EUROPEAN POLICY ANALYSIS

The Ukrainian Refugee Situation: Lessons for EU Asylum Policy

Bernd Parusel and Valeriia Varfolomieieva*

Summary

Russia's invasion of Ukraine in February 2022 triggered the largest and most dynamic refugee situation in Europe in decades. Most people fleeing Ukraine fled to the EU, where they have been welcomed under a temporary protection framework. Meanwhile, negotiations are ongoing about the European Commission's New Pact on Migration and Asylum, a legislative package aiming at a comprehensive reform of the Common European Asylum System (CEAS).

This SIEPS European Policy Analysis seeks to explore and explain the main differences between the EU's management of the Ukrainian refugee emergency and other major refugee arrivals in the recent past. It then considers the possible consequences of the Ukrainian refugee situation for the evolution of the CEAS and the Migration Pact.

The analysis shows that offering Ukrainians visa-free entry and making temporary protection available has helped avoid disruptions and bottlenecks in national asylum systems. When there is political will and unity among leaders, the EU can handle large-scale refugee situations relatively well. The handling of the Ukrainian refugee situation also shows that flexible models of responsibility-sharing between the EU Member States might be a better and more realistic option than static models of solidarity.

* Bernd Parusel is Senior Researcher in Political Science at SIEPS, and Valeriia Varfolomieieva is Research Assistant in Law at SIEPS.

The opinions expressed in the publication are those of the authors.

1. Introduction

The Russian assault on Ukraine on 24 February 2022 prompted a quickly escalating, large-scale displacement situation, with millions of people fleeing within Ukraine and towards the European Union. Among those who left Ukraine, the vast majority first arrived in Poland, in other EU Member States bordering Ukraine (Slovakia, Hungary and Romania) and in Moldova. Over time, many moved further on.

The EU reacted quickly to this new refugee emergency. On 24 February 2022, at a special meeting of the European Council, EU leaders expressed full solidarity with Ukraine and its people and invited the European Commission to present contingency measures. On 3 March 2022, the European Commission proposed that the EU Temporary Protection Directive (TPD) be activated.[1] This Directive was originally adopted in 2001 in the wake of the conflicts in the former Yugoslavia but was, until recently, relatively little known and had never been applied. The Council quickly followed the Commission's initiative and adopted, on 4 March 2022, an Implementing Decision which entered into force on the same day.[2] The aim was to provide immediate and collective protection to displaced persons from Ukraine, to alleviate pressures on national asylum systems in the EU and to allow displaced persons to enjoy harmonised rights across the EU.

At the time of the Council decision, more than 1.3 million people had crossed the Ukrainian borders into neighbouring countries and the United Nations High Commissioner for Refugees (UNHCR) estimated that up to 4 million people might flee.[3] It quickly became clear, however, that these projections would be exceeded. By the beginning of September 2022 over 12 million border crossings from Ukraine had been counted

and over 7 million individual refugees from Ukraine had been recorded across the EU and other European countries, including almost 2.4 million in Russia and 145,000 in Turkey. Over 4 million refugees from Ukraine had registered for Temporary Protection in the EU or for similar national protection schemes in the United Kingdom, Norway, Switzerland, and a few other countries. Poland had granted temporary protection to the highest number of people – 1.3 million – followed by Germany (655,800), the Czech Republic (427,521), Italy (153,664) and Spain (140,297).[4] Since mid-March 2022, significant numbers of people who had fled also started returning to certain parts of Ukraine again. During the summer, more people travelled back into Ukraine than out of Ukraine towards the EU.

> 'By the beginning of September 2022 almost 12 million border crossings from Ukraine had been counted […].'

This SIEPS European Policy Analysis considers what the EU's handling of the Ukrainian refugee situation might mean in the wider context of European migration and asylum policy, and what impact it might have on future policy decisions in this field, including the ongoing negotiations on the Commission's New Pact on Migration and Asylum. It first clarifies what the Temporary Protection Directive is and how it is now used to receive and protect people fleeing from Ukraine. It then asks how and why the reception of displaced Ukrainians differs from how the EU has managed other refugee emergencies. Based on this, it outlines some possible consequences of the Ukrainian refugee situation for the evolution of EU policymaking on migration and asylum. Finally, the paper offers some conclusions for policymakers to consider.
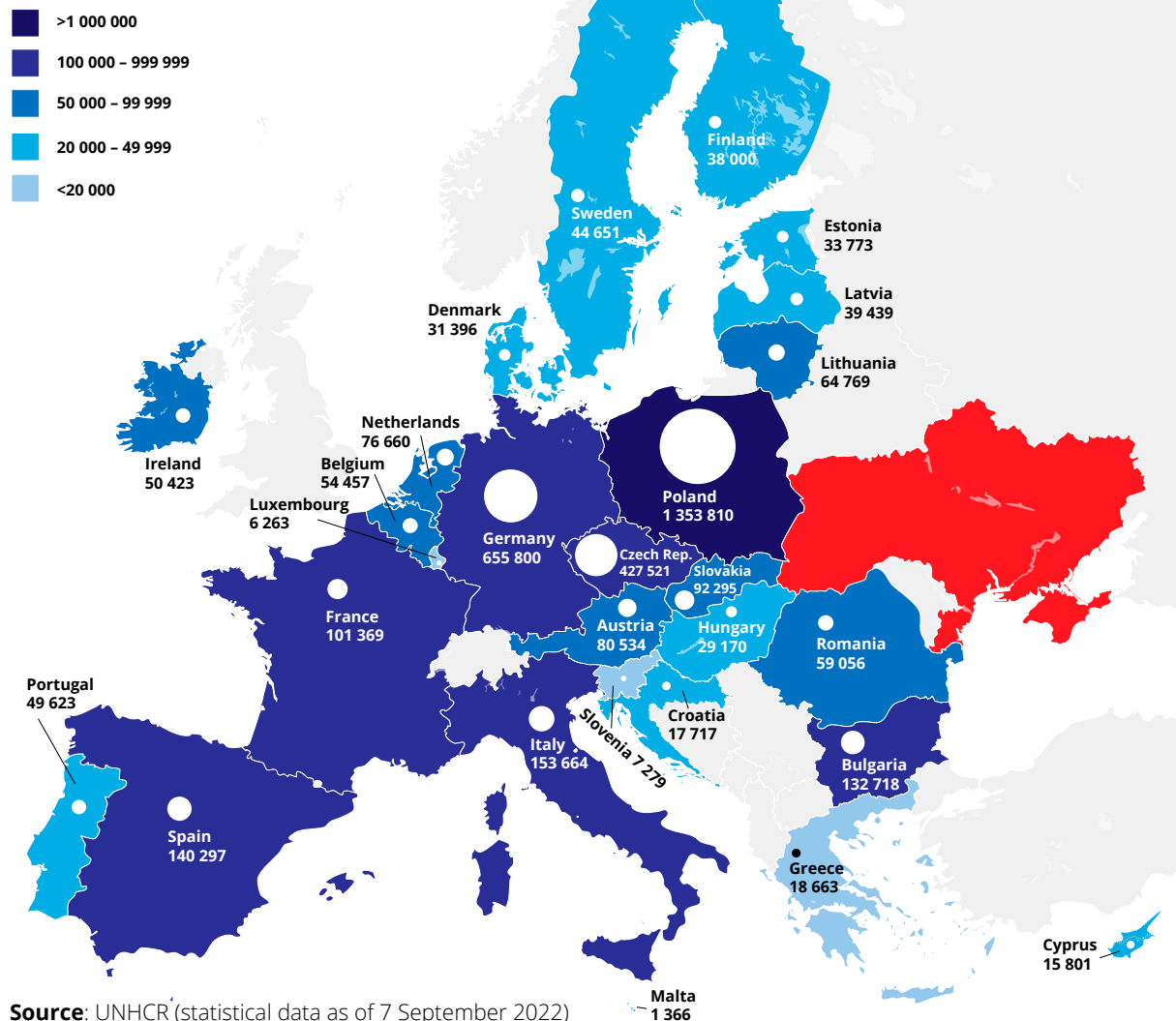
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[1] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

[2] Council Implementing Decision (EU) 2022/382 of 4 March 2022 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.

[3] UNHCR Regional Bureau for Europe. 'Ukraine Situation: Regional Refugee Response Plan, Summary and Inter-Agency Funding Requirements March-August 2022', 1 March 2022

[4] UNHCR, Operational Data Portal, Ukraine Refugee Situation, https://data.unhcr.org/en/situations/ukraine, accessed 7 September 2022.

Figure 1: Refugees from Ukraine in the EU registered for temporary protection or similar schemes since February 2022

Legend:
- >1 000 000
- 100 000 – 999 999
- 50 000 – 99 999
- 20 000 – 49 999
- <20 000

Finland 38 000

Sweden 44 651

Estonia 33 773

Latvia 39 439

Denmark 31 396

Lithuania 64 769

Netherlands 76 660

Poland 1 353 810

Ireland 50 423

Belgium 54 457

Luxembourg 6 263

Germany 655 800

Czech Rep. 427 521

Slovakia 92 295

France 101 369

Austria 80 534

Hungary 29 170

Romania 59 056

Portugal 49 623

Slovenia 7 279

Croatia 17 717

Italy 153 664

Bulgaria 132 718

Spain 140 297

Greece 18 663

Cyprus 15 801

Malta 1 366

Source: UNHCR (statistical data as of 7 September 2022)

2. What is the Temporary Protection Directive?

The TPD, which was adopted in 2001, was for a long time something of a 'sleeping beauty'. Until the recent refugee exodus from Ukraine, it was never used.

Its origins can be traced a long way back. As early as September 1995, against the background of large-scale displacement of people caused by the conflicts in the former Yugoslavia, the Council of the European Union adopted a Resolution on 'burden-sharing with regard to the admission and residence of displaced persons on a temporary basis'.[5] In March 1996, it adopted a Decision on an 'alert and emergency procedure' for burden-sharing.[6]

At an EU summit in Tampere (Finland) in October 1999, the EU decided to establish a 'Common European Asylum System' (CEAS),

[5] Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, OJ C 262, 7 October 1995.
[6] Council Decision of 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, OJ L 63, 13 March 1996.

which would include, among other elements, the following: rules on determining the Member State responsible for the examination of an asylum application, standards for fair and efficient asylum procedures, minimum conditions of reception for asylum seekers, and the approximation of rules on the recognition of refugees. EU leaders also committed to reaching an agreement, based on solidarity between Member States, for providing temporary protection for displaced people. This was to include making available 'some form of financial reserve' for situations of 'mass influx' of refugees.[7]

In 2000, the Commission presented a proposal for a directive on temporary protection. Some aspects of this proposal were debated at length, such as the definitions of 'temporary protection' and 'mass influx', possible methods of activating and terminating temporary protection, the essence of the principle of solidarity, and certain obligations of Member States towards persons enjoying temporary protection.[8] Nevertheless, around two years after the Tampere summit, the Temporary Protection Directive (TPD) was adopted.

The TPD sets minimum standards for the reception of people in need of temporary protection, which means that EU Member States can offer more generous, but not stricter, conditions and rights than those provided for by the Directive. Temporary protection beneficiaries receive a residence permit for the entire duration of the protection, which is initially granted for one year and can be extended to a maximum of three years in total. The minimum set of rights for beneficiaries includes access to the labour market, housing, medical assistance, social welfare, banking services and, for children, access to education. The Directive guarantees access to national asylum procedures through a right to

submit an application for asylum at any time, but Member States may pause the examination of asylum claims for those with a temporary protection status.

'The TPD sets minimum standards for the reception of people in need of temporary protection, which means that EU Member States can offer more generous, but not stricter, conditions and rights than those provided for by the Directive.'

In 2011, following the popular revolts across the Middle East known as the Arab spring and considerable migration flows from North Africa to Italy, the Italian and Maltese governments requested the activation of the TPD. At a meeting of the Justice and Home Affairs Council, however, these requests were rejected. Further attempts to activate the TPD were made in February 2015 in connection with the refugee 'crisis' in Europe,[9] and in 2021, Members of the European Parliament argued that the TPD should be activated to cope with refugee flows following the takeover of Afghanistan by the Taliban.[10] But these attempts to make use of the TPD failed as well.

Some reasons for the non-activation of the TPD until 2022 have been identified in research. For example, many Member States anticipated that the Directive would create a 'pull factor' for migrants seeking entry to the EU and that it would attract asylum seekers to particular EU host countries. It was also difficult to obtain the required qualified majority in cases where a 'mass

7   European Council. 'Tampere European Council 15 and 16 October 1999 Presidency Conclusions'.
8   Beirens, Hanne et al. Study on the Temporary Protection Directive: Final Report
     (Luxembourg: Publications Office of the European Commission, 2016), 5–8.
9   Ineli-Ciger, Meltem. 'Time to Activate the Temporary Protection Directive' European
     Journal of Migration and Law, 18.1 (March 2016), 1–33, 13.
10   European Parliament. 'Exchange of views on Afghanistan', Session of the Committee
     on Civil Liberties, Justice and Home Affairs, 1 September 2021.

The New Pact on Migration and Asylum

The 'New Pact on Migration and Asylum' is a policy document presented by the European Commission in September 2020. It lays out an agenda for EU migration and asylum policy through several recommendations and a package of proposed legislative instruments. The Commission presented the Pact as a 'fresh start' to build a 'system that manages and normalises migration for the long term and which is fully grounded in European values and international law'.

The legislative proposals within the Pact are intended to amend or replace several legal instruments of the EU's existing Common European Asylum System (CEAS), such as the directive on asylum procedures and the Dublin regulation, and to complement the CEAS with a new regulation on screening of third-country nationals at the EU's external borders. Politically, a key aspect (and challenge) is solidarity: whether – and if so how –

the EU could agree on a system for sharing equally between Member States the responsibilities arising from the arrival of asylum seekers and migrants in the EU.

The non-binding recommendations address issues such as an EU mechanism for preparedness and management of crises related to migration; the promotion of refugee resettlement, humanitarian admission and other complementary pathways; certain aspects of search and rescue operations; and the prevention of the facilitation of unauthorised entry, transit, and residence.

The Pact also includes a proposal for a regulation addressing situations of 'crisis and force majeure' in the field of migration and asylum. If adopted, this regulation would replace the current TPD. If or when an overall agreement on the Pact and its various components will be reached is currently still unclear.

influx' affected only a limited number of Member States and not the entire EU.[11] Moreover, Member States' governments had different views on how responsibility for displaced people arriving on EU territory should be shared. Under the TPD, Member States have a wide margin of appreciation in deciding how many people they can receive and are not required to provide reasons justifying their decision.[12]

When the European Commission put forward the 'New Pact on Migration and Asylum' in September 2020, a series of proposals to reform and strengthen the CEAS,[13] it also proposed to repeal the TPD and replace it with a new EU regulation on situations of crisis and *force majeure* in the field of migration and asylum.[14] At the time of writing, this proposed

regulation is still being negotiated as part of the overall Pact package. Surprisingly, just before potentially being abolished, the TPD of 2001 finally found a concrete purpose in February 2022.

3. Temporary protection for people from Ukraine in 2022

Although the TPD lays down minimum obligations for EU Member States towards persons enjoying temporary protection, the scope and application of rights within the EU vary. While the treatment of temporary protection beneficiaries from Ukraine is often similar to the reception conditions for asylum seekers, some Member States go beyond that and offer better conditions, not least with regard to welfare entitlements, allowances

[11] Ineli-Ciger, Meltem. 'Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean' in Céline Bauloz *et al.* (eds) *Seeking Asylum in the European Union* (Leiden: Brill, 2015), 223–46, 233.

[12] Karageorgiou, Eleni & Stoyanova, Vladislava. 'Massflyktsdirektivet: EU:s svar på skyddssökande från Ukraina', The Migration Studies Delegation, Delmi Policy Brief 2022:4.

[13] European Commission. 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum' COM (2020) 609 of 23 September 2020.

[14] European Commission. Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, COM (2020) 613 of 23 September 2020.

and integration arrangements such as language courses.[15] There are also differences regarding the scope of temporary protection, i.e. to what extent the protection offered also includes non-Ukrainians who had been living in Ukraine on a temporary or permanent basis.[16]

Regarding reception and access to housing support, some EU Member States rely on accommodating Ukrainians in private households (Belgium, Croatia, Malta), but most countries have arranged short-term and long-term reception center housing in addition to private solutions. Financial assistance for accommodation is provided by the state either to local authorities or other accommodation providers offering housing or to refugees directly (Slovenia, Austria, Cyprus, the Czech Republic, Lithuania, Netherlands, Spain).

'Financial allowances to cover basic needs are also provided, but levels and mechanisms vary greatly across countries […].'

Financial allowances to cover basic needs are also provided, but levels and mechanisms vary greatly across countries depending on family size, the duration of this support, the accommodation type, and whether food is included in the accommodation. For example, in June 2022, the financial support for a single Ukrainian refugee in accommodation per month was EUR 449 in Germany, EUR 323 in Finland, EUR 280 in Belgium, EUR 220 in Spain, EUR 207 in Sweden, EUR 150 in Italy, EUR 150 in Estonia, EUR 109 in Latvia, EUR 61 in Hungary, EUR 40 in Austria, and EUR 15 in Poland.[17]

Access to education, language courses and other integration measures varies widely as well. All EU Member States provide Ukrainian children with access to education, but adults do not necessarily have the same access. However, some countries have waived tuition fees for Ukrainian university students or launched support programmes for students and researchers. Most EU countries offer support to Ukrainians in finding jobs, usually through the public employment service. This is done, for example, through programmes that match job requirements and refugees' skills (Denmark, France) or by either suspending qualification requirements or fast-tracking the evaluation of those qualifications (Lithuania, Poland, Spain, France). Many EU countries provided access to official language courses (Germany, Latvia, the Czech Republic, France). There is no access to publicly funded language courses in Cyprus, Finland, Greece, the Netherlands, Malta, or Poland. In Sweden, Ukrainian refugees currently do not have access to the Swedish for Immigrants (SFI) course, which is otherwise available free of charge to recognized beneficiaries of international protection.[18]

4. From 2015 to today – what is different and why?

Those who have followed the evolution of EU policymaking on refugees, asylum and irregular migration over recent years will certainly agree that the EU has moved quickly and with remarkable unity when confronted with the refugee exodus from Ukraine. There has been a clear willingness to help and protect those who have been forced to flee – a spirit that has been absent in other situations of refugee arrivals in the EU or at the EU's external borders over the past few years.

Though all EU Member States are signatories of the UN Refugee Convention – which is also the basis of today's EU Common European Asylum System – the arrival of asylum seekers, and of migrants more generally, has for many years raised significant concerns in many Member States.

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[15] Organisation for Economic Cooperation and Development. Rights and Support for Ukrainian Refugees in Receiving Countries (Paris: OECD Publishing, 2022); European Migration Network. 'EMN Information on the application of the Temporary Protection Directive (Scope and Registration)' Brussels (2022).

[16] Kienast, Julia et al. 'Preferential, differential or discriminatory? EU protection arrangements for persons displaced from Ukraine', ASILE project, 27 April 2022.

[17] Statista. 'Financial support for a single Ukrainian refugee in accommodation per month in Europe as of June 2022, by selected country', July 2022.

[18] Organisation for Economic Cooperation and Development. Rights and Support for Ukrainian Refugees in Receiving Countries (Paris: OECD Publishing, 2022), 13–27.

Policymaking on asylum seekers has therefore been characterized by attempts to control and limit their number. This is especially true since what was widely known as the refugee 'crisis' of 2015, during which many people seeking protection arrived from Syria, Afghanistan, Iraq and other countries. This wave of arrivals first prompted compassion and welcoming attitudes across many EU countries and then an upsurge of new deterrence strategies and political disagreement.[19] Several Member States were hostile to the idea of receiving asylum seekers from these countries from the beginning, while others felt overwhelmed by the number of people arriving and faced bottlenecks in registration and reception capacity as well as a lack of staff and facilities to examine asylum claims.[20] This situation still casts a shadow over policymaking today, which is characterized by struggles between the Member States over solidarity and responsibility-sharing.[21]

As asylum can only been claimed on the territory of a Member State or at a border, various instruments have been designed and put in place to prevent people from reaching those places, both at national and at EU level. The main EU-wide deterrence instrument is undoubtedly visa requirements (as defined in Schengen visa regulations), combined with sanctions for carriers who transport people without the required documentation to the EU, and rigorous controls at the EU's external borders. The citizens of most countries that people flee from, to the EU, cannot legally travel to or enter the Union without a visa, and visas are normally not granted if there is a 'risk' that the person might not leave again. This is the main reason behind the fact that many people try to reach the EU irregularly by, for example, trying to cross the Aegean Sea from Turkey to Greece, the Mediterranean from Libya to Italy or the Western Atlantic from Senegal or Mauritania to the Spanish Canary Islands.

While the EU was unable to agree on a reformed asylum system after 2015, it significantly stepped up border control measures and strengthened the European border and coastguard agency, Frontex, which has grown very rapidly in terms of budget, tasks and staff.[22] The EU has also sought to externalize responsibility for migrants and refugees, including by making controversial arrangements with non-EU states and entities, such as Turkey, Morocco, and the Libyan Coastguard, to limit the flows of people to the EU and combat human smuggling networks. Further strategies, largely at national level, aimed at lowering protection and reception standards or adopting 'hostile environment' policies in an attempt to become less attractive as destinations for people seeking protection. Several Member States have even resorted to harsh border practices (such as 'pushbacks'), which are forbidden under both international law and EU law.[23]

'Interestingly, deterrence measures of these kinds have until now not affected Ukrainians to any significant degree.'

Interestingly, deterrence measures of these kinds have until now not affected Ukrainians to any significant degree. On the contrary, they have been exempted from Schengen visa requirements since June 2017, after almost ten years of 'Visa Liberalisation Dialogue' between Ukraine and the EU,[24] to the effect that they can today, if they hold biometric passports, enter the EU and stay there for up to 90 days without a pre-arranged visa. This also meant that when Ukrainians started to leave their country following the Russian attack in February 2022, they were not confronted with

[19] Parusel, Bernd. Pieces of the Puzzle: Managing Migration in the EU (Brussels: European Liberal Forum/Fores, 2020).

[20] Beirens, Hanne. Cracked Foundation, Uncertain Future: Structural Weaknesses in the Common European Asylum System (Brussels: Migration Policy Institute Europe, 2018).

[21] Karageorgiou, Eleni & Gregor Noll. 'What Is Wrong with Solidarity in EU Asylum and Migration Law?' Jus Cogens, Volume 4.2 (July 2022), 131–54.

[22] Moser, Carolyn. 'A Very Short Introduction to Frontex— Unravelling the Trajectory of one of the EU's Key Actors' Verfassungsblog, 3 February 2020.

[23] Radjenovic, Anja. 'Pushbacks at the EU's external borders' European Parliamentary Research Service, Briefing PE 689.368 (2021).

[24] European Commission. 'European Commission welcomes the Council adoption of visa liberalisation for the citizens of Ukraine', Press statement, 11 May 2017.

closed borders. The possibility of visa-free travel also meant that they could not be required to stay in their country of first arrival (such as Poland or the other EU Member States bordering Ukraine), which is usually required for asylum seekers under the EU's 'Dublin' regulation.[25] Instead, they were entitled to travel to a Member State of their choice within the Schengen area.

Given the sheer numbers, applying ordinary asylum procedures for Ukrainians seeking protection seemed implausible. Within a short period of time, millions of individuals would have had to file asylum requests, be interviewed by national asylum officers and be issued reasoned decisions, which would have caused gridlock in asylum systems. The Dublin system for determining the Member State responsible for examining an asylum request would have become unworkable. This is essentially why activating the TPD appeared to be a realistic way forward and perhaps the only reasonable way of managing the situation. The TPD gives almost immediate access to protection and makes lengthy asylum procedures unnecessary for as long as temporary protection is available. Thus, the EU rediscovered an old and hitherto never-applied legal instrument for dealing with mass arrivals of people in need of protection; a system which allows people to get protection wherever they want within the EU and immediately grants a basic set of rights and entitlements.

In addition to this, the European Commission also set up a 'solidarity platform' as a forum for Member States' representatives to discuss mutual assistance to manage the reception of people from Ukraine. Initially it was mostly used to coordinate the relocation of Ukrainian refugees from Moldova, which as a neighbouring country received many displaced Ukrainians, to EU Member States. According to the Commission, however, discussions on the platform also related

to the needs of particularly vulnerable groups and specific challenges regarding the onward movement of temporary protection beneficiaries from one Member State to another.[26] To further facilitate cooperation, the Commission also created data bases and digital tools for relocation activities and for keeping track of secondary, intra-EU movements. Significant EU financing for the reception of Ukrainian refugees in the Member States was also made available, from the current budget and by allocating unused funds from the 2014–2020 budget.[27]

One may ask why the EU and its Member States have handled refugee flows from Ukraine differently from how other refugee situations were managed. There are some obvious explanations as well as some perhaps less obvious ones, as this non-exhaustive list shows:

- **Geographical vicinity**
  Ukraine shares land borders with four EU Member States (Poland, Slovak Republic, Hungary and Romania), therefore many people who fled arrived directly in the EU, without transiting non-EU countries. Furthermore, they did not need visas to be able to cross EU borders. This is a notable difference to the refugee situation in 2015. When people fled from Syria, Afghanistan, or Iraq, they had to transit at least one, often several, non-EU countries before arriving at an EU border, and they could generally not get visas for legal entry. In some cases, refugees from these countries stayed in non-EU countries (such as Lebanon, Turkey or Iran) for shorter or longer periods of time and only started to move towards the EU in greater numbers when they perceived their socio-economic or legal situation in the first country of refuge as untenable. Thus, the impact of the exodus from Ukraine was more sudden for the EU, and more immediate.

[25] European Parliament / Council of the European Union. 'Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person', OJ L 180, 29 June 2013.

[26] European Commission. 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs', COM (2022) 131 final, 23 March 2022.

[27] Tarschys, Daniel. 'EU:s roll i finansieringen av Ukraina-insatser' Swedish Institute for European Policy Studies, European Policy Analysis 2022:11epa.

- **The geopolitical dimension**
  While the Russian attack on Ukraine prompted fears of wider conflicts with possible subsequent attacks by Russia on EU Members, the war in Syria and the armed conflicts in Afghanistan were not generally understood as direct threats to Europe. This partly explains why, though compassion was shown in Europe for Syrian and, perhaps to a lesser extent, Afghan refugees, and though refugees from these countries were initially welcomed (at least in parts of the EU and for a time), the level of sympathy and solidarity was greater when it came to Ukrainians. It could also be argued that receiving Ukrainian refugees has not only been a matter of humanitarian policy but also functioned as an element in the broader response of support for Ukraine against an aggressive invader. This response also included nominating Ukraine as an official candidate for EU membership, military support, financial transfers and other material measures, as well as numerous symbolic gestures. In this broader framework, hostility towards refugees would obviously have been deeply incoherent. Finally, the importance of geopolitics as a factor is underlined by the fact that sympathy for Ukrainian refugees has been particularly conspicuous in EU countries close to Ukraine and with experiences or fears of Russian threats, such as Poland or the Baltic nations.

- **Compassion and cultural aspects**
  Less obvious is whether, and if so to what extent, cultural ties, language, demography, gender or religion have played a role. However there have been media reports that images of people fleeing from Ukraine contrasted with earlier Western European perceptions of irregular migrants, asylum seekers and refugees. While asylum seekers in recent influxes were often men, people fleeing from the war in Ukraine were often women and children, partly because Ukrainian men were not allowed to leave their country. There have been a number of comments in European and US media which linked sympathy for refugees with perceived cultural and ethnic

similarity: that Ukraine was a 'relatively civilized country', that the people fleeing looked like 'us' and have 'blue eyes and blond hair'.[28] There have also been numerous reports that foreign nationals in Ukraine, for example international students from African countries or people who had stayed in Ukraine as refugees, found it more difficult to leave the country and encountered a far less enthusiastic reception when they arrived in Poland or other EU countries.[29] Although it cannot be proven that the distinction has a cultural basis, it is notable that Polish society has made extensive efforts to welcome and accommodate Ukrainians, whereas it has so far shown little intention to welcome those from the Middle East and other regions who sought, not long before, to enter via Belarus.[30]

Further to these possible explanations, we might argue that activating the TPD seemed reasonable because it was widely expected, at least initially, that the war in Ukraine would soon be over, and that many refugees would quickly be able to return. Insofar as expected economic burdens mattered, accepting Ukrainians on a temporary basis might have appeared cheaper than admitting them by some permanent mechanism. Despite the high number of people fleeing, the situation perhaps seemed more manageable under a temporary framework than the refugee crisis of 2015 because the refugees now came from one specific country and had similar profiles. The arrivals in 2015 were much more mixed in terms of nationalities and protection needs. In sum, many arguments spoke in favour of activating the TPD and the EU simply lacked a reasonable alternative.

5. Consequences for migration and refugee policies in the EU

The magnitude of the Ukrainian refugee situation raises questions about its possible longer-term impacts on EU policymaking on migration and asylum. The situation is still evolving which means it is difficult to make definitive observations or judgments. The level of welcome and compassion

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[28] Bayoumi, Moustafa. 'They are 'civilised' and 'look like us': the racist coverage of Ukraine', *The Guardian*, 2 March 2022.

[29] Okeowo, Alexis. 'The Foreign Students Who Saw Ukraine as a Gateway to a Better Life', *The New Yorker*, 1 April 2022.

[30] Davis, Hanna. 'At Poland's borders, Ukrainians are welcomed while refugees from elsewhere face a growing crackdown', *The New Humanitarian*, 26 May 2022.

seen so far may or may not continue, and if the displacement situation worsens this winter, refugee flows from Ukraine could lead to increased frustration in the EU. State and non-state actors in the reception and integration fields could become overburdened, especially if public budgets become strained as the economy stagnates or shrinks, inflation rises and gas, fuels, and related products become more expensive, in part because of the invasion. In the longer run, EU decision makers will also have to think about how to deal with displaced people from Ukraine once temporary protection ends. Observers have already argued that the EU urgently needs a long-term strategy.[31]

> 'If, on the other hand, the reception of Ukrainian refugees continues to work relatively well, we might argue that their reception can remind governments and electorates why people need to flee, and why functioning asylum and protection systems are imperative.'

If, on the other hand, the reception of Ukrainian refugees continues to work relatively well, we might argue that their reception can remind governments and electorates why people need to flee, and why functioning asylum and protection systems are imperative. More geographically distant refugee situations are sometimes more abstract, gain less media attention, and therefore lack this potential educational impact about the value of protection systems. We have in any case already learned that the EU and its Member States can quickly mobilise considerable resources and accommodate many people at the same time if there is political will and commitment.[32]

At the same time, there is a risk that certain refugees are regarded more deserving than others, or that some are prioritized over others. When resources are limited, or when one conflict is closer to the EU than another, this can give rise to proposals to refocus refugee-receiving efforts even though international refugee law and European law does not provide justification for geographical preferences or prioritization. There have already been proposals to downscale the resettlement of refugees from other parts of the world and to instead concentrate on making the reception and integration of Ukrainians work, even in countries such as Sweden, where relatively few Ukrainians were received.[33] And in the development and humanitarian aid sector it has been painfully observed that donor countries have diverted aid and relief efforts away from various crisis regions and redirected staffing and funding to Ukraine.[34] Similarly, with a large-scale refugee situation in the EU's immediate vicinity, willingness to solve or alleviate refugee crises in more distant places away could further decrease.

We have so far seen that the welcoming approach to people fleeing from Ukraine has not made it easier for other groups of displaced people to access to European territory. The number of deaths and disappearances in the Mediterranean Sea, for example, has not declined, and deterrence measures have not been eased. On the contrary: the upscaling of EU external border surveillance and control capacities has continued, and this includes the construction of new physical barriers, the deployment of high-tech surveillance instruments and preventive cooperation with third countries on irregular migration routes to Europe. Public scrutiny of these problematic developments at the EU's external borders, and public attention to violent conflicts and refugee situations around the world could decrease as media coverage focuses on Ukraine.

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[31] Rasche, Lucas. 'Implementing Temporary Protection in the EU – From crisis response to long-term strategy', Policy Brief, Hertie School Jacques Delors Centre (2022). https://www.delorscentre.eu/en/detail/publication/temporary-protection.

[32] Angenendt, Steffen *et al.* 'Zeitenwende in der Asyl- und Migrationspolitik?' *Internationale Politik*, 27 June 2022.

[33] Malmer Stenergard, Maria. 'M: Frys mottagande av kvotflyktingar', Svenska Dagbladet, 24 March 2022.

[34] Redfern, Corinne. 'How the focus on Ukraine is hurting other humanitarian responses', *The New Humanitarian*, 7 July 2022.

But there is room for some cautious optimism, too. In June 2022, the Council of the European Union agreed on a voluntary 'solidarity mechanism' among EU Member States to help Mediterranean countries – where many asylum seekers disembark – deal with reception and asylum processing.[35] This was intended to unlock blockages in the Council regarding the controversial issue of solidarity and responsibility-sharing between Member States. The mechanism will now be tested, and whether or not it works well can be expected to influence the ongoing negotiations about solidarity and responsibility in the New Pact on Migration and Asylum.

On 1 July 2022, the Czech Republic took over the rotating presidency of the Council of the EU and stated that it aimed to continue the activities of the preceding French presidency in migration and asylum policy.[36] Negotiations on the Pact's legislative proposals are also ongoing in the European Parliament.

If or when a compromise on the Pact might be reached is difficult to predict as its various components form a complex and complicated whole, but further progress could be made during the Swedish presidency in the first half year 2023. The Swedish government has long argued that the CEAS must be based on the fair sharing of responsibilities among the EU Member States. However Swedish leadership might not be particularly strong in this matter as Stockholm has repeatedly chosen not to take part in voluntary relocation efforts that have been carried out during recent years, for example when asylum seekers and refugees were evacuated and redistributed from Greece to other EU Members after a fire in the Moria asylum camp on the island of Lesvos in 2020. Swedish reluctance was often justified with reference to the refugee situation in 2015, where Sweden received disproportionally many asylum applicants.[37] Sweden was also not among the countries that immediately signed the more recent solidarity declaration from June 2022. On

a more positive note, Sweden has long-standing and solid experience as regards asylum procedures, integration, and resettlement, and therefore generally enjoys a good reputation in asylum matters among its EU partners. A likely scenario is that Sweden could sufficiently advance the negotiations on the Pact proposals so that a final compromise would be able to be reached before the next European Parliament elections and the end of the current European Commission's term in 2024.

6. Lessons learned and conclusions

As the Ukrainian refugee situation and the reception of refugees from Ukraine in the EU continue to evolve, drawing lessons and conclusions might appear premature. We must keep in mind, for example, that this is the first time the TPD has been used. Experience is limited and it remains to be seen how to best apply it; whether there might be a need to better harmonise the rights and entitlements it offers, instead of just laying down minimum standards; and whether there will be a need to redistribute beneficiaries of temporary protection across the Member States.

Despite this, several lessons can already be learned and can inspire future policymaking.

- *First*, the EU's handling of the Ukrainian refugee emergency has shown that it matters greatly whether those fleeing need visas to enter the EU or not. We already knew that visa requirements are an effective deterrent – albeit one which pushes refugees and migrants to use irregular and dangerous routes to enter the EU – but the Ukrainian refugee situation has shown how the absence of visa requirements can help offer people fleeing from war quick and legal access to European territory. One might argue that even if Ukrainians had been subject to visa requirements, closing the EU's borders to them would not have been an option politically. But the fact that the visa requirement had previously been abolished made clear from the onset that the movement of

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[35] French Presidency of the Council of the European Union. 'First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism', 22 June 2022.

[36] Czech Presidency of the Council of the European Union. 'Programme of the Czech Presidency of the Council of the European Union' (2022), 33–34.

[37] Eurostat. 'Record number of over 1.2 million first time asylum seekers registered in 2015' News release 44/2016, 4 March 2016.

Ukrainians into the EU could not be restricted. It also allowed them to choose where to go, and while countries neighbouring Ukraine have so far taken the greatest number of those seeing protection in the EU, the possibility of legal onward travel has certainly reduced pressures on EU countries of first arrival. A lesson to learn from this is that if the EU wanted to offer legal pathways to protection in other refugee situations, it could consider allowing visa-free entry or granting visas for humanitarian purposes.[38]

- *Second*, the TPD, which was long considered useless, has suddenly proven to be an effective tool to avoid overburdening and congestion of asylum systems and reception services. While temporary protection might not be the preferred option for all types of refugee situations the EU faces, using it more frequently could be a good option for sudden spikes in refugee flows to the EU, at least during the initial stages of such major flows.

- *Third*, voluntary secondary movements of protection seekers within the EU are not necessarily a bad thing. It is hard to imagine that the Dublin system of allocating Member States' responsibilities would have coped successfully with millions of people fleeing from Ukraine. Sending them to specific countries against their will would certainly have caused resentment, both among the refugees themselves and among the governments of the relevant Member States. And giving people the freedom to choose their destination is also likely to facilitate their integration. Dublin is often seen as a static system that mainly burdens Member States of first arrival. It does include flexibility components, however, such as the humanitarian and sovereignty clauses. Until the EU eventually finds a new system of allocating and redistributing responsibility, these clauses should be used more often.

- *Fourth*, in policy discussions about the reform of the CEAS, different models of sharing responsibility among the Member States (including by the redistribution of asylum seekers) have been proposed. The point of departure is often the idea of sharing responsibility more evenly, taking into account factors such as population size or economic power.[39] But how the EU is handling refugees from Ukraine is surprisingly far from such models; instead, it is close to an idea that has routinely been ruled out as idealistic or unrealistic; the so-called 'free choice' model. According to this idea, no allocation criteria are used to determine the Member State responsible for receiving an asylum seeker; instead, people simply make their own choices and ask for protection in the Member State of their choosing. Surprisingly perhaps, even if the reception of people fleeing from Ukraine has so far been highly unequal across the EU, there has, as yet, been relatively little discussion about unbalanced burden-sharing or a lack of solidarity. Countries that received many Ukrainians generally took pride in it rather than complaining. To some extent, this could be explained by the fact that they could count on financial solidarity as the EU made considerable resources available for reception, registration and integration support. Some governments might also have considered that generosity towards Ukrainian refugees could serve their wider policy agendas or negotiating power towards other EU countries or institutions.

That 'free choice' is a good option for people in need of protection goes without saying: it facilitates the reunification of relatives and friends and makes it easier for new arrivals to integrate. What is new is that we now have seen that this model also has advantages for the Member States, although it cannot be ruled out that this may not always be the case. If refugee flows continue or even intensify again, national budgets come under pressure and EU financing dries out, the previously much debated lack of solidarity between the Member States could quickly become an issue again and lead to renewed antagonism within the EU. This means the EU should continue to strive for a

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[38] Humanitarian visas are today only issued in exceptional circumstances and by few Member States, see Iben Jensen, Ulla. 'Humanitarian Visas – option or obligation?' Study for the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (Brussels: Publications Office of the European Union, 2014).

[39] Parusel, 'Pieces of the Puzzle', 70–73.

system where Member States share responsibility fairly and equally. However, such a system should remain flexible and perhaps not solely rely on mandatory transfers (relocation) of asylum seekers or beneficiaries of international protection.

- *Fifth*, the situation shows that the political framing of the reception of refugees matters a great deal. When there is a clear political commitment and will to accept refugees, even very high numbers of people can be received and accommodated without it causing excessive frustration and political turmoil. Once the reception of refugees appears as a good thing to do, a high refugee inflow is not perceived as a threat. An important question is therefore how such political will could be mobilized to facilitate agreement and joint action in the EU for other refugee situations at present and in the future. Here, the media, human rights advocacy, civil society engagement and other factors are likely to play major roles. Whether the integration of new arrivals appears to work well or not is certainly also a factor that counts. Until now, we have not seen that the welcoming attitude of EU and national policy makers towards refugees from Ukraine has spilled over and led to a re-evaluation of asylum and refugee policies in general. It rather seems that the Ukrainian refugee situation is a case of 'selective benevolence',[40] and that it is regarded as a special situation; an extraordinary event within its own larger frame and with a unique underlying logic. Critical observers should question this, however, and highlight that while each refugee situation is special, there is a common denominator (people's need of protection) and if the EU can handle the current situation well, it should be able to act similarly to alleviate other crises.

Admittedly, some of these lessons and conclusions run contrary to the thinking that has informed the EU's handling of refugee flows in recent years.

It is therefore far from clear that political leaders will want to build on positive experiences with the Ukrainian refugee situation so far. There are already many signs that, instead of learning from what has worked so far and what has not, the EU's handling of the Ukrainian refugee situation is being framed as an extraordinary, one-time solution, with little-to-no consequences for refugee and migration policy in general. However, there are also some indications of change. For example, the French presidency's 'Solidarity Declaration' in June 2022 could indicate that positive experiences with the current 'free choice' model for receiving refugees from Ukraine will strengthen political support for more flexible models of intra-EU solidarity as regards refugee reception. These could be models where financing and other types of assistance for receiving countries would play a greater role compared to more static models of redistributing asylum seekers or refugees within the EU. Thus, a change in attitudes could make it easier for the Member States to agree on a new, more flexible model for responsibility-sharing to replace the Dublin regulation. Capitalizing on positive experiences with the TPD could also mean re-evaluating secondary movements of asylum seekers or beneficiaries of protection between the Member States; seeing it as a solution rather than as a problem, and that the TPD (or a new, similar follow-up framework, such as the proposed Crisis and Force Majeure Regulation within the Migration and Asylum Pact) is applied more often.

As negotiations on the various components of the Commission's New Pact on Migration and Asylum are still on-going, there is time to reassess some of the proposed pieces of legislation in the light of the experience of the Ukrainian refugee situation. If this were to happen, the tragic events in Ukraine could help the EU make progress in a policy area that has for many years been characterized by distrust between the Member States, political short-sightedness, and policy fragmentation.

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[40] Bornemann, Jonas. 'The Selective Nature of a pan-European Willkommenskultur', *Verfassungsblog*, 12 July 2022.

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