

## Temporary Protection at a Crossroads: Direct Effect, Social Assistance, and Post-TPD Legal Pathways

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### INTRODUCTION

*The activation of the Temporary Protection Directive (TPD) in March 2022 marked a defining moment for the European Union’s crisis governance. For the first time, the EU deployed a supranational instrument capable of delivering immediate protection on a large scale, granting millions of displaced Ukrainians residence rights, a predictable legal status, and access to national welfare systems. The speed and scope of this response demonstrated the Union’s capacity to act collectively under conditions of exceptional urgency.*

Three years into its implementation, however, temporary protection has evolved from an emergency response into a structural stress test for EU solidarity. The way in which its core guarantees are applied across Member States increasingly reveals tensions between supranational commitments and decentralised administrative practices. What is at stake is no longer only the effectiveness of a single instrument, but the credibility of EU-wide protection mechanisms in the face of future displacement crises — whether linked to ongoing conflicts, regional instability, or climate-related emergencies.

Divergent national practices have begun to reshape the substance of temporary protection, leading to a gradual re-nationalisation of what was designed as a uniform European response. In several Member States, core entitlements are filtered through domestic welfare concepts that were never envisaged by the Directive, creating unequal levels of protection for individuals holding the same EU-law status.

Belgium offers a particularly illustrative example of this dynamic. In the context of housing shortages, many beneficiaries of temporary protection were initially hosted by family members. Over time, however, local welfare administrations treated these arrangements as permanent household formations, effectively substituting individual social assistance with presumed family support. As a result, private hosting — conceived as a voluntary and temporary act of solidarity — became a functional condition for exclusion from public assistance.

This practice stands in tension with humanitarian standards governing private hosting. Evidence from the International Federation of Red Cross and Red Crescent Societies (IFRC) confirms that so-called “solidarity households” are inherently temporary, relational arrangements designed to complement, not replace, public responsibility.<sup>1</sup> Reclassifying them as stable welfare units shifts the burden of protection from public authorities to private individuals.

Such administrative adaptations raise broader questions about the governance of temporary protection. Allowing national welfare logic to redefine EU-level guarantees risks fragmenting a Union-wide emergency instrument into parallel national regimes. It also exposes the limits of EU enforcement when directly applicable protection rights depend on decentralised implementation without structured oversight.

As temporary protection approaches its scheduled expiry in 2027, these governance tensions acquire particular urgency. The Directive’s legacy will not be measured solely by its rapid activation in 2022, but by the Union’s capacity

to ensure that solidarity-based protection remains effective, enforceable, and coherent over time.

### LEGAL ANCHOR: INDIVIDUAL ENTITLEMENT AND GOVERNANCE IMPLICATIONS

Under the Temporary Protection Directive, access to material assistance is framed as an individual entitlement. This individualised logic is reinforced by the Directive’s internal structure, which explicitly links the level of support to the beneficiary’s own income when employment occurs. The framework does not envisage household aggregation, presumed family maintenance, or the attribution of responsibility to third parties.

From a governance perspective, this distinction is crucial. EU law does not provide for the horizontal transfer of public protection obligations to private individuals. When administrative practice treats family members as *de facto* financial sponsors, the effect is not merely a technical adjustment of welfare assessment. It amounts to a functional displacement of State responsibility into the private sphere.

Such displacement matters because individuals benefiting from temporary protection derive their status directly from EU law. Their access to basic subsistence is therefore anchored in European standards of dignity rather than in variable national welfare classifications. While social assistance remains a national competence, the minimum level of protection attached to an EU status cannot be redefined through administrative practice without undermining the uniformity of EU law.<sup>2</sup>

When Member States, or subnational authorities acting under delegated powers, reinterpret EU-level guarantees through domestic welfare logic, the outcome is not legitimate diversity of implementation but structural fragmentation. Public obligations become conditional on private resources, and supranational commitments are diluted without formal legislative debate, and — without political accountability at Union level.

The legal issue at stake thus extends beyond doctrinal interpretation. If EU protection instruments can be substantively reshaped through decentralised administration, the Union’s capacity to govern through law is weakened. If such reinterpretations become normalised, the question is no longer whether Article 13(2) is directly effective, but whether the EU retains the capacity to enforce its own emergency instruments, and more broadly, its supranational law.

### DIVERGENT NATIONAL PATHWAYS IN THE IMPLEMENTATION OF TEMPORARY PROTECTION

Implementation practices under the Temporary Protection Directive reveal markedly different national pathways, reflecting how Member States mediate EU-level obligations through domestic governance choices. Some systems seek to insulate families from welfare responsibility. Germany, for example, maintains strictly individual entitlement to subsistence support, even in cases of cohabitation with relatives, reflecting a legislative choice to shield ordinary families from financial obligation and to preserve public responsibility for minimum subsistence. Other approaches introduce conditionality or cost-sharing. In Poland, access to key benefits has increasingly been linked to labour-market participation and compliance with behavioural criteria, compressing the substantive content of protection while remaining formally aligned with the Directive. In the Netherlands, financial contributions required from beneficiaries with income have transformed protection into a partially monetised arrangement, justified through administrative reinterpretations of “means of subsistence.” Against this background, Belgium represents a distinct pattern. Rather than insulating families, conditioning assistance, or monetising protection, Belgian practice relocates responsibility outside the public sphere altogether by treating cohabitation with adult children as evidence of sufficient resources. This approach neither openly restricts eligibility nor formally alters benefit levels; instead, it shifts EU-level obligations onto private households, raising specific concerns for the enforceability of EU law and the sustainability of solidarity-based crisis governance.



## GENDERED AND SOCIAL COSTS OF ADMINISTRATIVE DEPENDENCY

The gendered consequences of these administrative choices are substantial. When access to assistance is conditioned on the income of daughters hosting their parents, responsibility for social protection is effectively shifted from public authorities to private households. In practice, fiscal and care obligations are transferred onto women who already sustain welfare systems through taxation and unpaid care work. Solidarity thereby moves away from a collective public commitment and becomes an individualised private burden, reinforcing existing inequalities in the distribution of responsibility.

These effects extend beyond economic impact and entail broader social and psychological costs. Many of the women concerned are single earners supporting two households over prolonged periods. This arrangement limits financial resilience and generates sustained pressure on daily life, family relations, and personal well-being. The absence of autonomy, continued dependency, and lack of realistic exit options from shared household arrangements create long-term strain that is not accidental, but inherent to administrative frameworks that substitute public provision with private endurance.<sup>3</sup>

The governance implications are further intensified by the absence of effective remedies. The Temporary Protection Directive is not addressed to the residents or citizens who absorb these indirect costs, and domestic legal frameworks offer no clear avenue to contest the burdens generated by administrative practice. As a result, those who carry the practical costs of implementation remain legally and institutionally unrecognised, despite their central role in sustaining the functioning of temporary protection.

## INSTITUTIONAL VULNERABILITY

A formal complaint submitted to the European Commission in 2025 raised concerns regarding systemic non-compliance with Article 13(2) TPD in Belgium. In its response, the Commission indicated that it had identified

no issues in Belgium’s transposition and referred to beneficiaries “living with sponsors or family members legally residing as foreigners in Belgium.”<sup>4</sup> Art. 13 of the Temporary Protection Directive, however, contains no reference to “sponsors” or “host families”; the concepts such as “sponsor” derives from family-reunification framework<sup>5</sup> rather than welfare concept whereas “host family” has been a factual circumstance rather than a legal concept.

The Commission’s response therefore does more than address an individual complaint. It illustrates the absence of a governance mechanism capable of identifying systemic deviations that emerge through decentralised administrative practice. By accepting domestic welfare classifications without examining their compatibility with EU-level guarantees, enforcement is effectively displaced rather than exercised.

This approach carries broader institutional implications. Tolerating divergent administrative practices weakens the uniform application of EU law and reduces the credibility of EU crisis instruments as enforceable commitments. It also exposes the Commission to reputational risks as the Temporary Protection framework approaches its next political review. If effective enforcement is not pursued in the context of the Temporary Protection Directive — one of the Union’s most visible expressions of solidarity — it raises a wider question about the Union’s capacity to ensure compliance when future emergency instruments are activated.

## SUPRANATIONAL LAW UNDER PRESSURE: GOVERNANCE RISKS AND THE 2027 CLIFF EDGE

From a policy perspective, it is essential to recognise the operational constraints under which Member States have implemented temporary protection. The Directive was activated amid acute housing shortages, decentralised welfare systems, and intense administrative pressure at local level. These conditions shaped national responses and explain many of the implementation choices observed since 2022.



Yet the persistence of divergent practices suggests that the issue extends beyond short-term crisis management. In many cases, implementation reflects a structural administrative reflex: local welfare authorities rely on familiar national categories and proceed on the assumption that social assistance remains exclusively a domestic competence. The implications of directly applicable EU obligations — particularly where welfare entitlements arise from shared competences such as migration and asylum — are often insufficiently integrated into subnational decision-making. Faced with legal uncertainty, administrations prioritise internal coherence over the operationalisation of supranational rights.

While these trade-offs may be institutionally intelligible, they are insufficient to justify the resulting outcomes at EU level. Directly applicable EU provisions are designed to function precisely within decentralised systems and to prevail where national logic conflicts with Union commitments. Allowing administrative convenience or competence misunderstandings to displace EU rights risks normalising non-application through practice, thereby weakening both the effectiveness and authority of EU law. The consequences of this approach are tangible. Where the Commission defers the assessment of subsistence rights entirely to Member States, and Member States in turn shift responsibility onto private households, EU-level obligations are effectively externalised. Families become de facto providers of protection without any legal framework defining such a role. Many daughters who opened their homes at the outset of temporary protection could not reasonably anticipate that this act would entail long-term financial responsibility with sustained effects on household stability.

These effects are compounded by the absence of effective remedies. Citizens and long-term residents who absorb the economic consequences of administrative practice face significant obstacles in challenging such arrangements. The Temporary Protection framework does not provide mechanisms to address the indirect burdens placed on hosting households, leaving affected families without clear avenues for redress. In practice, administrative classifications shape dependency and cohabitation

patterns in ways that later constrain individual choices regarding residence, separation, or return.

These governance risks acquire particular urgency as temporary protection approaches its scheduled expiry in March 2027. Transition to ordinary residence channels, including under the Family Reunification Directive, requires that dependency be pre-existing, genuine, and documented prior to entry.<sup>6</sup> Yet for many elderly or medically vulnerable individuals, dependency was formalised only because individual assistance was denied during temporary protection. As a result, persons previously considered sufficiently supported to justify exclusion from social assistance may later be deemed insufficiently supported to qualify for residence after temporary protection ends.

Absent corrective measures, this dynamic risks leaving a significant group of beneficiaries — particularly elderly parents with chronic illness or disability — without a viable legal pathway once temporary protection expires. More broadly, the end of the TPD risks triggering a cross-sectoral exclusion shock, whereby individuals fall simultaneously out of residence, welfare, healthcare, and related systems. This form of manufactured irregularity does not result from individual non-compliance, but from policy design that fails to account for the cumulative effects of administrative practice over time.

The 2027 transition therefore represents more than an administrative milestone. It is a test of the Union's capacity to ensure that emergency protection instruments remain coherent, enforceable, and credible beyond the moment of crisis activation.



## RECOMMENDATIONS

### For the European Commission

- Establish an EU-wide monitoring and comparability mechanism **under Article 27 TPD**, focused on Member States' implementation of **Article 13(2)** (and related family unity pathways), to prevent de facto denial of rights through divergent national discretion and to flag systemic barriers to access to remedies (Article 29).
- Integrate a gender and mental-health-impact lens into the Commission's ongoing evaluation of the Directive, with specific attention to the indirect effects of administrative implementation on private households.

### For the Council and European Parliament

- In any future revision of the Temporary Protection Directive, clarify the individual nature of entitlement to material assistance to prevent substitution of public responsibility with family-based support.

### For National Governments (especially Belgium)

- Ensure that local welfare authorities are equipped to implement EU protection instruments in a manner consistent with their objectives, including through targeted guidance and training.
- Guarantee accessible and effective appeal mechanisms for individuals affected by administrative decisions related to temporary protection.
- Prepare coordinated transition frameworks ahead of the expiry of temporary protection in 2027, aligning national procedures with the Family Reunification Directive and providing clear guidance on how dependency shaped during temporary protection should be assessed, in order to avoid exclusion or irregularity, particularly for elderly or medically vulnerable individuals.

## CONCLUSION

The activation of the Temporary Protection Directive marked an unprecedented step in the European Union's crisis response. It showed that EU law could operate as an instrument of immediate protection, capable of stabilising the legal and social situation of millions of displaced persons within a short period of time. Temporary protection was not merely an emergency measure; it was a manifestation of supranational governance in action.

The experience of implementation, however, reveals the fragility of this capacity. The challenges identified in this paper are not limited to questions of social assistance or national welfare design. They expose a deeper structural vulnerability of the EU legal order: the growing gap between EU-level commitments and their translation into everyday administrative practice. When directly effective EU rights are routinely filtered through domestic categories, not as an act of resistance but as a matter of administrative habit, the effectiveness of supranational law is gradually weakened.

This erosion is particularly visible in crisis contexts. Prolonged emergencies place sustained pressure on administrative systems, encouraging local authorities to rely on familiar national categories rather than on EU legal reasoning. Over time, this dynamic produces a quiet re-nationalisation of EU law, whereby supranational obligations formally remain in force but lose their guiding role in decision-making. Solidarity weakens not only because of political fatigue, but because EU law ceases to function as the primary normative reference for local governance.

The approaching expiry of temporary protection in 2027 crystallises these concerns into a legal and political cliff edge. Millions of individuals currently reside in the European Union on the basis of a unique, *sui generis* EU legal regime. The foreseeable termination of this regime will not simply entail the loss of a residence status; it risks triggering a cascade of legal and social consequences across healthcare, banking, housing, education, and family life. Without coordinated transition mechanisms,

the Union risks manufacturing irregularity through policy design rather than through individual conduct.

At this stage, the challenge can no longer be framed as a matter of uncertainty. Member States are fully aware of both the scale and the temporal limits of temporary protection. Allowing a directly effective EU legal regime to expire without anticipatory governance raises a distinct issue under the principle of loyal cooperation enshrined in Article 4(3) TEU. EU law does not only require compliance in the present; it requires good-faith management of its foreseeable effects.

Ultimately, the experience of temporary protection raises a question that extends beyond migration policy. It concerns the Union's ability to sustain supranational law under conditions of pressure. If EU rights can be diluted through administrative practice and allowed to expire without structured transition, the credibility of EU crisis governance is at risk. Preparing a coherent post-2027 framework is therefore not simply a technical or social-policy task. It is a test of the Union's capacity to govern through law, to maintain trust in its commitments, and to ensure that solidarity remains a public responsibility rather than a private burden.

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## Endnotes

- 1 International Federation of Red Cross and Red Crescent Societies (IFRC) (2024). Safe Homes: Key Lessons from Hosting People Displaced from Ukraine in Private Homes.
- 2 Charter of Fundamental Rights of the European Union, Articles 1 and 34(3).
- 3 WHO (2025). *Refugee and Migrant Mental Health*; Caputo, Jennifer. "Crowded nests: Parent–adult child coresidence transitions and parental mental health following the great recession." *Journal of health and social behavior* 60.2 (2019): 204-221.
- 4 European Commission, DG HOME Reply to Ares (2025)8766456. Letter to Dr Marta Barandiy concerning the implementation of Article 13(2) of Directive 2001/55/EC in Belgium. On file with the author.
- 5 Directive 2001/55/EC
- 6 Directive 2003/86/EC







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