individuals who were initially granted protection under the same EU regime and undermines the coherence of the CEAS (INELI-CIGER, 2025). At the same time, there is continued support for a coordinated Union-level approach to the transition, with calls for stronger EU guidance aimed at promoting consistency, limiting disparities between Member States, and reducing incentives for onward movement (WAGNER and GRAMA, 2025).

Accordingly, national pathways must be understood as necessary but structurally insufficient responses. While they provide continuity of stay for some beneficiaries, they do not ensure equal access to durable status across the Union and, in most cases, fail to address the needs of those who cannot meet migration-based criteria. The transition out of temporary protection thus remains characterised by fragmentation, conditionality and structural legal uncertainty. Rather than resolving this transition at Union level, the current framework effectively displaces it into national systems, prioritising migration-based and individually conditioned pathways without establishing a coherent mechanism for the continuation of protection.

The EU Pact on Migration and Asylum: Crisis Management Without Transition Mechanisms

The Commission's 2020 Pact on Migration and Asylum was accompanied by a legislative proposal addressing situations of crisis and force majeure, which explicitly envisaged repealing the TPD on the grounds that it no longer reflected Member States' operational realities. In its place, the proposal introduced "immediate protection", conceived as a group-based protection status with rights broadly comparable to subsidiary protection and with an activation mechanism shifted from the Council to the Commission (European Commission, 2020).

Properly understood, this model had the potential to function as an alternative to temporary protection while simultaneously providing a structured bridge between emergency response and longer-term protection through a form of prima facie international protection based on group-oriented recognition in situations of mass influx. The legislative development of the Crisis Regulation demonstrates an increasing reliance on procedural forms of group-based reasoning within refugee status determination (European Parliament, 2023a; European Parliament, 2023b; GERBAUDO, 2023).

Although the proposals did not expressly provide for the automatic transition of beneficiaries of temporary protection into immediate or prima facie international protection, their development in the context of prolonged displacement from Ukraine suggests an attempt to address situations in which beneficiaries of temporary protection continue to require protection beyond the temporal limits of the TPD. In this sense, the proposed mechanisms appeared capable of functioning as a post-temporary protection framework based on forms of group-oriented recognition.

The European Parliament's LIBE Committee, in its 2021 report, went further by proposing to replace immediate protection with prima facie recognition of international protection under the Qualification Directive (INELI-CIGER, 2025, p. 17). It reflects an explicit institutional recognition that large-scale displacement requires collective protection approaches. At the same time, it exposes a deeper limitation of EU asylum law, which does not formally accommodate prima facie recognition as a legal technique.

The final legislative outcome rejected both approaches. The TPD was retained, and no equivalent protection status was introduced. Instead, the adopted framework relies on a comprehensive approach combining solidarity mechanisms, external cooperation and crisis procedures, explicitly designed to operate alongside existing instruments. In particular, the Regulation (EU) 2024/1359 confirms that its rules are complementary to those set out in Directive 2001/55/EC and may be applied concurrently, thereby institutionalising the coexistence of different crisis-response regimes rather than replacing them (European Union, 2024, Recital 3).

The Regulation crystallises a decisive shift towards proceduralisation. It allows for the identification of "groups of applicants" whose claims may be considered well-founded, with the aim of ensuring a "swift and efficient granting of international protection" (European Union, 2024, Recital 54). It further provides for derogations from standard procedural guarantees, including shortened deadlines and expanded use of border procedures. Crucially, however, it does not confer a protection status. Protection remains contingent on individual asylum decisions (European Union, 2024, Art. 10).

From a doctrinal perspective, the Regulation incorporates elements of group-based reasoning while formally preserving case-by-case assessment. It proceeds on the assumption that certain categories of applicants are likely to qualify for protection and therefore facilitates accelerated processing within the asylum system. However, the Regulation does not recognise collective protection as a distinct legal status. In this sense, the framework approximates prima facie protection, but only at the level of procedure rather than substantive status.

Although the TPD preserves access to asylum procedures, its temporary nature presupposes the subsequent development of a longer-term solution. The termination of

temporary protection does not, however, in itself establish that protection needs have ceased or that safe and dignified return has become possible. In this context, Ľneli-Ciger argues that EU authorities should consider whether Ukrainians should be granted *prima facie* international protection status, subjected to individual refugee status determination procedures, or provided with long-term residence permits in the Member States. (INELI-CIGER, 2025, p. 361).

In this regard, it is notable that the Proposal for a recast Long-Term Residents Directive, which would facilitate more stable residence pathways for beneficiaries of temporary protection, has not yet been adopted. By contrast, Regulation (EU) 2024/1359 has already been adopted and introduces procedural mechanisms based on assumptions that certain categories of applicants are likely to qualify for protection. Together with broader recommendations encouraging beneficiaries of temporary protection to access asylum procedures where transition into migration-based residence or return remains impossible (European Commission, 2025, pp. 3–4), this may indicate a gradual shift towards forms of group-based reasoning within refugee status determination, albeit still formally embedded within individualised asylum procedures.

The implications of this design are particularly acute for beneficiaries of temporary protection, especially those in vulnerable situations. Individuals who are unable to transition into migration-based residence—due to structural barriers to socio-economic integration—and who cannot return in light of the principle of non-refoulement remain entitled to seek protection within the asylum system. The principle of non-refoulement, as enshrined in Article 19(2) of the Charter of Fundamental Rights of the European Union, prohibits removal to a state where there is a serious risk of persecution or inhuman or degrading treatment. The Court of Justice has consistently affirmed that Member States may not transfer or remove individuals where systemic deficiencies or individual circumstances give rise to such risks, requiring a rigorous assessment of protection needs (CJEU, 2011, paras 94–106).

In this context, beneficiaries of temporary protection who fall outside migration pathways may increasingly rely on asylum procedures as a means of maintaining protection. Articles 17–19 of the TPD guarantee access to asylum procedures at any time and require the examination of asylum applications to continue even after the expiry of temporary protection (European Union, 2001, Arts 17–19). While these provisions ensure continuity of examination, they do not establish a structured transition from temporary protection to a more durable protection status. In situations where large numbers of former beneficiaries of temporary protection continue to require protection beyond the temporal limits of the Directive, the procedural mechanisms introduced by Regulation (EU) 2024/1359 may therefore acquire particular significance. Although formally embedded within individualised refugee status determination, the Regulation facilitates accelerated processing for categories of applicants considered likely to qualify for protection. However, this effect remains strictly procedural. It may accelerate recognition, but it does not itself ensure continuity of protection or residence status.

The Pact therefore does not resolve the structural problem of transition. It replaces the possibility of status-based continuity—embodied in the earlier proposal for immediate protection—with procedural management within the asylum system. Crisis situations are addressed through flexible procedures rather than through the development of new protection statuses.

This may be regarded as a missed opportunity. A system of immediate protection, or an equivalent group-based status, could have provided a coherent legal bridge between temporary protection and longer-term protection. Instead, the adopted framework entrenches a dual structure in which collective protection and individualised procedures coexist without connection. The result is a structurally incomplete architecture. A prolonged, status-based TPD operates alongside a procedural crisis regime. One grants protection collectively and immediately; the other processes claims individually and more rapidly. Neither provides a mechanism for transition. The continuity of protection is therefore not secured but displaced.

Conclusion

This article has demonstrated that the prolonged application of temporary protection following the displacement from Ukraine has exposed a fundamental limitation of the current CEAS: EU law provides an effective mechanism for the activation of collective emergency protection, but lacks a coherent framework governing its long-term continuation and termination.

The analysis first showed that the continued extension of temporary protection beyond the temporal framework established by Directive 2001/55/EC raises unresolved questions concerning legality, institutional competence and legal certainty. The Ukrainian regime has effectively transformed the TPD from a short-term emergency instrument into a medium-term protection framework without corresponding legislative recalibration. In this respect, the article argues that the central issue is no longer the activation of temporary protection itself, but the absence of rules governing prolonged displacement within EU secondary law.

The article further demonstrated that existing pathways beyond temporary protection remain fragmented and conceptually disconnected. *Prima facie* recognition would provide the most coherent protection-based transition by allowing beneficiaries whose protection needs remain evident at group level to move directly into durable international protection without full individualised determination. However, the legislative development of the EU Pact on Migration and Asylum indicates that the Union ultimately rejected this direction. Instead of introducing a new status-based mechanism, the adopted framework increasingly relies on proceduralisation within the asylum system.

In this regard, Regulation (EU) 2024/1359 represents an important shift identified in this article. While formally preserving individual refugee status determination, the Regulation introduces procedural mechanisms based on assumptions that certain categories of applicants are likely to qualify for protection. The article therefore argues that elements of group-based reasoning are gradually entering EU asylum law indirectly through accelerated procedures rather than through formal *prima facie* recognition. However, this development remains limited to procedure and does not ensure continuity of legal status.

The analysis also demonstrated that long-term residence under Directive 2003/109/EC cannot operate as a comprehensive substitute for protection-based transition. Even if the proposed reform is adopted, access to long-term residence will remain dependent upon socio-economic integration and migration-related conditions. As a result, the continuation of stay increasingly depends on national migration systems rather than on harmonised protection-based solutions at Union level.

This problem becomes particularly acute for vulnerable beneficiaries of temporary protection. Individuals unable to satisfy migration-based requirements, yet unable to return safely in light of the principle of non-refoulement, are likely to be redirected towards international protection procedures. In practice, this may also entail a reduction in rights and stability previously guaranteed under temporary protection during the examination of asylum claims, particularly where international protection is not granted before the expiry of temporary protection. Although the procedural mechanisms introduced by Regulation (EU) 2024/1359 may facilitate faster processing in such cases, they do not eliminate the underlying absence of continuity of status.

Finally, the comparative analysis undertaken in this article demonstrates that the transition beyond temporary protection is increasingly displaced into fragmented national frameworks. Among the examined approaches, Poland currently provides the closest approximation to a broader and more durable transition model, including for beneficiaries who may not satisfy strict integration-based conditions. In most other cases, continuation of stay remains heavily dependent upon employment, self-sufficiency or other migration-related criteria.

The article therefore concludes that the current CEAS contains an unresolved tension between collective emergency protection and individualised long-term status determination. Temporary protection operates collectively at the point of admission, yet durable protection is increasingly pursued individually through asylum procedures or national migration pathways. The continuity of protection is thus not secured through a coherent Union-level mechanism, but displaced into fragmented and uneven national systems.

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