The European Temporary Protection Directive And The Ukrainian Refugee Crisis

Anelia Atipova
The Defense Advanced Research Institute (DARI)
National Defense College “G. S. Rakovski”
Sofia, Bulgaria
a.atipova@rndc.bg

Abstract. The military conflict in Ukraine since the end of February 2022 has caused an unprecedented intra-European refugee crisis. More than 6 million Ukrainians left the country, and another 8 million were internally displaced. The policy of solidarity with the Ukrainian state faced the EU in exceptional circumstances and required a revision of the existing legislation in the field of international protection. The report offers a comparative analysis of the transposition practices of the Council Directive 2001/55/EC on minimum standards for the granting of temporary protection, activated for the first time since its adoption. The legislations of sixteen countries that have become the main receivers of the refugee flow have been examined, one of which is the Republic of Bulgaria.

Keywords: military conflict; refugee crisis; Temporary protection directive; Ukraine.

I. MATERIALS AND METHODS

The report uses the generally accepted methods of content analysis, criterion and statistical analysis and teleological legal analysis to summarize the results and trends in the implementation of the European directive framework for the regulation of mass influxes of refugees, through its transposition into national legislations.

The normative framework of the EU in the subject area, as well as the legislation of 16 member states, which experienced the most significant part of the refugee pressure, were examined.

In the analysis of the documents, the presumption was respected that the regime of temporary protection is not prejudicial to the recognition of refugee status (Article 3 of Directive 2001/55/EC) and does not cancel or replace the regulations for the granting of such status.

Official open sources, normative documents and statistical data of Eurostat and UNHCR were used.

II. RESULTS AND DISCUSSIONS

A. Dynamics of the Ukrainian refugee flow to the EU (2022-2024)

The dynamics of migration processes is determined by two categories of factors - pull factors and push factors. They vary with the mixed immigration flows consisting of refugees and illegal (economic) immigrants, as traditionally settled in the EU countries.

In a situation of military and/or humanitarian crisis, the social and economic pull factors do not disappear.

They are supplemented with other factors, with a higher degree of priority, such as the geographical proximity of the first safe country, the logistical possibilities for movement, the presence of an established diaspora (in this
case, Ukrainian), the refugee-immigration policy of the host country, etc.

Geographically closest to Ukraine are the EU countries - Romania, Poland, Hungary, Slovakia, as well as Moldova and Belarus, the latter of which has diametrically opposed European policy regarding the conflict and the refugee crisis, as a result of it.

The geographical proximity does not fully correspond to the presence of Ukrainian citizens on the territory of the EU, before the conflict. According to Eurostat data, the largest Ukrainian diasporas are in Poland (651,221), Italy (230,360), the Czech Republic (193,547), Spain (97,442), Germany (83,043), Hungary (63,175), and Slovakia (54,138) [8].

The number of asylum seekers in 2022 [9], 2023 [10] and 2024 [11], [12], compared to the number of Ukrainians settled in the EU, also shows a discrepancy in the expectations for the choice of the first safe country, assumed by geographical proximity (Table 1).

<table>
<thead>
<tr>
<th>Country</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>9149</td>
<td>30505</td>
<td>166535</td>
<td>67770</td>
</tr>
<tr>
<td>Croatia</td>
<td>2405</td>
<td>240</td>
<td>22485</td>
<td>24355</td>
</tr>
<tr>
<td>Czech R.</td>
<td>193547</td>
<td>244650</td>
<td>357960</td>
<td>381400</td>
</tr>
<tr>
<td>Greece</td>
<td>206090</td>
<td>0</td>
<td>27365</td>
<td>26675</td>
</tr>
<tr>
<td>France</td>
<td>18610</td>
<td>26015</td>
<td>64775</td>
<td>65175</td>
</tr>
<tr>
<td>Germany</td>
<td>83043</td>
<td>700347</td>
<td>119490</td>
<td>1235960</td>
</tr>
<tr>
<td>Hungary</td>
<td>63175</td>
<td>0</td>
<td>33060</td>
<td>65585</td>
</tr>
<tr>
<td>Italy</td>
<td>230360</td>
<td>0</td>
<td>161220</td>
<td>168840</td>
</tr>
<tr>
<td>Latvia</td>
<td>9087</td>
<td>12840</td>
<td>43035</td>
<td>43565</td>
</tr>
<tr>
<td>Lithuania</td>
<td>32884</td>
<td>3155</td>
<td>72810</td>
<td>52670</td>
</tr>
<tr>
<td>Poland</td>
<td>651221</td>
<td>675085</td>
<td>958655</td>
<td>955110</td>
</tr>
<tr>
<td>Portugal</td>
<td>27195</td>
<td>23930</td>
<td>37230</td>
<td>38490</td>
</tr>
<tr>
<td>Romania</td>
<td>2260</td>
<td>1980</td>
<td>140585</td>
<td>78745</td>
</tr>
<tr>
<td>Slovakia</td>
<td>54138</td>
<td>58750</td>
<td>109530</td>
<td>115875</td>
</tr>
<tr>
<td>Spain</td>
<td>97442</td>
<td>32445</td>
<td>187205</td>
<td>192405</td>
</tr>
<tr>
<td>Sweden</td>
<td>5768</td>
<td>17850</td>
<td>41915</td>
<td>42040</td>
</tr>
</tbody>
</table>

The countries with the largest Ukrainian diaspora also have the largest growth in persons seeking international protection (Table 1). From Graph 1, it is evident that the refugee pressure is the lowest in 2022, gradually increasing and reaching its peak in February 2024. The most affected countries are Germany, Poland, Czech Republic and Spain, while in Bulgaria, Italy, Lithuania and Romania, it is weakening.

This clearly outlines the profile of the first group of countries as permanent settlement countries and the second group of countries as transit countries. The countries of the first group have a higher level of economic and social development and access to the labor market, which is crucial for accommodating the refugee contingent. However, the listed 16 countries bear the overwhelming burden of the refugee pressure from Ukraine and the responsibility for its management for a period defined in the European and national legislation.

B. Overview of the regular basis for the grant of temporary protection in the EU


The provision of temporary protection in case of a mass influx of displaced persons into the territory of the EU is regulated in Council Directive 2001/55/EC (TPD), adopted in 2001. It sets minimum standards in the subject area, with the aim of evenly distributing the responsibilities between Member States.

According to its provisions, this type of protection should be for a limited period of time and based on the principles of subsidiarity, proportionality and non-discrimination. In Art. 5 it is stated that "the existence of a mass entry of displaced persons is certified by a decision of the Council". On March 4, 2022, Implementing Decision (EU) 2022/382 [13] was adopted, and at the end of the same month operational guidelines for its implementation [14] came into force.

The main mechanisms for the management of mass refugee flows, which the Directive introduces, are the following:

1. Registration of people seeking temporary protection (Art. 10, art. 17).
3. Access to the labor market and social benefits (Article 12, Article 13, Paragraph 2).
4. Housing (Article 13, Paragraph 1).
5. Medical and psychological insurance (Article 14).
7. Right to family reunification, respecting the interests of the child (Article 15, Paragraph 4 and Paragraph 5).
8. Information exchange and access to information (Art. 26, Art. 27).

In addition, member states must develop mechanisms to differentiate immigration flows and exclude persons from access to international protection (item 22, art. 28), work with vulnerable groups (art. 16, art. 23) and mechanisms for return.

According to Art. 32, para. 1, when transposing Directive 2001/55/EC of the Council, when introducing the specified measures into national legislation, they must contain a reference to the Directive, in a manner adopted by the state.
b) Implementing Decision (EU) 2022/382

Implementing Decision (EU) 2022/382 specifies the refugee quota, according to the legal formulation of item 22 of Directive 2001/55/EC, for determining a criterion "for excluding certain persons from the circle of those who are granted temporary protection in a case of mass entry of displaced persons" and reduces the action to only persons coming from the territory of Ukraine.

Item 6 of the Decision assumes that, given their right to free visa-free entry and stay for 90 days within 180 days, on the territory of the EU, "it is expected that half of the Ukrainians coming to the Union […] will join to family members or to seek employment in the Union, and the other half to seek international protection'.

The decision also states that, in accordance with the Directive, "Member States may extend the scope of temporary protection to stateless persons or third-country nationals legally residing in Ukraine who cannot return permanently and under safe conditions to their country or region of origin" (item 13).

c) Issues arising from the framework for granting temporary protection in the EU

The status of a beneficiary of temporary protection cannot be combined with that of a person applying for refugee status while the application is being processed. Thus, temporary protection is the only effective tool to prevent mass applications for refugee status from overwhelming national asylum systems and leaving states unable to manage the process.

However, there are several significant problems that the transposition of Directive 2001/55/EC into national legislation may cause:

1. Since 2017, Ukrainians enjoy the right to freely enter the territory of all EU countries, therefore they can choose in which country to receive temporary protection. Despite the intention of this assumption to spread the burden of refugee pressure evenly, countries with higher economic growth are more burdened, as can be seen from the statistics in Table 1.

2. To date, temporary protection for those coming from the territory of Ukraine has been extended twice, for a period of 1 year each. Its final term of operation is March 4, 2025. [15] This creates preconditions for burdening the social system, at the expense of the asylum system of the member states, since the potential contribution of Ukrainian refugees to the labor market in the receiving countries is uncertain, due to difficulties in the integration process [16], although the regulatory framework allows inclusion in the labor market.

3. In 2025, a new travel authorization for Ukrainian citizens (Electronic Travel Authorization System, ETIAS) [17] will enter into force, according to which each person will receive individual access to EU member states, after a thorough check in European bases -security data (eu-LISA, the Schengen Information System (SIS), INTERPOL, EURODAC, EUROPOL and the Visa Information System (VIS)). The provisions do not apply to beneficiaries of temporary protection at present, but severely limit the ability to prorate the refugee burden in future movements.

The minimum standards should be introduced and further developed by transposing Directive 2001/55/EC into the national legislation of the member states.

C. Analysis of the national legislation for the transposition of Directive 2001/55/EC

The transposition of Directive 2001/55/EC into the national legislation of 16 countries, which received the largest part of the refugee pressure from Ukraine, was analyzed. The analysis was performed according to synthesized 8 criteria, and the results are summarized in Table 2.

| TABLE II. LEVEL OF TRANSPOSITION OF DIRECTIVE 2001/55/EC INTO THE NATIONAL LEGISLATION OF 16 EU COUNTRIES |
|------------------|------------------|------------------|------------------|------------------|
| Country          | Criteria         | Access to health care | Access to social housing | Vulnerable groups protection | Provisions of information |
| Bulgaria         | Yes              | Yes                | Yes                | Yes                | Yes               |
| Croatia          | Yes              | No                 | Yes                | Yes                | Yes               |
| Czech R.         | Yes              | Yes                | Yes                | No                 | No                |
| France           | Yes              | Yes                | Yes                | Yes                | Yes               |
| Germany          | Yes              | Yes                | Yes                | Yes                | Yes               |
| Greece           | Yes              | Yes                | Yes                | Yes                | Yes               |
| Hungary          | Yes              | Yes                | Yes                | Yes                | Yes               |
| Italy            | Yes              | Yes                | Yes                | Yes                | Yes               |
| Latvia           | Yes              | Yes                | Yes                | Yes                | Yes               |
| Lithuania        | Yes              | Yes                | Yes                | Yes                | Yes               |
| Poland           | Yes              | Yes                | Yes                | Yes                | Yes               |
| Portugal         | Yes              | Yes                | Yes                | Yes                | Yes               |
| Romania          | Yes              | Yes                | Yes                | Yes                | Yes               |
| Slovakia         | Yes              | Yes                | Yes                | Yes                | Yes               |
| Spain            | Yes              | Yes                | Yes                | Yes                | Yes               |
| Sweden           | Yes              | Yes                | Yes                | Yes                | Yes               |

The analysis shows that 7 of the 16 countries transpose Council Directive 2001/55/EC into their existing legislation and by Decision of the Council of Ministers or another responsible institution (Bulgaria, Hungary, Italy, Portugal, Romania, Spain and Sweden), and 9 adopt special normative acts for Ukraine [18]. (Croatia, Czech
Republic, France, Germany, Greece, Latvia, Lithuania, Poland and Slovakia).

Countries with changes to existing legal norms create legal resilience and build capacity to deal with future mass refugee flows. These are also the countries with the greatest refugee-immigration experience.

A total of 14 countries benefit from what is specified in Art. 7, para. 1 of Directive 2001/55/EC right to expand the categories of persons, beneficiaries of temporary protection. The cases of Spain, Germany and Lithuania stand out, where, in addition to Ukrainian citizens and citizens of third countries residing in Ukraine, there are also illegally residing Ukrainians and Ukrainians legally residing in other EU countries. Latvia and Slovakia do not expand the categories for accepting refugees from Ukraine.

The national practices of 8 countries differ on the fingerprinting procedure at registration. Hungary stands out for not giving beneficiaries of international protection access to the labor market. Slovakia and Greece do not provide accommodation.

A total of 13 countries bind the granting of international protection to the date of 24 February 2022, as follows:
1. Ukrainian citizens and third-country nationals residing in Ukraine or in an EU accession country before February 24, 2022 – 5 countries (Sweden, Slovakia, Italy, Czech Republic and Bulgaria).
2. Ukrainian citizens and citizens of third countries who left Ukraine before February 24, 2022 – 3 countries (Lithuania, Georgia and Croatia).
3. Ukrainian citizens and citizens of third countries who left Ukraine after February 24, 2022 – 4 countries (Poland, Hungary, Greece and France).
4. Ukrainian citizens and citizens of third countries who left Ukraine before February 24, 2022 – 3 countries (Lithuania, Germany and Croatia).
5. Ukrainian citizens and citizens of third countries who left Ukraine before or after February 24, 2022 – 1 country (Romania).

Portugal, Spain and Latvia do not bind the granting of temporary protection to displaced persons from the territory of Ukraine, with departure or residence before or after February 24, 2022.

Tying temporary protection status to a specific date means that all refugee flows out of the country after that date will be internally displaced, flow into illegal immigration flows or claim refugee status. A part of them will be redirected to the countries that do not bind their refugee policy towards Ukraine with time specifics and thus, they will violate the proportionality of the reception.

On the other hand, the option of visa-free travel and stay in the EU for a period of 90 days becomes a highly selective measure towards refugees from Ukraine, presupposed by the factors of diaspora presence, socio-economic level and refugee policy, including the transposition of Directive 2002/55/EC into their national legislations.

**CONCLUSION**

The analysis of the national practices of 16 EU member states for the transposition of Directive 2001/55/EC and their influence on the real picture of refugee-immigration flows from Ukraine show dependencies between policies and migration dynamics. The observed deficits and irregularities in the transposition of the European Directive on temporary protection have the potential to differentiate the refugee masses, according to the mechanisms of their management (types of status), but at the same time lead to their concentration in certain countries, under the complex action of the pull factors.

All this, and the specifics of the refugee contingent, the lack of clarity about the end of hostilities and the absence of a European mechanism for long-term control of a mass influx of refugees, turn the Ukrainian refugee crisis into an open problem. It will inevitably divide the EU into nation states that must refer to their national legislations to resolve it. And this would be a decisive step towards the disintegration of the Union and perhaps the most effective hybrid-type weapon in the war against Europe.

**REFERENCES**

[1] How many Ukrainian refugees are there and where have they gone? How many Ukrainian refugees are there and where have they gone? - BBC News [Accessed on 22.02.24]


[3] Infographic - Refugees from Ukraine in the EU, Refugees from Ukraine in the EU - Consilium (europa.eu) [Accessed on 22.02.24]


Ukrainians granted temporary protection in March 2022,
Infographics, Eurostat (2480×2480) (europa.eu) [Accessed on 23.02.24]

Refugees in Ukraine, Infographics, European Council, Refugees from Ukraine in the EU - Consilium (europa.eu) [Accessed on 23.02.24]

Ukraine refugee situation, Operational Data Portal, Situation Ukraine Refugee Situation (unhcr.org) [Accessed on 23.02.24]

Number of Ukrainian refugees with temporary protection status in EU grows by 36,600 in Nov – Eurostat (interfax.com) [Accessed on 23.02.24]


COMMUNICATION FROM THE COMMISSION on Operational guidelines for the implementation of Council implementing Decision 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, and having the effect of introducing temporary protection (2022/C 126 I/01), Publications Office (europa.eu) [Accessed on 23.02.24]


The potential contribution of Ukrainian refugees to the labour force in European host countries, 27 July 2022, The potential contribution of Ukrainian refugees to the labour force in European host countries (oecd.org) [Accessed on 23.02.24]

ETIAS for Ukrainians, ETIAS Europe Visa Waiver for Ukrainians - ETIASVisa.com [Accessed on 24.02.24]

National legislation implementing the EU Temporary Protection Directive in selected EU Member States (October 2022 update), 31 October 2022, National legislation implementing the EU Temporary Protection Directive in selected EU Member States (October 2022 update) | European Union Agency for Fundamental Rights (europa.eu) [Accessed on 24.02.24]