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EMN European Migration Network

Ad-Hoc Query

2024.40 Application for temporary protection by a person with dual nationality

European Migration Network
Ad-hoc query

AD-HOC QUERY ON 2024.40 APPLICATION FOR TEMPORARY PROTECTION BY A PERSON WITH DUAL NATIONALITY

REQUESTED BY EMN NCP SLOVENIA ON 4 JULY 2024

Responses from: EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Ireland, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Portugal, EMN NCP Slovakia, EMN NCP Spain, EMN NCP Sweden **(22 in total)**

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BACKGROUND INFORMATION

The Temporary Protection Directive (TPD; Council Directive 2001/55/EC) was triggered for the first time by the Council in response to the unprecedented Russian invasion of Ukraine on 24 February 2022 to offer quick and effective assistance to people fleeing the war in Ukraine. On 4 March 2022, the Council adopted Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC with the effect of introducing temporary protection (Implementing Decision (EU) 2022/382). According to Article 2(2) of the Implementing Decision (EU) 2022/382 Member States shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.

WE WOULD LIKE TO ASK THE FOLLOWING QUESTIONS:

We would very much appreciate your responses by **25 July 2024**.

1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO.

2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application?

RESPONSES

		Wider Dissemination?	
	EMN NCP Belgium	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? In Belgium temporary protection cannot be refused solely on the basis of the fact that the Ukrainian national holds also the nationality of an EU Member State. However, temporary protection can be refused due to the fact that the Ukrainian national is authorised to reside in another Member State which is obliged to comply with the decision of the Council of the EU.
	EMN NCP Bulgaria	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. There is no such provision in the current national legislation. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? The Temporary Protection Directive was transposed into the Law on Asylum and Refugees (LAR). In accordance with Art. 1a. (3) LAR, temporary protection is granted to foreigners who are forced to leave their country of origin due to armed conflict, civil war, foreign aggression, violation of human rights or large-scale violence on the territory of the respective country or in a separate region of it and who cannot for these reasons return there. Pursuant to the Additional Provisions of LAR - § 1, Item 1, "Foreigner" shall mean any person who is not a Bulgarian national or is not a national of any other European Union Member State, nor a national of any country party to the Agreement creating the European Economic Area, a national of the Swiss Confederation or a person who is considered not to be a national of any country, as per the relevant national legislation. Pursuant to Article 2 of the Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, the categories of persons to be granted temporary protection are Ukrainian nationals, stateless persons or third-country nationals who are unable to return

			freely to their country of origin and their family members. Having regard to the provisions laid down in Union's and national law, and the fact that persons who hold the nationality of an EU Member State may move freely within the territory of the Union and enjoy the rights deriving therefrom without having been granted temporary protection by a Member State, they do not fall within the scope of Directive 2001/55/EC and should not enjoy the rights it confers.
	EMN NCP Croatia	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. NO. It is not explicitly prescribed by law. Temporary protection can generally be granted to a displaced person who cannot return to the country of origin. Additionally, due to the massive influx, it is not possible to effectively implement the international protection procedure in order to ensure effective protection for the displaced, as well as other persons. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? Taking into account that temporary protection follows the logic of international protection, an EU citizen's who requests for temporary protection would be rejected. Besides, he would be rejected for the reason that citizenship by definition is a status that results from a special legal and permanent link between an individual and the state.
	EMN NCP Cyprus	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? Cyprus has encountered very few cases where an application for temporary protection is made by a person with dual nationality in the event where, in addition to Ukrainian nationality, the person also holds the nationality of an EU Member State. Those cases where always connected with a Ukrainian national and for maintaining family unity, Temporary Protection was granted.
	EMN NCP Czech	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection

	Republic		could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Yes, according to the provisions of Section 5(1)(e) of Act No. 65/2022 Coll., as amended, an application for temporary protection is inadmissible if it is submitted by a foreigner who is (1) a citizen of the European Union, or (2) a State bound by an international treaty negotiated with the European Union from which he or she derives a right to free movement equivalent to that of citizens of the European Union, or (3) a State bound by the Agreement on the European Economic Area. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? N/a
	EMN NCP Estonia	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No. The grounds for refusal to apply temporary protection and refusal to issue or extend residence permit are set in § 57 of the Act on Granting International Protection to Aliens. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? According to the 9th of March 2022 Decree of the Government of the Republic of Estonia on the application of temporary protection, there are two categories of people who can apply for temporary protection: (1) Ukrainian citizens and their family members who have arrived in Estonia since 24 February and (2) people of other nationalities who were beneficiaries of international protection in Ukraine and their family members who have arrived in Estonia since 24 February. If the applicant holds another EU Member State´s citizenship, it is likely that the application is rejected and temporary protection cannot be applied as the applicant´s status does not comply with the definition provided above.
	EMN NCP Finland	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. NO.

			2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? Generally speaking, temporary protection is denied on the basis that it is applicable only to nationals of Ukraine and other third countries. If an EU citizen applies for temporary protection and intends to stay in Finland for more than three months, the applicant is informed about the possibility of registering their right of residence.
	EMN NCP France	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. NO 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? The following reasoning applies to EU nationals: 1. Decision EU 2022/382 applies to the following categories of persons displaced from Ukraine on or after 24 February 2022 as a result of the military invasion by the Russian armed forces which began on that date: a) Ukrainian nationals residing in Ukraine before 24 February 2022; b) stateless persons, and nationals of third countries other than Ukraine, who have been granted international protection or equivalent national protection in Ukraine before 24 February 2022; and, c) family members of persons referred to in points a) and b). 2. Member States shall apply this Decision or adequate protection under their national law to stateless persons, and nationals of third countries other than Ukraine, who can establish that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return to their country or region of origin under safe and sustainable conditions. 3. In accordance with Article 7 of Directive 2001/55/EC, Member States may also apply this Decision to other persons, including stateless persons and nationals of third countries other than Ukraine, who were legally residing in Ukraine and who are unable to return to their country or region of origin under safe and sustainable conditions. 4. For the purposes of paragraph 1(c), the following persons shall be considered as family members, insofar as the family was already present and residing in Ukraine before 24 February 2022: (a) the spouse of a person referred to in paragraph 1(a) or (b), or the unmarried partner in a stable relationship, where the legislation or practice in force in the Member State concerned treats unmarried couples in a comparable way to married couples under its national law on aliens; (b) unmarried minor children of a person referred to in paragraph 1(a) or (b) or of his/her spouse, whether legitimate, born out of wedlock or adopted;

			c) other close relatives who were living in the family unit at the time of the circumstances surrounding the mass influx of displaced persons and who were wholly or mainly dependent on a person referred to in paragraph 1(a) or (b). Thus, an EU citizen cannot obtain temporary protection on his own. They can only obtain it if they are a family member of a beneficiary of temporary protection.
	EMN NCP Germany	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Yes. The restriction of the possibility to grant temporary protection exclusively to third-country nationals is a direct consequence of the Implementing Decision of 4 March 2022 (Council Implementing Decision (EU) 2022/382, last extended on 25 June 2024 by Implementing Decision 2024/1836) of the Temporary Protection Directive (Directive 2001/55/EC). 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? n/a
	EMN NCP Greece	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No. In our legal system “Temporary Protection Status” is regulated by the provisions of Law no 4939/2022 (Gov. Gazette A’ 111) Articles 119-146, transposing Council Directive 2001/55/EC. On our legislation in force there is not a direct provision for the rejection of an application solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State, if the person otherwise fulfils all the conditions required. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? Greece has not encountered such a case so far. However, we are of the strong opinion that such an application must be rejected on the following grounds: According to the “Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof” {COM (2000) 0303 final, C 311}, par. 2.1. EU Commission states: “Temporary protection has been developed by several Member States as a response to the challenge raised by the mass influx to the asylum system. Special provisions on an autonomous basis have been adopted to speed up decision-making as regards temporary admission so

			as to avoid or delay the application of the lengthy procedures laid down for asylum requests". Legal basis of directive 2001/55/EC is consistent with the amendments made to the Treaty establishing the European Community by the Amsterdam Treaty, which entered into force on 1 May 1999. Article 63(2) provides that the Council is to adopt measures relating to refugees and displaced persons, notably in the following areas: minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin (a) and promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (b). Citizenship of the Union is a right provided for in Article 20 of the TFEU and in Article 9 of the TEU. Anyone who is a national of an EU Member State is automatically a citizen of the Union. This right is thus enshrined in the European Union's (EU) treaties and is a key factor in developing a European identity. Citizenship of the Union gives people, among others, the right to: non-discrimination on the grounds of nationality; travel and take up residence anywhere in the European Union; vote and stand as a candidate in European and local elections where they are living; diplomatic protection and consular support around the world from any other EU country if one's own country is not represented there; write to any EU institution in one of the EU's official languages and receive a reply in the same language; work in any EU member state; live in any member state. In the light of the above, and the combination of the more specific provisions, we consider that temporary protection is addressed as a form of protection to third country nationals, not entitled to the protection and rights of citizenship of the Union.
	EMN NCP Hungary	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No, with the exception of dual Ukrainian-Hungarian nationals, who are not entitled to temporary protection as Hungarian citizens. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? The asylum authority examines the applications taking into account the individual circumstances of the applicant.
	EMN NCP Ireland	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO.

			No. However, according to the International Protection Act 2015, a 'displaced person' for the purposes of temporary protection, has the same meaning as in the Temporary Protection Directive i.e. "a third country national or stateless person" who have had to leave their country or region of origin and cannot return safely. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? The application for temporary protection may be refused on the basis of the fact that the person does not meet the definition of a displaced person due to the nationality of an EU Member State.
	EMN NCP Italy	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Third country nationals who also hold citizenship of an EU Member State can reside in the national territory following the rules and requirements that apply to all EU citizens, such as registering with the local registry office, paying for health insurance, etc. They will not need to obtain a residence permit to stay because they enjoy other rights as EU citizens. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? N/A
	EMN NCP Latvia	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? If a Ukrainian citizen who holds the citizenship of another EU country applies for temporary protection in Latvia, their application is rejected because their status does not comply with the criteria outlined in Article 1 of the Ukrainian Civilian Support Law: "Within the meaning of this Law, Ukrainian civilians are citizens of Ukraine and their family members, and also the persons who have received a permanent residence permit in Ukraine and cannot return to the country of their citizenship, the status of a

			stateless person, or the status of international protection in Ukraine and their family members.
	EMN NCP Lithuania	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. No 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? The categories of people eligible for temporary protection are defined by the Law on the Legal Status of Foreigners and detailed by a government resolution.
	EMN NCP Luxembourg	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Our national legislation (amended national law of 18 December 2015 on international protection and temporary protection) does not specify who can benefit from temporary protection, and there is no specific article in that law that will refuse the temporary protection to a dual national. However, Article 67 of the amended law of 18 December 2015 on international protection and temporary protection states that the temporary protection is granted to displaced persons coming from a third country and who cannot re-enter their country of origin. A dual national with an EU nationality can therefore enter the EU country of which they are a national. For Ukrainian nationals with a second nationality, the last of which is an EU nationality, applying for an application for international protection will not be beneficial as they enjoy freedom of movement within the EU, giving them the right to work and reside in any EU Member State, subject to certain conditions. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? If Ukrainian citizens who also hold the nationality of another EU Member State apply for temporary protection in Luxembourg, they are informed of their rights and options, including the fact that as EU citizens they will not be granted temporary protection in Luxembourg and that they have to return to their country of nationality or try to apply for another type of

			residence permit in Luxembourg.
	EMN NCP Netherlands	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Yes, in the Netherlands the application for temporary protection could be refused on the basis of the fact that the Ukrainian national also holds the nationality of an EU member state. On the basis of their nationality of an EU member state they have the right to remain in the Netherlands or the European Union.[1] [1] Information provided by the Immigration and Naturalisation Service (IND) on 10 July 2024. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? N/A.
	EMN NCP Poland	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. NO 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? There are no provisions in Polish national legislation, i. e. Act of June, 13th 2003 on granting protection to foreigners in the Republic of Poland and Act of March, 12th 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of Ukraine, which would stipulate solely refusal of temporary protection to an Ukrainian citizen due to the fact, that this Ukrainian citizen holds the nationality of a Member State, however the interpretation of these Acts, supported currently by the Office for Foreigners, brings to the conclusion that these national legislation acts apply only to foreigners (not being Polish citizens) who are third-country nationals. Therefore, Ukrainian citizens with citizenship of EU Member States should not be granted temporary protection under these national legal acts.
	EMN NCP Portugal	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State?

			YES/NO. No. According to PT legislation, the fact that a Ukrainian citizen also has the nationality of an EU MS is not what determines whether temporary protection is granted or not. Ultimately, it will all depend on the condition the applicant submit its request and if he met the criteria laid down in EU law and reflected in PT legislation for granting temporary protection. To sum-up, if the applicant makes his request for temporary protection to PT Authorities as a national of an EU MS, even having Ukrainian citizenship, his application will be rejected by PT authorities who will not be able to consider the applicant as a Ukrainian national. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? -
	EMN NCP Slovakia	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Yes. The Act on Asylum in its Article 29 par. 1 states: "Temporary protection is provided for the purpose of protecting foreigners from war conflict, endemic violence, the consequences of a humanitarian catastrophe or systematic or mass human rights violations in their country of origin; For the purpose of providing temporary protection, a foreign national shall be understood as a third-country national pursuant to... Act on Residence of Foreigners." While based on the Act on Residence of Foreigners a third country national is considered anyone who is not a citizen of the Slovak Republic or a citizen of the (European) Union. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? NA
	EMN NCP Spain	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. YES. In the Royal Decree 1325/2003, of 24 October, approving the Regulation on the temporary protection regime in the event of a mass influx of displaced persons, there is a definition of displaced persons that establishes that they must be nationals from a third country not a member of the European Union.

			2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? -
	EMN NCP Sweden	Yes	1. In your Member State, do you have a provision in the legislation in force under which an application for temporary protection could be refused solely on the basis of the fact that the Ukrainian national also holds the nationality of an EU Member State? YES/NO. Yes. It appears from the preamble to the directive (point 10) that the temporary protection provided by the directive should be compatible with the member states´ international commitments regarding refugees. The purpose of the directive is further, according to Article 1, to provide temporary protection in the event of a massive influx of displaced persons from third countries who cannot return to their country of origin. A person who can return to their country of origin (one of their countries of origin) is excluded and it is not relevant to examine whether the person otherwise meet the criteria for being covered by the right to temporary protection. If it concerns dual citizenship of Ukraine and another EU country, the starting point is that an application for asylum from an EU citizen is clearly unfounded and can be rejected (see Asylum Protocol of the Treaty of Amsterdam EUR-Lex – 12006E/PRO/29 – EN – EUR-Lex (Europa.eu). However, under certain conditions, an EU citizen has the right of residence or the right to stay in Sweden for three months. 2. If you answered NO to Q1, how does your Member State proceed in case of receiving such an application? N/a.

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