

The European Temporary Protection Directive And The Ukrainian Refugee Crisis

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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.

INTRODUCTION

The military conflict in Ukraine since the end of February 2022 has faced Europe with a serious refugee crisis. 3.5 million people left the country in the first months after the bloodshed, seeking international protection in the EU [1]. In March 2023, their number increased to 3,888,345 million people [2], and in November of the same year, it was already 4.2 million people [3].

The massive influx of Ukrainians falling under two European [4], [5], [6] and one international [7] regulation, the lack of clarity about the outcome of the war and the exclusivity of the mechanisms for granting temporary protection in the EU complicate the case considerably.

The main problems arise when transposing Council Directive 2001/55/EC into national legislation. EU member states should develop their own normative instruments regulating the reception of mass refugee flows and their consequences.

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

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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 I NUMBER OF UKRAINIAN CITIZENS IN EU COUNTRIES FOR THE PERIOD 2021-2024

Country	2021	2022	2023	2024
Bulgaria	9149	30505	166535	67770
Croatia	2405	240	22485	24355
Czech R.	193547	244650	357960	381400
Greece	20690	0	27365	26675
France	18610	26015	64775	65175
Germany	83043	700347	1194900	1235960
Hungary	63175	0	33060	65585
Italy	230360	0	161220	168840
Latvia	9087	12840	43035	43565
Lithuania	32884	3155	72810	52670
Poland	651221	675085	958655	955110
Portugal	27195	23930	57230	58490
Romania	2260	1980	140585	78745
Slovakia	54138	58750	109530	115875
Spain	97442	32445	187205	192405
Sweden	5768	17850	41915	42040

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.

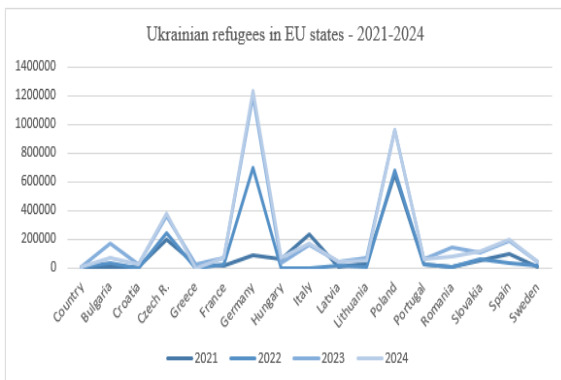


Fig.1. Ukrainian refugees in EU – 2021 – 2024

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

a) Directive 2001/55/EO

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).
2. Mechanisms for termination of temporary protection and return of a beneficiary (Article 11).
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).
6. Access to education (Art. 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			
	Mechanism for excluding from TMD	Registration of people	Access to labour market	Access to education
Bulgaria	Yes	Partly	Yes	Yes
Croatia	Yes	Yes	Yes	Yes
Czech R.	Yes	Partly	Yes	Yes
France	Yes	Partly	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Greece	Yes	Partly	Yes	Yes
Hungary	Yes	Partly	No	Yes
Italy	Yes	Yes	Yes	Yes
Latvia	Yes	Partly	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes
Poland	Yes	Partly	Yes	Yes
Portugal	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes
Slovakia	Yes	Partly	Yes	Yes
Spain	Yes	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes
Country	Criteria			
	Access to health care	Access to social housing	Vulnerable groups protection	Provision of information
Bulgaria	Yes	Yes	Yes	Yes
Croatia	Yes	Yes	Yes	Yes
Czech R.	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Greece	Yes	No	Yes	Yes
Hungary	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes
Latvia	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes
Poland	Yes	Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes
Slovakia	Yes	No	Yes	Yes
Spain	Yes	Yes	Yes	Yes
Sweden	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, Germany 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 practice due to the entry into force of ETIAS from 2025.

The differentiation of the refugee-immigration flows from the country to the EU and the redistribution of the administrative capacity of the asylum systems to manage them are not a permanent solution to the problem. Steps are needed towards sustainable integration of Ukrainians in EU member states.

This is particularly relevant in the countries with the largest influx of 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.

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