

1-2024

## Temporary Protection for Ukrainians in the European Union: Why Now and When Again

Maryellen Fullerton

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/faculty>



Part of the [Human Rights Law Commons](#), and the [Immigration Law Commons](#)

---

# Temporary Protection For Ukrainians in the European Union: Why Now and When Again?

Maryellen Fullerton\*

## ABSTRACT

*In 2022, the Russian invasion of Ukraine produced an unprecedented wave of temporary immigration protections throughout the European Union (EU). Within the first few months of the war in Ukraine, over 4 million displaced individuals had registered for temporary protection. EU States distant from Ukraine sheltered hundreds of thousands of displaced families, while Poland and other EU States that border Ukraine sheltered more than 2 million. This groundswell response marked a striking departure from just seven years earlier, when the EU Commission and EU Council failed to use readily available laws to provide a temporary protection program for Syrians displaced by civil war. Calls for temporary protection in response to prior migration crises had also gone unheeded.*

*What can account for this about-face? This Article offers multiple possible explanations for this radically different response: geographical proximity, the perception of a temporary armed incursion across international borders, the predominantly female composition of the war refugees, the existence of a Ukrainian diaspora in EU Member States, visa-free travel for Ukrainians throughout the European Union, and the general absence of racial and religious differences all played a role. Together these factors resulted in an immense display of social solidarity and civic engagement, which, in turn, led to a successful rollout of the first EU-wide temporary protection program since the legislation was enacted in 2001.*

*This Article argues for the centrality of the role played by civil society to the success of the program addressing the Ukrainian refugee crisis. Private individuals hosted the majority of the displaced in their own homes. Reliance on public shelters for long-term accommodations was minimal. Herein lies a key to successful future deployment of EU-wide temporary protection. Developing networks, both secular and faith-based, to welcome displaced families into private homes will*

---

\* Suzanne J. and Norman Miles Professor of Law, Brooklyn Law School. I thank Brooklyn Law School for its generous sabbatical leave support and summer research funding. I am indebted to Jean Davis, International and Foreign Law Reference Librarian, for her invaluable research strategies for this article and, indeed, for all of my scholarship. I also thank my colleagues and friends, particularly Stacy Caplow and Thomas B. Roberts, for their insightful comments and Caroline Golub and Jeremy Nelson for their excellent research assistance.

*bolster the political will to activate temporary protection when future needs arise. This form of civic engagement will provide social support and integration assistance to those who have fled conflict, endemic violence, and systemic human rights violations. It will relieve some economic and political pressures on governments and improve the odds that EU-wide temporary protection will not be a one-time-only event.*

#### TABLE OF CONTENTS

I.	INTRODUCTION .....	93
II.	TEMPORARY PROTECTION LEGISLATION IN THE EUROPEAN UNION .....	95
	A. The Temporary Protection Directive of 2001 ....	99
	1. Availability of Temporary Protection ..	99
	2. Activating Temporary Protection and Calculating its Duration.....	100
	3. Benefits for Individuals and Their Families.....	101
	4. Temporary Protection and Asylum....	103
	5. Exclusion from Temporary Protection .....	103
	6. Termination of Temporary Protection .....	104
	7. Balancing Efforts of Member States.....	105
	B. Two Decades of Disuse .....	106
III.	THE DECISION TO ACTIVATE TEMPORARY PROTECTION IN THE EUROPEAN UNION .....	109
	A. The February 2022 Invasion and the Geographical Proximity of the European Union.....	111
	B. The International Law Refugee Definition .....	113
	C. Antipathy to Russia .....	114
	D. Temporary Incursion .....	115
	E. Women and Children Displaced from Ukraine .....	117
	F. Visa-Free Travel in the European Union for Ukrainians .....	118
	G. The Ukrainian Diaspora in the European Union.....	119
	H. The EU Implementing Decision of March 4, 2022.....	120
IV.	THE ROLLOUT OF TEMPORARY PROTECTION IN THE EUROPEAN UNION .....	128
	A. Developments in Autumn-Winter 2022.....	133
	B. Developments in Summer-Autumn 2023 .....	137
V.	FACTORS BOLSTERING SUCCESS .....	141
	A. Social Solidarity and Welcome .....	144

B. Civil Society and Private Accommodations .....	147
VI. LESSONS FOR THE FUTURE .....	149

## I. INTRODUCTION

Millions of people fled Ukraine in February 2022 as the Russian army invaded and began bombing wide swaths of the nation. The proximity of military attacks in a neighboring country shocked the leadership of the European Union (EU) as it watched the staggering exodus from Ukraine. Quickly, and unanimously, the Council of the European Union decided to grant temporary protection to Ukrainians. This was the first time the EU had activated the twenty-year-old temporary protection framework, which guarantees legal residence and the right to work in all twenty-seven EU Member States. After two decades on the shelf, the temporary protection legislation was up and running within a week.

This Article examines the European Union's twenty-year reluctance to provide temporary protection and its turnaround in March 2022. The history, legislative framework, and practice regarding temporary protection in the European Union reveal a paradox: EU States created a generous humanitarian program that they then shunned. They repeatedly rejected calls for temporary protection for earlier groups of displaced persons. Those displaced from Ukraine, however, were treated differently.

Multiple commentaries attributed the differential treatment to racism and Islamophobia. They contrasted the welcome extended to Ukrainians in 2022 with the mixed reception of the mass influx of displaced persons from Syria in 2015. Some EU Member States, notably Hungary and Croatia, had previously built border fences and deployed the police and military to repel asylum seekers from their borders. Other EU States, led by Germany, accepted the Syrians, Afghans, and others who entered the European Union and processed their applications through the traditional asylum systems. Whether EU Member States were hostile or welcoming, however, the European Union did not initiate a program to grant Syrians temporary protection. Why did the Commission and the EU Council provide temporary protection to people displaced from Ukraine in 2022 after refraining from a temporary protection program for Syrians seven years earlier?

This Article argues that multiple factors led the Council of the European Union to take a different course during the 2022 Ukraine crisis. Geographical proximity, the perception of a temporary armed incursion across international borders, the predominantly female composition of the war refugees, the existence of a Ukrainian diaspora in EU Member States, visa-free travel for Ukrainians throughout the

European Union, and the general absence of racial and religious differences all played a role. Together, these factors resulted in an immense display of social solidarity and civic engagement, which, in turn, led to a successful rollout of the first EU-wide temporary protection program.

In a few short months, more than 4 million individuals displaced from Ukraine had registered for temporary protection in the European Union. EU States distant from Ukraine sheltered hundreds of thousands of displaced families, while Poland and other EU States that border Ukraine sheltered more than 2 million. The role civil society played was crucial: private individuals hosted in their own homes the majority of the displaced. Reliance on public shelters for long-term accommodations was minimal. Herein lies a key to successful future deployment of EU-wide temporary protection. Developing networks, both faith-based and secular, to welcome displaced families into private homes will bolster the political will to activate temporary protection when future needs arise. This form of civic engagement will provide social support and integration assistance to those who have fled conflict, endemic violence, and systemic human rights violations. It will relieve some economic and political pressures on governments and will improve the odds that EU-wide temporary protection will not be a one-time-only event.

Part I briefly describes the large scale movement of people displaced from Ukraine into the European Union in early 2022. Part II examines the background, framework, and utility of the 2001 Temporary Protection Directive, which was born as a result of armed warfare in Europe in the 1990s. Part III assesses the EU Decision to grant temporary protection in the European Union to people displaced from Ukraine. It identifies the factors that played a role in convincing the Council of the European Union to implement temporary protection in March 2022. It also surveys the content of the EU-wide authorization of temporary protection. Part IV examines the early successes and challenges of the temporary protection program. Part V identifies the public and private efforts that helped register and accommodate four and a half million individuals in a few months. Part VI identifies lessons learned from the March 2022 decision to grant temporary protection to displaced people and makes suggestions to encourage future implementation of the EU Temporary Protection Directive.

The Humanitarian Corridors program established in Italy during the past decade provides one template that could be adopted in the future to help accommodate those needing temporary protection while bolstering the political will to receive them. The longstanding Canadian program, which relies on private individuals and groups to sponsor refugees, is another model that might be adapted to fit the circumstances in different countries. Many factors coalesced to bring about the European Union's effective activation of the temporary

protection legislation in 2022, and they point the way for future successful deployments of short-term protection.

## II. TEMPORARY PROTECTION LEGISLATION IN THE EUROPEAN UNION

The European Union launched the development of a common asylum and temporary protection system at Tampere, Finland in late 1999. The Tampere Declaration committed the European Union to creating “an area of freedom, security and justice” throughout the European Union.<sup>1</sup> The European Council proclaimed:

From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. . . .

This freedom . . . acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe’s traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration . . . .

The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity.<sup>2</sup>

The project to develop a Common European Asylum System entailed a profound shift in the European Union’s vision of itself.<sup>3</sup> National governments of EU Member States had jealously guarded their prerogatives over the movement of non-EU citizens, known as third-country nationals, into national territory.<sup>4</sup> For its first four

---

1. See generally Tampere European Council 15 and 16 October 1999 Presidency Conclusions, No. 200/1/99 (Oct. 15–16, 1999) [hereinafter Tampere Declaration].

2. *Id.* at ¶¶ 1–4.

3. EUROPEAN ASYLUM SUPPORT OFF., ANNUAL REPORT ON THE SITUATION OF ASYLUM IN THE EUROPEAN UNION 24 (2020) (“Within the context of [Common European Asylum System], the Tampere Declaration set out the foundation for a comprehensive approach to migration by addressing political, human rights and developmental issues in countries and regions of origin and transit.”) [hereinafter EASO ASYLUM REPORT].

4. See Satvinder S. Juss, *The Decline and Decay of European Refugee Policy*, 25 OXFORD J. LEGAL STUD. 749, 750, 753 (2005); EUROPEAN COUNCIL ON REFUGEES & EXILES, BROKEN PROMISES – FORGOTTEN PRINCIPLES: AN ECRE EVALUATION OF THE DEVELOPMENT OF EU MINIMUM STANDARDS FOR REFUGEE PROTECTION 3 (2004) [hereinafter ECRE TAMPERE EVALUATION] (reporting that, in 2004, Member States’ implementation of Tampere initiatives was quite behind, reflecting much of the EU

decades, EU institutions could regulate the movement of EU citizens from one EU Member State to another but had only limited power to regulate the entry of non-EU citizens into EU territory.<sup>5</sup> The Tampere Declaration's promise of a common EU asylum law meant that national sovereignty over migration would have to relax.<sup>6</sup>

Multiple factors led to the recognition that asylum and migration demanded EU-wide approaches. By 1999, most EU Member States had joined the Schengen system, which issued a common visa valid in all participating States and abolished internal borders.<sup>7</sup> By removing internal border controls, the Schengen system had revolutionized travel on the continent. A person could show her passport upon entering Italy and then travel to Austria, Germany, Belgium, the Netherlands, France, Spain, and Portugal without ever showing travel documents again. The ease of travel in much of Europe had obvious consequences for asylum seekers, as well as for tourists and businesspeople.<sup>8</sup>

Simultaneously, warfare in the Balkans in the 1990s had triggered major concerns about EU-wide reception of refugees.<sup>9</sup> During the 1992–1995 Bosnian War, more than one million inhabitants fled Bosnia-Herzegovina, as television showed live reports of violence and ethnic cleansing.<sup>10</sup> Images of shell-shocked individuals fleeing westward in Europe reawakened memories of World War II. Presaging responses to the 2022 invasion of Ukraine, European commentators in 1992 exclaimed that a land war in Europe had seemed unthinkable.<sup>11</sup>

---

community's state pre-Tampere, where "[c]ountries showed little sense of solidarity and pursued their narrow national agendas at great cost to refugees").

5. See Juss, *supra* note 4, at 753–54. In this context an EU citizen means a citizen of one of the EU Member States.

6. See Tampere Declaration, *supra* note 1, at ¶¶ 14–16; EASO ASYLUM REPORT, *supra* note 3, at 24 (emphasizing that the Tampere Declaration required Member States to take shared responsibility for implementing common asylum procedures throughout the Union, regardless of where asylum applicants are physically located).

7. DIRECTORATE-GENERAL FOR MIGRATION & HOME AFFS., EUROPEAN COMM'N, EUROPE WITHOUT BORDERS: THE SCHENGEN AREA 3, 14–15 (2015).

8. *Id.* at 3, 11–12.

9. Marc Fisher, *Trepidation Over Balkans: Europeans Fear Yugoslav War Could Spread*, WASH. POST, May 16, 1992, at A01.

10. International Crisis Group, *Refugees and Internally Displaced Persons in B-H*, REF WORLD (Apr. 30, 1997), <https://www.refworld.org/docid/3ae6a6d20.html> [<https://perma.cc/23WJ-L997>] (archived Oct. 16, 2023).

11. See, e.g., Fisher, *supra* note 9 (“[s]ince last fall, the bloody breakup of Yugoslavia has shocked Europeans dreaming about an era of peace and progress”); see also Aleksandar Brezar, *War and EU Acceptance: Why Did Ukraine Succeed While Bosnia Failed?*, EURONEWS (June 29, 2022, 6:58 PM), <https://www.euronews.com/my-europe/2022/06/28/bosnia-ukraine-two-countries-affected-by-war-two-very-different-eu-paths> [<https://perma.cc/5XMU-EYWJ>] (archived Sept. 22, 2023) (explaining that western Europe allowed different ethnic factions within Yugoslavia to rule and make deals amongst one another because no one believed another war would break out, creating a “vicious cycle of agreeing to stabilocracy: there wouldn’t be conflict, there wouldn’t be war, so Europe was okay with that and allowed for all of these machinations to happen.”).

Public opinion in European Union states was almost uniformly sympathetic to Bosnian refugees, but the actual distribution of refugees within the European Union was wildly uneven. Germany hosted by far the largest number, registering 340,000 from Bosnia-Herzegovina.<sup>12</sup> Austria registered 88,000, followed by Sweden with 60,000, the Netherlands with 25,000, and Denmark with 21,000.<sup>13</sup> Farther afield, France, Italy, and Spain hosted 15,000, 9,000, and 2,000, respectively.<sup>14</sup>

Five years later, in the spring of 1999, close to 1 million ethnic Albanian refugees were driven from Serbia.<sup>15</sup> They arrived quickly and in great numbers in neighboring non-EU countries: roughly 445,000 in Albania, 345,000 in Macedonia, 70,000 in Montenegro.<sup>16</sup> As part of a Humanitarian Evacuation Program to relieve pressure on Macedonia, EU States volunteered to accept 20,000 refugees.<sup>17</sup> Again the distribution was uneven; Germany received 10,000, while France accepted 348, Belgium 340, and Poland 60.<sup>18</sup>

Many EU Member States had national temporary protection laws, and some governments activated temporary protection programs at different times during the Balkan refugee crises.<sup>19</sup> For example, Germany, Austria, Belgium, France, and four other EU Member States each granted temporary protection according to their own national legislation to Bosnians in the early 1990s.<sup>20</sup> A few years later, Sweden

12. Khalid Koser & Richard Black, *Limits to Harmonization: The “Temporary Protection” of Refugees in the European Union*, 37 INT’L MIGRATION 521, 539 tbl. 2 (1999).

13. *Id.*; see also Mikkel Barslund, Matthias Busse, Karolien Lenaerts, Lars Ludolph & Vilde Renman, *Integration of Refugees: Lessons from Bosnians in Five EU Countries*, 52 INTERECONOMICS 257, 258–59 (2017) (discussing the longer term approaches and effects of five countries hosting Bosnian refugees and how each nation “differed vastly in the type of residency granted to Bosnians, their access to national labour markets and education, integration measures offered to them, and the financial support they received”).

14. Koser & Black, *supra* note 12, at 539 tbl. 2.

15. NATO’s air strikes began on March 24, 1999 and “[w]ithin nine weeks . . . nearly 860,000 Kosovo Albanians fled or were expelled.” Evaluation & Policy Analysis Unit, U.N. High Comm’r for Refugees, *The Kosovo Refugee Crisis: An Independent Evaluation of UNHCR’s Emergency Preparedness and Response*, ¶¶ 29, 31, U.N. Doc. EPAU/2000/001 (Feb. 2000) [hereinafter U.N. High Commissioner Kosovo Report].

16. *Id.*

17. *Kosovo Refugee Statistics*, MEDECINS SANS FRONTIERES (Apr. 19, 1999), <https://www.msf.org/kosovo-refugees-statistics> [<https://perma.cc/Z4JJ-X9GN>] (archived Oct. 16, 2023).

18. *Id.*

19. See Directorate-General for Migration & Home Affs., European Comm’n, *Study on the Temporary Protection Directive*, at 4 (Jan. 15, 2016), [https://home-affairs.ec.europa.eu/pages/document/012016-study-temporary-protection-directive\\_en](https://home-affairs.ec.europa.eu/pages/document/012016-study-temporary-protection-directive_en) [<https://perma.cc/NF8W-4UNE>] (archived Oct. 16, 2023).

20. Austria, Belgium, Denmark, France, Germany, Ireland, Poland, and Spain activated temporary protection during the Bosnian War. *Id.*



joined Germany, Austria, Belgium, and several other EU Member States that activated national temporary protection laws to protect Kosovars.<sup>21</sup> The national laws demonstrated the usefulness of temporary protection in emergency situations, but their content and implementation were uneven.<sup>22</sup> The types of protection granted to fleeing individuals varied significantly from country to country, and these laws did not go into effect in a coordinated fashion.<sup>23</sup> National viewpoints—as opposed to EU-wide perspectives—drove the decisions to activate temporary protection schemes.<sup>24</sup>

Dissatisfaction with the lack of uniformity led to several unsuccessful proposals in the 1990s for EU-wide temporary protection legislation.<sup>25</sup> When the 1999 Tampere discussions about developing a common European asylum law took place, the Kosovo refugee crisis was fresh in memory and gave new impetus to creating a uniform temporary protection law.<sup>26</sup> The Member States most affected by the Kosovo conflict supported the EU Commission's proposal for an EU temporary protection law.<sup>27</sup> The negotiating process featured serious disagreements over the circumstances when temporary protection would be appropriate, which institution would activate it, how it would relate to asylum applications, and how Member States would act in solidarity with each other.<sup>28</sup> Nonetheless, Member States reached agreement on a temporary protection law quickly, just eighteen months after the Tampere Declaration.<sup>29</sup> This legislation took the form of an EU Directive that each EU Member State was obliged to implement in its national legislation. It was an important early milestone in building the Common European Asylum System.<sup>30</sup>

---

21. *Id.*

22. See Barslund, Busse, Lenaerts, Ludolph & Renman, *supra* note 13, at 257–58.

23. See *id.* at 258–59.

24. See *id.*; *Study on the Temporary Protection Directive*, *supra* note 19, at 5 (“[T]he administration and evolution of the various temporary protection schemes across Member States was however inconsistent and policies highly discretionary.”).

25. See *Study on the Temporary Protection Directive*, *supra* note 19, at 4–5 (“[T]he Commission proposed a Joint Action to harmonise temporary protection status across Member States in 1997. However, no unanimous agreement on the proposal including a modified version was found.”).

26. See Council Directive 2001/55/EC of 20 July 2001, 2001 O.J. (L 212) 12 (“On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo . . . [calling] on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty” [hereinafter *Temporary Protection Directive*]).

27. See *Study on the Temporary Protection Directive*, *supra* note 19, at 6.

28. See *id.* at 6–7.

29. *Temporary Protection Directive* *supra* note 26, at ¶¶ 7–10.

30. The initial central components of the Common European Asylum system include the EURODAC Regulation of 2000, the *Temporary Protection Directive* of 2001, the *Reception Conditions Directive* of 2003, the *Dublin Regulation* of 2003, the *Qualifications Directive* of 2004, and the *Asylum Procedures Directive* of 2005. See

### A. *The Temporary Protection Directive of 2001*

The title of the 2001 law makes clear the two major concerns: (1) effective responses to the arrival of large numbers of people fleeing harm and (2) fair distribution within the European Union of the impact of the refugees.<sup>31</sup> The *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* became law in mid-July 2001.<sup>32</sup> It stipulated that EU Member States had one and a half years to enact legislation to make the Directive's provisions effective in their own national laws.<sup>33</sup>

The Directive is a wide-ranging law. Articles 4 through 23 focus on the legal situation of the displaced persons and the benefits provided to them.<sup>34</sup> Only a handful of provisions, Articles 24 through 26, refer to allocation of responsibility among EU Member States.<sup>35</sup> The main provisions will be addressed in turn.

#### 1. Availability of Temporary Protection

The legislation defines temporary protection as a “procedure of exceptional character.”<sup>36</sup> Nonetheless, the circumstances that can qualify for temporary protection are quite broad. The key components, set forth below, envision a large number of people fleeing a specific geographic area in a wide array of perilous circumstances:

- A mass influx or imminent mass influx
- Of displaced persons from outside the EU
- Unable to return to their country of origin
- In need of immediate and temporary protection

---

Maryellen Fullerton, *Asylum Crisis Italian Style: The Dublin Regulation Collides with European Human Rights Law*, 29 HARV. HUM. RTS. J. 57, 65–66 (2016).

31. See Temporary Protection Directive, *supra* note 26, at ¶¶ 2, 4–8.

32. The European Council created the temporary protection law as a directive, a type of legislation that sets forth EU norms that Member States then must implement via their own national laws. *Id.* at ¶ 12. The directive intends to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons, in addition to measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Id.* at ¶¶ 12, 14–15.

33. *Id.* at art. 32(1) (“The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest.”).

34. See *id.* at arts. 4–23.

35. See *id.* at arts. 24–26.

36. See *id.* at art. 2(a).

- With a risk that the asylum system will be overwhelmed.<sup>37</sup>

The Directive defines a “mass influx” as a “large number of displaced persons . . . from a specific country or geographical area.”<sup>38</sup> “Displaced persons” are “third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated . . . and are unable to return in safe and durable conditions.”<sup>39</sup> The displacement may be due to a variety of circumstances:

- Persecution as defined by the 1951 Geneva Convention
- Armed conflict
- Endemic violence
- Systematic and generalized violations of human rights
- Other circumstances warranting international protection.<sup>40</sup>

## 2. Activating Temporary Protection and Calculating its Duration

The Directive grants the European Council, comprised of the head of government of each EU Member State, the authority to decide if there is a mass influx sufficient to trigger EU-wide temporary protection.<sup>41</sup> The European Commission, the EU’s administrative branch, however, is the gatekeeper. All proposals for temporary protection must come from the European Commission, acting either on its own or in response to a request from a Member State.<sup>42</sup> The Commission is not required to respond to a Member State’s request, nor to forward it to the Council.<sup>43</sup>

The Directive contemplates that the Commission will survey a crisis situation and decide whether temporary protection is warranted. If the Commission does not make a proposal, EU-wide temporary protection is unavailable.<sup>44</sup> If the Commission proposes temporary protection, the proposal must describe the scale of movements of displaced persons, the specific groups eligible for temporary protection, and the date that temporary protection would take effect.<sup>45</sup>

When the European Council receives a proposal from the Commission, the Council must assess the situation, consider the potential effectiveness of emergency aid or other measures, and consult with the United Nations High Commissioner for Refugees and other

37. *Id.*

38. *Id.* at art. 2(d).

39. *Id.* at art. 2(c).

40. *Id.*

41. *Id.* at art. 5(1).

42. *Id.*

43. *See id.* (qualifying that the Commission need only examine a Member State’s request, prior to determining, at its discretion, whether to submit any proposal to the Council).

44. *See id.*

45. *Id.* at art. 5(2).

international and European organizations.<sup>46</sup> The Council need not reach a unanimous decision on temporary protection. A qualified majority can decide that temporary protection is warranted.<sup>47</sup> If the Council concludes that temporary protection is appropriate, the Council issues a Decision specifying the persons entitled to temporary protection, the date on which temporary protection will take effect, and the information received from Member States concerning their capacity to receive people needing temporary protection.<sup>48</sup>

With regard to the duration of temporary protection, the Directive provides that it shall be effective for one year, followed by two automatic six-month extensions, if still needed.<sup>49</sup> An extension for a third year is possible.<sup>50</sup> While temporary protection is in effect, Member States may extend recipients more generous benefits than those outlined by the Directive.<sup>51</sup>

### 3. Benefits for Individuals and Their Families

The Directive provides substantial benefits to those receiving temporary protection. Most importantly, it authorizes residence permits for all granted temporary protection.<sup>52</sup> Furthermore, it specifies that free visas must be provided if visas are necessary to enter the EU state granting temporary protection.<sup>53</sup> The Directive ensures individuals the right to work, though priority can be given to EU citizens and to legal residents receiving unemployment benefits.<sup>54</sup> Those receiving temporary protection have the right to receive suitable

---

46. *Id.* at art. 5(4).

47. *Id.* at art. 5(1).

48. *Id.*

49. *Id.* at art. 4(1).

50. *Id.* at art. 4(2).

51. *Id.* at art. 3(5). The Directive provides that Member States may also extend temporary protection to a wider scope of displaced persons, so long as the displaced persons are from the same region as the designated group and were displaced for the same reasons. *Id.* at art. 7(1). The Directive's provisions regarding financial support from the European Refugee Fund (now the Asylum, Migration, and Integration Fund, established by Regulation (EU) 2021/1147 of the European Parliament and of the Council) and regarding transfer of temporarily protected persons between member States do not apply to the more expansive categories of displaced persons. *Id.* at art. 3(5).

52. *Id.* at art. 8(1).

53. Article 8(3) states: "The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum." *Id.* at art. 8(3).

54. *Id.* at art. 12.

accommodation,<sup>55</sup> medical care, and necessary social assistance.<sup>56</sup> Children under eighteen have access to education,<sup>57</sup> while adults are eligible for educational services at the option of the Member States.<sup>58</sup>

The Directive recognizes that families and friends are often separated in crisis situations and that robust efforts to locate and reunite loved ones are needed. For purposes of temporary protection, the Directive extends benefits to those who register for temporary protection and members of their families if the familial relationship already existed in the country of origin. The Directive protects these family members:

- Spouse
- Unmarried partner in a stable relationship, if the law or practice of the relevant EU Member State treats unmarried couples in a way comparable to married couples<sup>59</sup>
- Minor unmarried children<sup>60</sup>
- Close relatives who lived together as a family unit at the time of the events leading to the mass influx.<sup>61</sup>

Provisions facilitate the reunification of family members who are in separate EU States.<sup>62</sup> When an individual who has received temporary protection is in an EU State but other family members are not yet in any EU Member State, the Directive specifies that the registrant's spouse, unmarried partner, and minor unmarried children who are outside the European Union shall be admitted to the European

---

55. *Id.* at art. 13(1) ("The Member States shall ensure that persons enjoying temporary protection shall have access to suitable accommodation or, if necessary, receive the means to obtain housing.")

56. *Id.* at art. 13(2) ("The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence.")

57. *Id.* at art. 14(1) ("The Member States shall grant access to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host.")

58. *Id.* at art. 14(2) ("The Member States may allow adults enjoying temporary protection access to the general education system.")

59. The Directive sets forth a two-tier definition of family members. The first tier, in Article 15(1)(a), recognizes spouses, partners, and minor unmarried children. The second tier, in Article 15(1)(b), recognizes other close relatives who lived together as a family unit. *Id.* at art. 15(1)(a)–(b).

60. This includes both the minor unmarried children of the person qualifying for temporary protection and the minor unmarried children of the spouse of the qualifying person. *Id.* at art. 15(1)(a).

61. The other close relatives living as a family unit must have been wholly or mainly dependent on the person qualifying for temporary protection. *Id.* at art. 15(1)(b).

62. Spouses, unmarried partners, and minor unmarried children have the right to be reunited. "Close relatives," as described in Article 15(1)(b), may be reunited on a discretionary basis depending on a case-by-case analysis of the extreme hardship if not reunited. *Id.* at art. 15(2)–(3).

Union and reunited with them.<sup>63</sup> Member States have discretion with regard to admitting the other “close relatives” mentioned above. They must consider on a case-by-case basis the extreme hardship that would occur if reunification does not take place.<sup>64</sup> Acknowledging that children may be separated from or lose their parents in humanitarian crises, the Directive specifies that unaccompanied minors should receive placements with relatives, foster families, or suitable reception centers.<sup>65</sup> It directs Member States to ensure that unaccompanied minors are represented by legal guardians or by organizations specializing in caring for minors.<sup>66</sup>

#### 4. Temporary Protection and Asylum

Those granted temporary protection have the right to apply for asylum,<sup>67</sup> and the Member State that has accepted the individual’s “transfer onto its territory” is responsible for examining the asylum application.<sup>68</sup> If the asylum application is rejected, the individual has the right to continue under temporary protection until the period is terminated for the protection group.<sup>69</sup> If temporary protection is terminated before the Member State completes processing the asylum application, the Member State must continue to process the asylum application.<sup>70</sup> While applications are pending, Member States may prohibit individuals from “double dipping” by simultaneously receiving the benefits accorded to asylum seekers and the benefits granted to recipients of temporary protection.<sup>71</sup>

#### 5. Exclusion from Temporary Protection

Member States may exclude from temporary protection certain individuals from the designated group. “Serious reasons for considering” that a person has committed the following conduct may trigger exclusion:

- A crime against peace, a war crime, or a crime against humanity;

---

63. *Id.* at art. 15(3).

64. *Id.*

65. *Id.* at art. 16(2).

66. *Id.* at art. 16(1).

67. *See id.* at art. 17(1) (“Persons enjoying temporary protection must be able to lodge an application for asylum at any time.”).

68. *Id.* at art. 18.

69. *Id.* at art. 19(2).

70. *Id.* at art. 17(2).

71. *Id.* at art. 19(1).

- A serious non-political crime prior to admission as a person in need of temporary protection;
- Acts contrary to the purposes and principles of the United Nations;
- Danger to the community of the host Member State in connection with conviction of a particularly serious crime;
- Security danger to the host Member State.<sup>72</sup>

Exclusion must be proportional and can be based only on the personal conduct of the individual concerned.<sup>73</sup>

## 6. Termination of Temporary Protection

Once established by the Council, temporary protection ordinarily continues until the specified time limit expires.<sup>74</sup> Alternatively, temporary protection can be terminated early if the Council concludes that safe and durable return of those granted temporary protection can take place.<sup>75</sup> A safe and durable return requires that the facts on the ground allow “due respect for human rights and fundamental freedoms” and ensure that “obligations regarding non-refoulement,” will be upheld.<sup>76</sup>

The temporary protection framework contemplates that some individuals may wish to return to their homeland before the formal end of temporary protection. In such cases, Member States shall facilitate voluntary return, including providing for exploratory visits.<sup>77</sup> During the period before temporary protection expires, the Directive encourages Member States to readmit temporary protection registrants who voluntarily returned to their homeland but then changed their mind.<sup>78</sup>

After temporary protection ends, Member States must take measures to encourage the voluntary return of persons for whom protection has terminated.<sup>79</sup> Those who do not voluntarily depart can be forced to leave “with due respect for human dignity.”<sup>80</sup> Member

72. Article 28(1) lists the grounds of exclusion. There must be a showing of “serious reasons” for considering that an international crime, a non-political crime prior to the individual’s admission to the Member State, or an act contrary to the United Nations’ “purposes and principles” has been committed. *Id.* at art. 28(1)(a)(i)–(iii). There must be “reasonable grounds” for concluding that the individual presents a serious danger to the host state’s community. *Id.* at art. 28(1)(b).

73. *Id.* at art. 28(2).

74. *Id.* at art. 6(1)(a).

75. *Id.* at art. 6(1)–(2).

76. *Id.* at art. 3(2).

77. Article 21(1) mandates that Member States “facilitate . . . return with respect for human dignity,” but grants discretion regarding exploratory visits. *Id.* at art. 21(1).

78. *Id.* at art. 21(2) (“Member States shall . . . give favourable consideration to requests for return to the host . . . from persons who have enjoyed temporary protection and exercised their right to a voluntary return.”).

79. *Id.* at art. 21(1).

80. *Id.* at art. 22(1).

States are encouraged to take a flexible approach. They should consider humanitarian exceptions to forced returns.<sup>81</sup> They should not expel individuals when serious health consequences would ensue.<sup>82</sup> For families with children attending school, Member States should contemplate extending benefits until the school term has ended.<sup>83</sup> They may also extend the duration of the temporary protection benefits individually to persons participating in a voluntary return program.<sup>84</sup>

## 7. Balancing Efforts of Member States

As noted earlier, only three provisions, Articles 24–26, address the challenge of distributing displaced persons throughout the European Union. Member States shall receive individuals eligible for temporary protection in a “spirit of [EU] solidarity.”<sup>85</sup> Member States shall communicate “in general terms” their capacity to receive those eligible for protection.<sup>86</sup> Member States shall cooperate with each other regarding requests to transfer temporarily protected individuals from one Member State to another.<sup>87</sup> If the numbers of beneficiaries exceed the reception capacity, the Council shall “take appropriate action, including recommending additional support for Member States affected.”<sup>88</sup> The vagueness of the Directive’s text is amplified by the lack of examples of what might qualify as “appropriate action” and “additional support.” The Directive states that the European Refugee Fund (now the Asylum, Migration and Integration Fund)<sup>89</sup> shall benefit the temporary protection program.<sup>90</sup>

Nowhere in Articles 24–26 is there a discussion of a mechanism for assigning displaced persons to Member States. Distribution and reception of individuals granted temporary protection is apparently a matter of the often elusive “spirit of [EU] solidarity.”<sup>91</sup> Article 11,

81. *Id.* at art. 22(2).

82. *Id.* at art. 23(1).

83. *Id.* at art. 23(2) (“The Member States may allow families whose children are minors and attend school . . . to benefit from residence conditions allowing the children . . . to complete the current school period.”).

84. *Id.* at art. 21(3).

85. *Id.* at art. 25(1).

86. *Id.* at art. 25(1). Related administrative cooperation provisions call upon Member States to, “in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.” *See id.* at art. 27(1)–(2).

87. *Id.* at art. 26.

88. *Id.* at art. 25(3).

89. Regulation 2021/1147, of the European Parliament and of the Council of 7 July 2021 Establishing the Asylum, Migration and Integration Fund, 2021 O.J. (L 251) 1.

90. Temporary Protection Directive, *supra* note 26, at art. 24.

91. *See* discussion *infra* note 170.



which appears in the earlier chapter outlining obligations Member States have to persons granted temporary protection, suggests that territorial borders and geographical location will play a major role in the physical residence of displaced persons. Article 11 provides that “[a] Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the [temporary protection] period.”<sup>92</sup> This “take-back” formulation puts primary responsibility on EU Member States geographically nearest the forced migration crisis. It echoes the much-criticized Dublin Regulation that effectively assigns most of the asylum claims in the European Union to the few Member States on its periphery.<sup>93</sup> This take-back provision is likely to build resentment and grievance in the Member States located on the borders of the European Union, because displaced persons coming from other regions generally access the EU territory by crossing into one of the border countries. The take-back obligation means that temporary protection would theoretically be an EU-wide policy, but in actuality would result in temporary protection of displaced persons mostly in the frontline EU States. The Temporary Protection Directive does allow Member States to deviate from this approach via bilateral agreements, a tacit acknowledgement that the take-back obligation may present future points of contention.<sup>94</sup>

### B. *Two Decades of Disuse*

The European Union experienced multiple migration crises during the first twenty years after it enacted the Temporary Protection Directive, but it never activated the EU-wide system to temporarily admit displaced persons.<sup>95</sup> Although individual Member States called for EU-wide temporary protection in a number of instances, not once did the Commission present a temporary protection proposal.<sup>96</sup> In 2003–2004, Cyprus experienced close to a 400 percent increase in the

---

92. *Id.* at art. 11.

93. The concept known as the “Dublin system” first formally appeared in the Common European Asylum System in 2003, when the Council enacted Council Regulation 343/2003 of 18 February 2003, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third Country National, 2003 O.J. (L 50) 1 (EC). This approach is called the “Dublin system” because it originated in the Convention 97/C254/01, Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, 1997 O.J. (C 254) 1, an agreement signed in Dublin in 1990, which went into effect for EU States in 1997.

94. Temporary Protection Directive, *supra* note 26, at art. 11.

95. *Study on the Temporary Protection Directive*, *supra* note 19, at 32–33 (explaining that, during increased migration waves throughout the EU that strained some Member States’ systems, “there was no clear-cut case for the activation of the TPD . . . [instead,] preference was given to alternative measures).

96. *Id.*

number of asylum seekers, causing serious overloads on its reception facilities and substantial backlogs in its asylum procedures, but the Commission made no proposal for temporary protection.<sup>97</sup> During the “Arab Spring” in 2011, large numbers of Tunisians crossed the Mediterranean to seek safety, leading both Italy and Malta to seek the invocation of the Temporary Protection Directive.<sup>98</sup> The Commission said the requests were “premature.”<sup>99</sup> The EU Commissioner for Home Affairs acknowledged that “some of our Member States are under severe pressure,” but she said the situation did not yet constitute “a mass influx of migrants to Europe.”<sup>100</sup> The Commissioner hinted at vague future possibilities: “The temporary mechanism is one tool that could be used in the future, if necessary, but we have not yet reached that situation.”<sup>101</sup> Several years later, in 2013–2014, Bulgaria, too, faced a more than 400 percent increase in flows of asylum seekers, overwhelming its asylum system.<sup>102</sup> Again, the Commission made no proposal for temporary protection.<sup>103</sup>

The next year, 2015, witnessed a colossal surge of Syrians fleeing to Europe to escape the ongoing civil war in Syria.<sup>104</sup> In contrast to the situations mentioned above, hundreds of thousands of individuals who had been displaced from their homes headed for Europe. The displaced Syrians arrived in multiple EU countries; in contrast to the earlier examples, they did not overwhelm merely one or two Member States.<sup>105</sup> Nonetheless, the Commission did not recommend temporary protection.<sup>106</sup> Elisabetta Gradini, a member of the European Parliament, publicly confronted the Commission, asking whether the large flows of Syrians qualified as a “mass influx” of displaced persons sufficient to activate the temporary protection directive. If the hundreds

---

97. *See id.* at 27–28.

98. *Id.* at 13.

99. Ivan Camilleri, *Malmström Again Rejects Call for Activation of Migration Mechanism*, TIMES OF MALTA (Apr. 11, 2011), <https://timesofmalta.com/articles/view/malmstrom-again-rejects-call-for-activation-of-migration-mechanism.359381> [<https://perma.cc/C38V-X4UT>] (archived Sept. 23, 2023) (quoting Cecilia Malström, EU Commissioner for Home Affairs).

100. *EU’s Rejection of Migrants During the Arab Spring: A “Historical Mistake” According to Commissioner Malstrom*, STATEWATCH (Mar. 28, 2012), <https://www.statewatch.org/news/2012/june/statewatch-news-online-eu-s-rejection-of-migrants-during-the-arab-spring-a-quot-historical-mistake-quot-according-to-commissioner-malstr-ouml-m/> [<https://perma.cc/GE8Q-59X4>] (archived Sept. 23, 2023) (quoting EU Commissioner Cecilia Malström’s Blog, 6 April 2011).

101. *Id.*

102. *See Study on the Temporary Protection Directive*, *supra* note 19, at 27–28.

103. *See id.* at 27–28, 32.

104. *Id.* at 92–93, 135 (“In September 2013, UNHCR noted that Bulgaria’s asylum centres were ‘bursting at the seams as Syrians enter Europe.’”).

105. *See id.* at 96, 136–37.

106. *See id.* at 19, 96.

of thousands fleeing Syria did not constitute a mass influx, she demanded, “what numbers *would* qualify?”<sup>107</sup> The Commission responded that “the numbers arriving are still manageable” and “the asylum systems . . . are still working.”<sup>108</sup>

Thus, for twenty years, the EU institutions refused to initiate a temporary protection program, even in the face of undeniable mass influxes of persons fleeing armed conflict and endemic violence, who were at risk of systemic human rights violations. The Temporary Protection Directive, apparently a dead letter, never came into play.

As a political matter, the failure to implement temporary protection in the European Union could not be attributed to the Commission’s concern that one or two Member States would veto a proposal sent by the Commission to the EU Council. The Temporary Protection Directive specifies that the EU Council does not require unanimity to implement temporary protection; a qualified majority of EU Member States is sufficient.<sup>109</sup> Consequently, the inaction must have stemmed from the Commission’s view that a majority of EU Members did not want to offer protection, even temporarily, to large groups of people fleeing for their lives. Temporary protection existed formally as a component of EU law, but informally it was a nonentity.

Because the Commission never proposed temporary protection, no one knew the reasons that inhibited Member States from activating EU-wide temporary protection. Did Member States think it perilous to activate the Directive because its guarantees were too generous? Did they fear they would be inundated by the admission of large groups of displaced persons? Did they worry temporary protection would turn into a permanent responsibility? As the Commission never indicated it would recommend temporary protection, there was no public discussion of the costs and benefits of extending protection suddenly to a large group of displaced persons.

In the legal realm, scholars and analysts proposed improvements to the Temporary Protection Directive to bring it to life. Some recommended defining “mass influx” more definitively.<sup>110</sup> Others favored amending the Directive to clarify that temporary protection can be activated before “adverse effects” have occurred within EU States.<sup>111</sup> Yet others advocated revising the activation procedures. Some wanted to allow Member States to submit proposals directly to the European Council.<sup>112</sup> Some favored requiring the Commission to make written responses to requests by Member States.<sup>113</sup> Some

---

107. *Id.* at 19 (discussing debate within EU Parliament LIBE Committee on Feb. 26, 2015).

108. *Id.*

109. See Temporary Protection Directive, *supra* note 26, at art. 5(1).

110. *Study on the Temporary Protection Directive*, *supra* note 19, at 16–17.

111. *Id.* at 19.

112. See *id.* at 20.

113. See *id.* at 20, 22.

proposed giving the European Parliament a voice in the process.<sup>114</sup> There was no movement within the European Union, however, to modify or replace it.

As the third decade of the 2001 Temporary Protection Directive dawned in 2022, short-term humanitarian protection remained an illusory component of EU law. This contrasted with the extensive experience that the European Union had developed with all the other components of the Common European Asylum System. Not only had the other EU Directives and Regulations addressing those seeking protection been frequently utilized, but extensive experience with them had led to modifications and amendments.<sup>115</sup> The Temporary Protection Directive alone had been left on the shelf.

### III. THE DECISION TO ACTIVATE TEMPORARY PROTECTION IN THE EUROPEAN UNION

The Russian invasion of Ukraine on February 24, 2022, overcame the European Union's two-decades-long hesitance. An extraordinary meeting of the EU Justice and Home Affairs Council convened on February 27 to consider measures, including temporary protection, to support Ukraine.<sup>116</sup> On March 2, the EU Commission proposed that the European Union provide temporary protection for the mass influx of displaced persons from Ukraine.<sup>117</sup> One week into the war, on March 4, 2022, the Council of the European Union voted unanimously to activate the temporary protection framework that had been dormant

---

114. *Id.*

115. For example, the 2004 EU legislation setting forth the standards for qualifying for refugee status was amended and expanded by Directive 2011/95/EU, of the European Parliament and of the Council of 13 December 2011, 2011 O.J. (L 337) 8 [hereinafter EU Qualification Directive]. Similarly, the 2005 EU legislation on asylum procedures was amended by Directive 2013/32/EU, of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast), arts. 1–2, 2013 O.J. (L 180) 60, and the 2003 EU legislation on reception conditions for asylum seekers was amended by Directive 2013/33/EU, of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast), art. 1, 2013 O.J. (L 180) 96.

116. *Extraordinary Justice and Home Affairs Council, 27 February 2022*, COUNCIL OF THE EUROPEAN UNION (Feb. 27, 2022), <https://www.consilium.europa.eu/en/meetings/jha/2022/02/27/> [https://perma.cc/A9Z5-9KNL] (archived Sept. 27, 2023).

117. *Proposal for a Council Implementing Decision Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine with the Meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and Having the Effect of Introducing Temporary Protection*, at 1, COM (2022) 91 final (Mar. 2, 2022).

since its creation in 2001.<sup>118</sup> Why did they act this time? What was different?

Multiple commentaries concluded that the welcome extended to Ukrainians in 2022 was a product of racism and Islamophobia.<sup>119</sup> They noted the hostility of EU Member States, such as Hungary, Slovakia, Poland, and the Czech Republic, to the mass influx of displaced persons from Syria in 2015. They pointed to the numerous reports that many African and Asian students fleeing Ukraine after the Russian invasion experienced great obstacles that Ukrainians in the same exodus did not face.<sup>120</sup> These accounts led to a condemnatory statement by the African Union: “Reports that Africans are singled out for unacceptable dissimilar treatment would be shockingly racist and in breach [of] international law.”<sup>121</sup>

118. *Temporary Protection*, EUR. COMM’N, [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en) [<https://perma.cc/B7VG-ZUXQ>] (archived Oct. 17, 2023). Hungary, one of the most recalcitrant EU Member States with regard to providing refuge to asylum seekers, acted even more quickly than the EU. Hungary activated its national temporary protection law on February 24, 2022, the very first day of the war. See 56/2022. (II. 24.) Korm. r. a Törvény Menekültügyi Eljárás Átmeneti Szabályainak Eltérő Alkalmazásáról (Governmental decree 56/2022 (II. 24.) on the Different Application of the Transitional Rules of the Asylum Procedure) (Hung.). This decision allowed provisional protection (“menedékes” status) in Hungary for Ukrainian nationals and for third-country nationals who had been legally staying in Ukraine. *Information for Ukrainian Citizens Fleeing Ukraine, for Refugees Recognised in Ukraine and for Stateless Persons and Their Family Members (EN)*, HUNGARIAN HELSINKI COMM. (Apr. 12, 2023), <https://helsinki.hu/en/information-ukraine-stateless-recognized-refugees/> [<https://perma.cc/7FXT-2LDU>] (archived Oct. 17, 2023). Moreover, Hungary, Slovakia, the Czech Republic, and Poland, the Visegrad countries who had fought so tenaciously against receiving Iraqi refugees six years earlier, voted in favor of the European Council’s decision. *The War in Ukraine and the Renaissance of Temporary Protection – Why this Might be the Only Way to Go*, INT’L CENTRE FOR MIGRATION POL’Y DEV. (Mar. 2, 2022), <https://www.icmpd.org/blog/2022/the-war-in-ukraine-and-the-renaissance-of-temporary-protection-why-this-might-be-the-only-way-to-go> [<https://perma.cc/VRL4-FWHM>] (archived Oct. 17, 2023).

119. *E.g., Europe’s Different Approach to Ukrainian and Syrian Refugees Draws Accusations of Racism*, CBC NEWS (Feb. 28, 2022, 9:34 PM), <https://www.cbc.ca/news/world/europe-racism-ukraine-refugees-1.6367932> [<https://perma.cc/E7V8-CCTU>] (archived Sept. 27, 2023); James Traub, *The Unavoidable Moral Hypocrisy of Ukraine’s Refugee Crisis*, FOREIGN POL’Y (Mar. 21, 2022, 4:15 PM), <https://foreignpolicy.com/2022/03/21/ukraine-refugees-europe-hypocrisy-syria/> [<https://perma.cc/EC3C-RDX2>] (archived Sept. 27, 2023); Emily Venturi & Anna Iasmi Vallianatou, *Ukraine Exposes Europe’s Double Standards for Refugees*, CHATHAM HOUSE (Mar. 30, 2022), <https://www.chathamhouse.org/2022/03/ukraine-exposes-europes-double-standards-refugees> [<https://perma.cc/E5KA-8KZP>] (archived Sept. 27, 2023).

120. Maite Fernández Simon, *African Students Living in Ukraine Say They Face Racism While Trying to Flee*, WASH. POST (Mar. 6, 2022, 6:00 AM), <https://www.washingtonpost.com/world/2022/03/05/ukraine-african-refugees-racism/> [<https://perma.cc/5WMW-43JY>] (archived Sept. 27, 2023).

121. AFRICAN UNION, STATEMENT OF THE AFRICAN UNION ON THE REPORTED ILL TREATMENT OF AFRICANS TRYING TO LEAVE UKRAINE (Feb. 28, 2022), <https://au.int/sites/default/files/pressreleases/41534-pr-english.pdf> [<https://perma.cc/9EPA-7WF6>] (archived Sept. 27, 2023).

The widespread accounts of discriminatory treatment of students of color fleeing Ukraine are evidence that racism played a role as displaced people tried to escape Ukraine and enter the European Union.<sup>122</sup> Was it also the major explanation for the EU decision to implement temporary protection in 2022, but not in 2015? Or were other factors involved? Analyzing the circumstances that contributed to the 2022 temporary protection decision reveals a more complex reality. The geographical proximity of the conflict and the resulting exodus of displaced persons into the neighboring European Union was a weighty factor. It was amplified by anti-Russian sentiments in European countries that had been occupied by Soviet forces until 1989. Another key aspect was the perception, which may have been inaccurate, that the armed incursion was likely to be temporary. With women and children comprising up to 90 percent of the displaced populations, it seemed likely many displaced individuals intended to return to Ukraine as soon as they could.<sup>123</sup> The demographics of the displacement, which was triggered by a sudden invasion across international borders, undercut any view that the migrants fled for economic reasons. Another influential circumstance was the existence of a sizeable Ukrainian diaspora throughout the European Union, not solely in countries bordering Ukraine. In addition, the pre-existing visa-free travel policy for Ukrainians to enter and remain in the European Union also played a substantial role in the decision-making. Each factor is worthy of consideration, and together they may yield some useful lessons for the future of temporary protection in the European Union.

A. *The February 2022 Invasion and the Geographical Proximity of the European Union*

Ukraine borders four EU Member States: Poland, Slovakia, Hungary, and Romania. The Ukrainian city Lviv, with a population of 720,000, lies 40 miles from the Polish border. Although Ukraine's capital city, Kiev, is located 300 miles further east, there is no ocean separating Ukraine from the rest of the continent.<sup>124</sup> Nor are there

---

122. See SERGIO CARRERA, MELTEM INELI CIGER, LINA VOSYLIUTE & LEIZA BRUMAT, *CTR. FOR EUR. POL'Y STUD.*, NO. 2022-09, *THE EU GRANTS TEMPORARY PROTECTION FOR PEOPLE FLEEING WAR IN UKRAINE* 8–9 (2022).

123. See discussion *infra* note 154.

124. Kiev is 450 miles from Warsaw, roughly the distance from Washington, DC to Boston. Kiev is 540 miles from Krakow, and around 800 miles from Vienna, Prague, and Berlin. Odesa is 35 miles from the border with Moldova and 265 miles from Bucharest, Romania. *Political Map of Ukraine, Europe*, NATIONS ONLINE PROJECT, <https://www.nationsonline.org/onenewworld/map/ukraine-political-map.htm> (last visited Oct. 17, 2023) [<https://perma.cc/ZR5W-A59C>] (archived Sept. 27, 2023).

major mountain ranges that interrupt the plateaus that characterize much of the country.<sup>125</sup> The lack of geographic barriers made the Russian military's multi-pronged attack on Ukraine feel directly threatening to many in the European Union.<sup>126</sup> They could see on their television and computer screens women and children fleeing bombed apartment buildings, shopping centers, and hospitals.<sup>127</sup>

Long lines of Ukrainian civilians at passport control posts on the borders with Poland, Hungary, Slovakia, Romania, and Moldova mirrored long lines of Russian tanks, artillery, and troops advancing into Ukrainian towns and cities.<sup>128</sup> Within one week, more than 650,000 displaced persons had arrived in the European Union from Ukraine.<sup>129</sup> Clearly, the armed conflict impelled them to flee. Television and social media showed bombs launched by an external aggressor bringing death and destruction to residential areas in Ukraine, a country directly next door to the European Union.<sup>130</sup>

Some have questioned the relevance of the geographical proximity of Ukraine to the European Union with regard to the activation of the Temporary Protection Directive, arguing that Syria is closer to Cyprus than Kiev is to Warsaw.<sup>131</sup> Other scholars have argued that the

---

125. *See id.*

126. Ivan Krastev & Mark Leonard, *The Crisis of European Security: What Europeans Think About the War in Ukraine*, EUR. COUNCIL ON FOREIGN RELS. (Feb. 9, 2022), <https://ecfr.eu/publication/the-crisis-of-european-security-what-europeans-think-about-the-war-in-ukraine/> [<https://perma.cc/L63C-Q4D8>] (archived Sept. 28, 2023).

127. *See, e.g., Ukraine Conflict: Half a Million Flee as Fighting Rages*, BBC NEWS (Feb. 28, 2022), <https://www.bbc.com/news/world-europe-60551688> [<https://perma.cc/4S7R-RYGP>] (archived Sept. 28, 2023).

128. *See* Krisztina Than & Anna Wlodarczak-semczuk, *Freezing Weather and Border Bottlenecks as Ukrainians Flee War*, REUTERS (Feb. 28, 2022, 1:16 PM), <https://www.reuters.com/world/ukrainians-face-long-wait-borders-officials-seek-ease-bottlenecks-2022-02-28/> [<https://perma.cc/9B94-PDKC>] (archived Sept. 28, 2023); Charlie Dunmore & Irina Odobescu, *Ukrainian Refugees Find Warm Welcome in Neighbouring Moldova*, UNHCR: THE UN REFUGEE AGENCY (May 18, 2022), <https://www.unhcr.org/us/news/stories/ukrainian-refugees-find-warm-welcome-neighbouring-moldova> [<https://perma.cc/5ZRK-8FYH>] (archived Oct. 19, 2023).

129. Council Implementing Decision 2022/382, Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 3 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection, ¶ 5, 2022 O.J. (L 71) 2 (EU) [hereinafter Council Implementing Decision].

130. Ukraine shares more than 2,200 kilometers (1350 miles) of land border with four EU Member States: Poland, Slovakia, Hungary, and Romania. *See Political Map of Ukraine, Europe, supra* note 124. With the Russian invasion of Ukraine as the cause of the displacement, it was notable that no voices called the displaced individuals economic migrants.

131. *See* Rodrigo Bueno Lacy & Henk van Houtum, *Europe's Selective Dehumanisation: The Revival of Geographical Determinism as Rationalisation to Justify the Preferential Protection of Ukrainian Refugees in the EU*, in EU RESPONSES TO THE LARGE-SCALE REFUGEE DISPLACEMENT FROM UKRAINE 473 (2023). Although Damascus is 200 miles from Cyprus, which hosted 12,000 Syrians, Ukraine has more than 1,350 miles of land borders with the European Union and hundreds of thousands of Ukrainians live within a day's walk of the EU. *See id.* at 471, 473. Reports indicate that almost 4

Russian war of aggression in Ukraine created an existential crisis for the European Union in a way that the Syrian, Bosnian, and Kosovo armed conflicts did not.<sup>132</sup> Yet other scholars have emphasized that the political alliance to support Ukraine from the Russian invasion was an important motivating factor in the EU-wide provision of temporary protection to those displaced from Ukraine.<sup>133</sup> Without doubt, there are multiple perspectives on the significance of the crisis. Yet, the political and the military dimensions of Russia's brazen invasion of Ukraine made many Europeans feel that peril was nearby.<sup>134</sup>

### B. The International Law Refugee Definition

Turning to the legal dimension, many journalists describe those displaced from Ukraine as refugees, although people fleeing war often do not fall within the international law refugee definition, which requires a well-founded fear of persecution on account of one's race, religion, nationality, political opinion, or membership in a social group.<sup>135</sup> Though there are exceptions, "war refugees" and others fleeing international armed conflict frequently do not qualify as refugees under international law and consequently are not guaranteed asylum.<sup>136</sup> Therefore, many of those displaced from Ukraine may not

million Ukrainians live in the region bordering Poland. KIMMO KATAJALA & MARIA LÄHTEENMÄKI, *IMAGINED, NEGOTIATED, REMEMBERED: CONSTRUCTING EUROPEAN BORDERS AND BORDERLANDS* 188 (2012). And, even prior to February 2022, the border between Ukraine and Poland was the most frequently crossed eastern border of the EU. *E.g.*, FRONTEX, *EASTERN BORDERS: ANNUAL RISK ANALYSIS* 2013, at 13 (2013).

132. See Joanne van Selm, *Temporary Protection for Ukrainians: Learning the Lessons of the 1990s?*, ASILE (Apr. 11, 2022), <https://www.asileproject.eu/temporary-protection-for-ukrainians-learning-the-lessons-of-the-1990s/> [https://perma.cc/VH8B-TDTM] (archived Oct. 10, 2023) (stating that Ukrainians came directly to the EU from the war zone in 2022, whereas many Syrians arrived in the EU in 2015 after five years in Turkey or neighboring countries; EU did not border Bosnia or Kosovo in 1990s, nor did the Common European Asylum System exist then).

133. See Eleni Karageorgiou & Gregor Noll, *Receiving Ukrainian Refugees in the EU: A Case of Solidarity?*, ASILE (June 3, 2022), <https://www.asileproject.eu/receiving-ukrainian-refugees-in-the-eu-a-case-of-solidarity/> [https://perma.cc/QR46-VHZZ] (archived Oct. 10, 2023).

134. See, e.g., Elizabeth Schumacher, *Ukraine-Russia Conflict Has German Teens Terrified*, DEUTSCHE WELLE (Mar. 9, 2022), <https://www.dw.com/en/ukraine-russia-conflict-has-german-teens-terrified/a-61069344> [https://perma.cc/TH5B-DUFA] (archived Sept. 28, 2023).

135. Convention Relating to the Status of Refugees art. 1(2), July 28, 1951, 189 U.N.T.S. 137; see also EU Qualification Directive, *supra* note 115, at art. 2 (articulating that the Common European Asylum definition of refugee similarly being predicated on a "well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group).

136. Jaya Ramji-Nogales, *Ukrainians in Flight: Politics, Race, and Regional Solutions*, 116 AM. J. INT'L L. UNBOUND 150, 152–53 (2022).



have qualified for asylum under EU law.<sup>137</sup> Instead, some form of humanitarian relief might have been the more realistic outcome.<sup>138</sup>

In contrast, people fleeing a civil war often fear persecution by a competing faction within their homeland.<sup>139</sup> Therefore, speaking generally, many Syrians who fled the civil war in 2015 had a well-founded fear of persecution on account of their political opinion and social group. Accordingly, many were likely to qualify as refugees and have the right to asylum in the European Union. That many Syrians were eligible for asylum did not disqualify them from temporary protection, so this factor in itself did not prevent the European Union from invoking the Temporary Protection Directive in 2015. The fact that it was not clear if Ukrainian “war refugees” would qualify for asylum, however, may be a significant reason that the European Union adopted temporary protection in 2022.

No matter the legal definitions, the crisis was both immense and immediate for the European Union, which shares more than 2,000 kilometers of land borders with Ukraine.<sup>140</sup> The specter that millions of displaced persons would enter the European Union within a matter of weeks raised concerns that individual asylum adjudication systems in EU Member States would be overwhelmed.<sup>141</sup> In the first weeks after the invasion, the Council of the European Union, comprised of the heads of government of each of the twenty-seven Member States, held multiple emergency meetings.

### C. Antipathy to Russia

Eleven of the twenty-seven Member States of the European Union lived under the Soviet sphere of influence after World War II. Lithuania, Latvia, and Estonia were occupied by Soviet troops in 1940 and formally incorporated into the Soviet Union shortly thereafter.

---

137. See *id.* But see Hugo Storey, *Are Those Fleeing Ukraine Refugees?*, ASILE (June 28, 2022), <https://www.asileproject.eu/are-those-fleeing-ukraine-refugees/> [<https://perma.cc/5FFT-ZNEW>] (archived Oct. 10, 2022) (explaining that many Ukrainians fled their country prior to any persecution, but those from regions where the Ukrainian government cannot protect them may qualify as refugees).

138. EU asylum law guarantees refugee status to those with a well-founded fear of persecution on account of race, religion, national origin, political opinion, or membership in a particular social group. EU Qualification Directive, *supra* note 115, at arts. 9, 10, 13. Those at risk of serious harm, defined as execution, torture, inhuman or degrading treatment, or serious and individual threat to life due to indiscriminate violence from armed conflict, are eligible for subsidiary protection, which provides fewer rights. See *id.* at arts. 15, 18.

139. See, e.g., *Bolanos-Hernandez v. INS*, 767 F.2d 1277 (9th Cir. 1985) (describing polarization and persecution in Salvadoran civil war in 1980s).

140. Council Implementing Decision 2022/382, *supra* note 129, at ¶¶ 5–6.

141. Risk of overwhelming the asylum system is one of the triggering factors for activating EU Temporary Protection. See Temporary Protection Directive, *supra* note 26, at art. 2(a).

They regained their independence in 1990.<sup>142</sup> Poland, the Czech Republic, Slovakia, Hungary, Croatia, Slovenia, Romania, and Bulgaria all were under Soviet control starting in the late 1940s.<sup>143</sup> Many of these countries were members of the Warsaw Pact, a collective defense arrangement dominated by the Soviet Union, and had Soviet troops stationed on their territory.<sup>144</sup> When the Soviet Union dissolved in 1991 and Russia became its successor state, many of the eastern European countries perceived NATO as a protective shield against Russia and rushed to join.<sup>145</sup> Thirty years later, the citizens and leaders of many of these EU States remain suspicious of Russia, concerned about Russian efforts to create dissension within their borders, and wary when Russian troops cross international borders.<sup>146</sup> Anti-Russian sentiments fused with a sense of solidarity with those displaced from Ukraine. As one Polish supporter of displaced Ukrainians said, “The enemy of my enemy is my friend. Ukraine is fighting for Poland as much as for Ukraine, fending off both our countries’ age-old enemy, Russia.”<sup>147</sup>

#### D. *Temporary Incursion*

The February 24 invasion, with long columns of Russian tanks, trucks, and soldiers crossing international borders, elicited shock and

142. Lithuania, Latvia, and Estonia declared their independence from the Soviet Union in 1990. In September 1991 the Soviet Union formally recognized the independence of the three Baltic countries. John-Thor Dahlburg & Tyler Marshall, *Independence for Baltic States: Freedom: Moscow Formally Recognizes Lithuania, Latvia and Estonia, Ending Half a Century of Control. Soviets to Begin Talks Soon on New Relationships with the Three Nations.*, L.A. TIMES (Sept. 7, 1991), <https://www.latimes.com/archives/la-xpm-1991-09-07-mn-1530-story.html> [https://perma.cc/GKW4-VJQA] (archived Sept. 28, 2023).

143. Poland, Czechoslovakia, Hungary, Romania, Bulgaria, East Germany, and Albania were members of the Warsaw Pact, a military alliance with the Soviet Union. Yugoslavia, of which Slovenia and Croatia were part, was not a member of the Warsaw Pact, but remained a communist country. *The Warsaw Treaty Organization, 1955*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1953-1960/warsaw-treaty> (last visited Oct. 19, 2023) [https://perma.cc/43HQ-9CMH] (archived Sept. 28, 2023).

144. *Id.*

145. See, e.g., Monika Sieradzka, *Poland: 20 Years in NATO*, DEUTSCH WELLE (Mar. 12, 2019), <https://www.dw.com/en/after-20-years-in-nato-poland-still-eager-to-please/a-47862839> [https://perma.cc/6Z45-J8SH] (archived Sept. 28, 2023).

146. See, e.g., Anatoly Kurmanaev, *Latvia Revokes the License of TV Rain, A Major Independent Russian Channel*, N.Y. TIMES (Dec. 6, 2022), <https://www.nytimes.com/2022/12/06/world/europe/latvia-revokes-the-license-of-tv-rain-a-major-independent-russian-channel.html> [https://perma.cc/ZW43-FSUF] (archived Sept. 28, 2023).

147. Tamar Jacoby, *Living in Limbo: Displaced Ukrainians in Poland*, MIGRATION POLY INST. (Nov. 2, 2022), <https://www.migrationpolicy.org/article/living-limbo-displaced-ukrainians-poland> [https://perma.cc/Q6TA-KP4E] (archived Sept. 28, 2023) [hereinafter *Living in Limbo*].

horror in many Europeans, who condemned it as unthinkable after World War II.<sup>148</sup> At the same time, it also resonated as another move in a pattern of limited land grabs. Russia had launched an air, sea, and land invasion of Georgia in 2008 and occupied significant Georgian cities and towns, as well as the disputed South Ossetia territory. After several weeks, the Russian forces withdrew, having firmly wrested South Ossetia from Georgian control.<sup>149</sup>

Closer to EU territory, Russian military forces had invaded Crimea in February 2014 and installed pro-Russian government officials, who conducted a referendum and subsequently agreed to the annexation of Crimea by Russia.<sup>150</sup> Later, in August of the same year, Russian military vehicles entered the Donbas region in eastern Ukraine bringing firepower to back up separatist actions in Russian-speaking enclaves.<sup>151</sup> Warfare in the Donbas region continued for years; Ukraine reported in 2019 that 7 percent of its territory was temporarily occupied by Russian forces.<sup>152</sup>

Thus, it was possible to perceive the 2022 invasion as a third (after Crimea and the Donbas) limited incursion to snatch contiguous territory. Although there was a chance that the Russian army might advance throughout Ukraine and become long-term occupying forces,

---

148. See, e.g., Luke McGee, *Europe is Making Once-Unimaginable Decisions to Counter Putin's Aggression*, CNN (Mar. 3, 2022, 7:00 AM), <https://www.cnn.com/2022/03/02/europe/ukraine-putin-europe-security-analysis-intl-cmd> [<https://perma.cc/BG7S-QQ2C>] (archived Sept. 28, 2023); Ivan Krastev & Mark Leonard, *The Crisis of European Security: What Europeans Think About the War in Ukraine*, EUR. COUNCIL ON FOREIGN RELS. (Feb. 9, 2022), <https://ecfr.eu/publication/the-crisis-of-european-security-what-europeans-think-about-the-war-in-ukraine> [<https://perma.cc/ZB62-EEENS>] (archived Sept. 28, 2023); BBC Politics (@BBCPolitics), TWITTER (Feb. 15, 2022, 10:19 AM), <https://twitter.com/bbcpolitics/status/1493605789830979587> [<https://perma.cc/DY2Q-FTQY>] (archived Sept. 28, 2023) (“War has become unthinkable in Europe, and we have to make sure it stays that way,” says German Chancellor Olaf Scholz ‘I ask President Putin to send his negotiators with a positive mandate so that we can achieve progress’ <https://bbc.in/3LDBZuP>.”). Similar sentiments had also been expressed in the early 1990s during the Bosnian war, see, e.g., Fisher, *supra* note 9, and during the 1999 Serb bombing of Kosovo, William Drozdiak, *NATO's Newcomers Are Shaken by Airstrikes: Czechs, Hungarians Express Greatest Dismay*, WASH. POST, Apr. 12, 1999, at A17.

149. See Peter Dickinson, *The 2008 Russo-Georgian War: Putin's Green Light*, ATL. COUNCIL (Aug. 7, 2021), <https://www.atlanticcouncil.org/blogs/ukrainealert/the-2008-russo-georgian-war-putins-green-light/> [<https://perma.cc/QC6W-99EP>] (archived Sept. 28, 2023).

150. See Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS (Mar. 17, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/> [<https://perma.cc/42FF-GT6J>] (archived Sept. 28, 2023).

151. See Vlad Mykhnenko, *Expert Comment: Putin's War - How Did We Get Here? ... Ukraine 2014*, UNIV. OF OXFORD (Mar. 15, 2022), <https://www.ox.ac.uk/news/2022-03-15-expert-comment-putin-s-war-how-did-we-get-here-ukraine-2014> [<https://perma.cc/ZA7W-L3YY>] (archived Sept. 28, 2023).

152. See Press Release, General Assembly, Speakers Urge Peaceful Settlement to Conflict in Ukraine, Underline Support for Sovereignty, Territorial Integrity of Crimea, Donbas Region, U.N. Press Release GA/12122 (Feb. 20, 2019).

the recent pattern suggested that the Russians would be content after capturing a greater portion of Ukraine's eastern territory. If this occurred, it would be reasonable to expect that many of the Ukrainians granted temporary protection would return to the cities and towns still free from Russian control.<sup>153</sup>

#### E. *Women and Children Displaced from Ukraine*

On the day of the Russian invasion, Ukrainian President Zelensky issued a presidential decree declaring martial law and prohibiting male Ukrainian citizens between the ages of 18 and 60 from leaving Ukraine.<sup>154</sup> Consequently, most individuals who fled Ukraine were women and children under eighteen. In fact, the European Parliament reported that ninety percent of the population displaced by the armed conflict was female and young.<sup>155</sup> These demographics were influential in two ways. Women and children are traditionally perceived as vulnerable and in need of protection from warfare. Also, the fact that most husbands and fathers remained in Ukraine highlighted that many families were separated,<sup>156</sup> and conveyed the message that many

153. See Six months after the outbreak of war, many Ukrainians had returned to Ukraine. A September 2022 survey reported that 81% of the displaced still in the European Union planned to return to Ukraine. *The Desperate Uncertainty of Ukrainian Refugees*, THE ECONOMIST (Feb. 22, 2023), [https://www.economist.com/interactive/international/2023/02/22/ukrainian-refugees-remain-in-limbo?utm\\_medium=cpc.adword.pd&utm\\_source=google&ppccampaignID=17210591673&ppcadID=&utm\\_campaign=a.22brand\\_pmax&utm\\_content=conversion.direct-response.anonymous&gclid=CjwKCAjwp8OpBhAFEiwAG7NaEl2MOhGoLdegeg1LZIMU6KcK\\_ZJBH395eCsYAK5bfyhcoxWdau527BoCXB4QAvD\\_BwE&gclsrc=aw.ds](https://www.economist.com/interactive/international/2023/02/22/ukrainian-refugees-remain-in-limbo?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=CjwKCAjwp8OpBhAFEiwAG7NaEl2MOhGoLdegeg1LZIMU6KcK_ZJBH395eCsYAK5bfyhcoxWdau527BoCXB4QAvD_BwE&gclsrc=aw.ds) [https://perma.cc/KAT2-FMSM] (archived Oct. 19, 2023).

154. Introduction of a State of Emergency in Separate Regions of Ukraine, Presidential Decree No. 64/2022 (Feb. 24, 2022) (Ukr.). There are multiple exceptions, including medical conditions, men with three children under the age of 18, men who are raising on their own a child or children under the age of 18. *Exceptions: When a Man Can Leave Ukraine Under Martial Law*, VISIT UKRAINE (Mar. 22, 2022), <https://visitukraine.today/blog/102/exceptions-when-a-man-can-leave-ukraine-under-martial-law> [https://perma.cc/C6ED-4ZPR] (archived Oct. 19, 2023).

155. European Parliament Press Release IPR28229, War in Ukraine: Protecting Women Refugees from Violence and Sexual Exploitation (May 5, 2022); see also Iulia Lashchuk, *Time to Address the Absence of 'Gender' in the Temporary Protection Directive and its Recent Implementation*, in EU RESPONSES TO THE LARGE-SCALE REFUGEE DISPLACEMENT FROM UKRAINE, *supra* note 131, at 304, 311 (stating that, by November 2022, 4.7 million registered for temporary protection in the EU, 86% of whom are women and children, and most women fleeing held good levels of education, with 46% holding university or post-university degrees and 29% with vocational training).

156. See European Parliament Press Release IPR28229, *supra* note 155; Lashchuk, *supra* note 155, at 309–10 (reporting that 78% of those fleeing Ukraine are separated from immediate family members, and lack both family psychological and economic support).

mothers and children would return to Ukraine when it was safe to do so.<sup>157</sup>

This reinforced the idea that Ukrainians were seeking only a temporary safe haven, not a permanent home. Images of mothers pulling rolling suitcases as children carried their pets conveyed the impression that these families intended to return home soon.<sup>158</sup> These same images of women and small children fleeing bombed Ukrainian cities also underlined the idea that those displaced from Ukraine were victims of war, not economic migrants. Indeed, the labor shortages in Poland, Germany, and the Czech Republic, where fifty percent of those displaced from Ukraine reside, made the arrival of workers attractive.<sup>159</sup> Moreover, two-thirds of the adult Ukrainian women had post-secondary education, which was higher than the average in Poland, in particular, and in the European Union in general.<sup>160</sup>

#### F. *Visa-Free Travel in the European Union for Ukrainians*

As the EU Council focused on the military invasion of a neighboring European country, the Council was well aware that Ukrainians already had the right to enter and travel throughout the EU Member States without any visa or passport formalities. In 2017, the European Union and Ukraine had entered an agreement allowing Ukrainian citizens with biometric passports to enter the European Union without a visa.<sup>161</sup> The agreement provides Ukrainians with the right to remain lawfully in the European Union for up to ninety days

157. A September 2022 survey reported that 81% planned to return to Ukraine. *The Desperate Uncertainty of Ukrainian Refugees*, *supra* note 153.

158. See, e.g., Monika Sieradzka Przemysl, *Thousands of Ukrainians Cross Polish Border*, DEUTSCHE WELLE (Feb. 27, 2022), <https://www.dw.com/en/eyewitness-thousands-of-ukrainians-flood-polish-border/a-60937731> [<https://perma.cc/5E4Z-PDFW>] (archived Sept. 28, 2023); Omer Karasparan, *Ukrainian Refugees: Challenges in a Welcoming Europe*, BROOKINGS (Oct. 14, 2022), <https://www.brookings.edu/articles/ukrainian-refugees-challenges-in-a-welcoming-europe/> [<https://perma.cc/ZSJ4-2V62>] (archived Sept. 29, 2023) (reporting that many returned relatively quickly from the EU to Ukraine in order to reunite with the men in their families who remained in Ukraine).

159. See *The Desperate Uncertainty of Ukrainian Refugees*, *supra* note 153.

160. *Id.*

161. In May 2016 the European Commission recommended that Ukrainian nationals should be able to travel in the European Union without visas for business and tourism reasons. The Council of the European Union agreed. *Visas: Council Confirms Agreement on Visa Liberalization for Ukrainians*, EUR. UNION EXTERNAL ACTION (Mar. 3, 2017), [https://www.eas.europa.eu/node/21907\\_en](https://www.eas.europa.eu/node/21907_en) [<https://perma.cc/K55N-2DHK>] (archived Oct. 19, 2023). The European Parliament approved the recommendation in April 2017 and the new policy went into effect in June 2017. *Visa free Travel for Ukrainians Comes into Force*, EUR. UNION EXTERNAL ACTION (June 11, 2017), [https://www.eas.europa.eu/node/27990\\_en](https://www.eas.europa.eu/node/27990_en) [<https://perma.cc/2VMT-DUMA>] (archived Sept. 28, 2023); see Agreement between the European Union and Ukraine Amending the Agreement between the European Community and Ukraine on the Facilitation of the Issuance of Visas, art. 1, 2013 O.J. (L 168) 11).

within any 180-day period.<sup>162</sup> Ukrainians embraced this new law enthusiastically. Within the first three years Ukrainians, whose population totals roughly 40 million, had made 49 million visa-free trips to the European Union.<sup>163</sup> As a result, millions of Ukrainians knew they had unimpeded access to the European Union. Millions had personally experienced the ease of travel throughout the twenty-seven EU Member States.

### G. *The Ukrainian Diaspora in the European Union*

The of EU-Ukraine visa-free travel law is connected to another important demographic reality: the substantial Ukrainian diaspora throughout the European Union. By early 2022, more than 1.5 million Ukrainians had acquired lawful residence in the European Union.<sup>164</sup> As would be expected, many lived in EU States that border on Ukraine. For example, statistics showed 650,000 Ukrainians with residence permits in Poland.<sup>165</sup> There were 193,000 Ukrainians residing lawfully in the Czech Republic, 63,000 in Hungary, 55,000 in Slovakia, and 33,000 in Lithuania.<sup>166</sup>

Perhaps more importantly, large numbers of Ukrainians also were lawful residents of EU Member States located further west. The second largest number of lawfully resident Ukrainians in the European Union lived in Italy, where 230,000 had residence permits.<sup>167</sup> Spain, with

162. *Visa free Travel for Ukrainians Comes into Force*, *supra* note 161; *see also* Regulation 2018/1806 of the European Parliament and of the Council of 14 November 2018, Listing the Third Countries Whose Nationals Must be in Possession of Visas When Crossing External Borders and Those Whose Nationals are Exempt from that Requirement, ¶ 3, annex II n. 4 2018 O.J. (L 303) 39 (instructing that the “determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be made on the basis of a considered, case-by-case assessment of a variety of criteria”). News reports in the early days of the Russian invasion indicated that authorities at the external borders of the EU bordering on Ukraine did not limit visa-free travel to those with biometric passports. *See, e.g.*, Julia Dahm & Oliver Noyan, *EU Countries Set to Drop Barriers for Ukraine Refugees*, EURACTIV (Mar. 2, 2022), <https://www.euractiv.com/section/justice-home-affairs/news/eu-countries-set-to-drop-barriers-for-ukraine-refugees> [https://perma.cc/N2EX-CYEU] (archived Sept. 28, 2023).

163. *Ukrainians Have Made Nearly 49 Million Trips to EU, During Three Years of Visa-Free Travel*, SCHENGEN VISA (June 19, 2020), <https://www.schengenvisainfo.com/news/ukrainians-have-made-nearly-49-million-trips-to-eu-during-three-years-of-visa-free-travel/> [https://perma.cc/G9LF-JBGE] (archived Sept. 28, 2023).

164. *Ukrainian Citizens in the EU*, EUROSTAT STAT. EXPLAINED, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Ukrainian\\_citizens\\_in\\_the\\_EU&oldid=572558](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Ukrainian_citizens_in_the_EU&oldid=572558) (last visited Oct. 19, 2023) [https://perma.cc/52VX-5XGH] (archived Sept. 20, 2023).

165. *Id.*

166. *Id.*

167. *Id.*

97,000 Ukrainian lawful residents, was an important destination.<sup>168</sup> Portugal, too, was home to 27,000 Ukrainians with residence permits.<sup>169</sup> Throughout the European Union, more than a million Ukrainians had stable homes, jobs, and neighbors who employed them and knew them as members of the community. Thus, before the invasion, Ukrainians had a widespread and integrated presence in many EU Member States.

#### H. *The EU Implementing Decision of March 4, 2022*

Against the backdrop of a massive invasion of a country that neighbors multiple EU Member States, the EU Commission presented its first temporary protection proposal and the Council of the European Union voted on March 4, 2022, to activate the EU Temporary Protection Directive for the first time. The EU Council's decision was unanimous. It is noteworthy that Poland, Hungary, and Slovakia, three EU States that had been recalcitrant to admitting Syrian and other refugees in the past,<sup>170</sup> border Ukraine. These three States together had already experienced the arrival of more than 600,000 people displaced from Ukraine.<sup>171</sup>

In its March 4th Decision to Implement the Temporary Protection Directive, the Council of the European Union emphasized the armed invasion, the scale of people displaced, the visa-free travel regime, and the anticipated role the Ukrainian diaspora would play. The EU Council underscored the military dimension:

Following the invasion, which seeks to undermine European and Global security and stability, the European Council . . . condemned Russia's unprovoked and unjustified military aggression against Ukraine. . . . The European Council

---

168. *Id.*

169. *Id.*

170. The European Council approved a plan in September 2015 to relocate asylum seekers from Greece and Italy to other EU States according to a formula that took into account size, population density, gross domestic product, unemployment rate, and number of asylum seekers per inhabitant. Council Decision 2015/1601 of 22 September 2015, Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, art. 4, 2015 O.J. (L 248) 80 (EC). Hungary's allotment was 1,294, Slovakia's was 802; in contrast, for example, Germany's was 17,036. *Id.* at anns. 1–2. Hungary and Slovakia defied the Council's decision and filed suit against the Council in the Court of Justice of the European Union. Poland later intervened to support Hungary and Slovakia. Joined Cases C-643/15 & C-647/15, *Slovak Republic & Hungary v. Council*, 2017 E.C.L.I. C-631. The CJEU unanimously ruled against the plaintiffs and upheld the Council's decision. *Id.* Hungary, Poland, and Slovakia announced they would defy the CJEU and refuse to admit relocated asylum seekers. For further discussion, see Maryellen Fullerton, *Borders, Bans, and Courts in the European Union*, 23 ROGER WILLIAMS L. REV. 393, 408–18 (2018).

171. See Council Implementing Decision, *supra* note 129, at ¶ 5 (stating that 650,000 had arrived by March 1, 2022 in Poland, Hungary, Slovakia, and Romania).

demanded Russia's full respect for Ukraine's territorial integrity, sovereignty and independence within its internationally recognized borders, which includes Ukraine's right to choose its own destiny. The European Council also confirmed that the Russian government bears full responsibility for its act of aggression, which is causing human suffering and loss of lives, and that it will be held accountable for its actions.<sup>172</sup>

The EU Council also accentuated the scale of the anticipated displacement and the substantial "migratory pressure" on the eastern borders of the European Union:

As of 1 March 2022, more than 650,000 displaced persons had arrived in the Union from Ukraine through Poland, Slovakia, Hungary, and Romania. Those numbers are expected to increase. . . . Depending on how the conflict evolves, based on current estimations, the Union is likely to be faced with a very large number of displaced persons, potentially between 2.5 million and 6.5 million as a consequence of the armed conflict, of whom it is anticipated that between 1.2 million and 3.2 million would be persons seeking international protection. The United Nations High Commissioner for Refugees estimates that, under the worst-case scenario, up to 4 million people may potentially flee Ukraine.<sup>173</sup>

The size of the anticipated influx from Ukraine, according to the EU Council, created a "clear risk" to the functioning of the asylum systems in Member States.<sup>174</sup> The Commission and Council had apparently not seen such a risk in the prior arrivals of large groups of forced migrants.

In assessing whether to activate temporary protection throughout the European Union, the Council highlighted the significance of the visa-free travel regime for Ukrainians:

Ukrainian nationals, as visa-free travellers, have the right to move freely within the Union after being admitted into the territory for a 90-day period. [Once granted temporary

---

172. *Id.* at ¶ 3.

173. *Id.* at ¶¶ 5–6.

174. *Id.* at ¶ 7.



protection, they will continue to have] the right to travel within the Union for 90 days within a 180-day period.<sup>175</sup>

The Council also stressed the breadth and depth of the Ukrainian diaspora and estimated that at least 50 percent of those granted temporary protection would stay with family members and friends in the European Union, who would provide lodging and help them find work:

Based on the experience gained from the aftermath of the 2014 Russian illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol, and from war in the east of Ukraine, the expectation is that half of the Ukrainians coming to the Union, benefitting from visa-free travel for short-stays, will join family members or seek employment in the Union, whilst the other half will request international protection.<sup>176</sup>

In light of these factors, the Council of the European Union concluded that the mass influx of people displaced from Ukraine by the Russian military invasion launched on February 24, 2022, should be granted temporary protection. The mass influx grew, and the pace of displacement accelerated. Within three weeks, 3 million had fled Ukraine, and 6 million more had been displaced within Ukraine.<sup>177</sup>

The Council's momentous Implementing Decision is remarkably brief, consisting of just four articles. The first article contains one sentence and establishes the existence of a mass influx of displaced persons leaving Ukraine for the European Union. The second article defines the categories of individuals entitled to temporary protection, while the third discusses cooperation and monitoring. The fourth article, only one sentence, establishes March 4, 2022, as the effective date.<sup>178</sup>

Despite its brevity, the EU Council's Implementing Decision sets forth broad protections. They apply in all twenty-seven EU Member States and they guarantee Ukrainians the right to remain lawfully for up to three years.<sup>179</sup> Those granted temporary protection have the right to work, go to school, receive social services, and apply for asylum should they choose to do so. Furthermore, Ukrainians have the right

---

175. *Id.* at ¶ 16.

176. *Id.* at ¶ 6. International protection, in this context, means refugee status or subsidiary protection status.

177. U.N. High Comm'r for Refugees, Ukraine Situation: Flash Update #4 (Mar. 18, 2022), <https://data.unhcr.org/en/documents/details/91448> [<http://perma.cc/X8W2-GTPV>] (archived Sept. 27, 2023).

178. See Council Implementing Decision, *supra* note 129, at art. 4.

179. *Id.* at ¶ 21. The initial period is one year, followed by two automatic six-month renewals. The Council may extend protection by one more year, for a total of three years. *Id.*

to choose the EU Member State in which to apply for temporary protection:

[As visa-free travellers, Ukrainians] are able to choose the Member State in which they want to enjoy the rights attached to temporary protection and to join their family and friends across the significant diaspora networks that currently exist across the Union. This will in practice facilitate a balance of efforts between Member States, thereby reducing the pressure on national reception systems.<sup>180</sup>

The EU Council's Implementing Decision prohibits EU States from selecting which Ukrainians to receive or setting quotas on the numbers registering for temporary protection.<sup>181</sup> Distant States like Portugal must provide temporary protection, as must Poland and other EU States bordering Ukraine. EU States reputed to be economic powerhouses, such as Germany, must grant temporary protection to the applicants who arrive. So too must States, such as France, that are reputed to have generous social benefits. The choice of country of temporary protection is up to those displaced from Ukraine.<sup>182</sup>

The heart of the Implementing Decision is Article 2, defining those entitled to temporary protection. The definition is broad in some respects and narrow in others. The key factors are nationality, family membership, type of residence permit, and date of residence. Three groups are entitled to temporary protection, with the right to reside, work, and receive social and educational benefits. They include (1) Ukrainian nationals residing in Ukraine when Russia invaded;<sup>183</sup> (2) non-Ukrainian nationals who had previously been granted asylum in Ukraine;<sup>184</sup> and (3) non-Ukrainian nationals living in Ukraine on permanent residence permits, so long as they cannot return safely to their homelands.<sup>185</sup> Individuals in all three categories must have been residing in Ukraine prior to February 24, 2022, the day Russian forces invaded.

---

180. *Id.* at ¶ 16.

181. *See id.* at ¶¶ 11–13.

182. *Id.* at ¶ 16.

183. *Id.* at art. 2(1)(a)–(c).

184. *Id.* at art. 2(1)(c) (specifying that family members, as well as those listed in article 2(1)(b) [stateless persons and nationals of third-countries who have received international protection in Ukraine], are entitled to temporary protection).

185. *Id.* at art. 2(2). With regard to lawfully resident stateless persons or third-country nationals, Article 2 provides Member States with the option of relying on EU temporary protection law or their national protection laws so long as national law offers adequate levels of protection.

Family members of the first two groups—Ukrainian nationals and those granted asylum or equivalent protection in Ukraine—are also entitled to temporary protection. Family members are defined broadly to include a spouse, unmarried partner in a stable relationship, minor unmarried children, and other close relatives who lived together as part of the family.<sup>186</sup> Notably, the Implementing Decision does not extend temporary protection to family members of the third group, long-term residents of Ukraine who are unable to return safely to their homeland.<sup>187</sup>

The EU Council Implementing Decision does not guarantee temporary protection to short-term lawful residents of Ukraine, such as students and temporary workers,<sup>188</sup> but grants Member States the discretion to include these individuals in the temporary protection program if they cannot return safely to their country of origin.<sup>189</sup> Whether or not a Member State grants temporary protection to those holding short-term residence permits in Ukraine, the Implementing Decision exhorts Member States to admit them on humanitarian grounds and dispense with visas or other travel documents as they try to escape the war and make their way back to their homelands.<sup>190</sup>

In addition to allowing flexibility regarding short-term residents, the Implementing Decision confers significant discretion on other matters that broaden temporary protection. It encourages Member States to provide temporary protection to Ukrainian nationals and lawful permanent residents who fled Ukraine shortly before February 24, 2022.<sup>191</sup> Similarly, it encourages Member States to provide temporary protection to Ukrainians who were already present in the European Union when the war started if they cannot return to Ukraine due to the armed conflict.<sup>192</sup>

Article 2 of the Implementing Decision acknowledges that some Member States have national temporary protection laws that provide more favorable treatment than that required by the EU Temporary Protection Directive. These Member States may provide more favorable treatment if they wish to do so.<sup>193</sup> Member States with less favorable national temporary protection systems must ensure that

---

186. *Id.* at art. 2(4).

187. *Id.* at art. 2(4)(c) (limiting protected family members to families of Ukrainian nationals and those already receiving asylum or similar protection in Ukraine).

188. *See id.* at ¶ 13 (stating that Member States have the discretion to grant short-term Ukraine residents who cannot return safely to their homeland with temporary protection status). As short-term residents are not included in the temporary protection decision, neither are their family members protected by the EU-wide program. *See id.* at art. 4.

189. *Id.* at ¶ 13, art. 2(3).

190. *Id.* at ¶ 13.

191. *Id.* at ¶ 14.

192. *Id.*

193. *Id.* at ¶ 17.

displaced Ukrainians receive the additional rights specified by the EU-wide temporary protection program.<sup>194</sup>

The grounds for excluding individuals from temporary protection are barely mentioned. They appear in a preambular clause that briefly reiterates the exclusions listed in the 2001 Temporary Protection Directive.<sup>195</sup>

Article 3, concerning the coordination of EU efforts, contains only two paragraphs. It instructs the EU Commission to keep information flowing among Member States and to cooperate with EU agencies as well as Member States in monitoring and reviewing the situation.<sup>196</sup> It calls on Member States to use the recently initiated EU Migration Preparedness and Crisis Management Network as a way to share relevant data.<sup>197</sup> The Council also ordered the newly created EU Asylum Agency, the EU Border and Coast Guard Agency (Frontex), and the EU Law Enforcement Cooperation Agency (Europol) to provide operational support to Member States who are responding to the new temporary protection program.<sup>198</sup>

Article 4, the concluding provision, stipulates the entry into force of the Implementing Decision on March 4, 2022.<sup>199</sup> Temporary protection extends initially for a one-year period, followed automatically by two six-month periods.<sup>200</sup> The Council expressly noted that it may extend temporary protection for a third year. It may also end protection earlier if safe return to Ukraine becomes possible.<sup>201</sup>

One of the most important and surprising details of the EU's first temporary protection program does not appear in the four articles of the Implementing Decision. Instead, one of the preambular clauses states that the Member States agree that they will not apply the take-

---

194. *Id.*

195. *Id.* at ¶ 18. This recital states these exclusions: a displaced person who has committed a crime against peace, a war crime, or a crime against humanity; a serious non-political crime prior to seeking temporary protection; has been found guilty of acts contrary to the purposes and principles of the UN; is a danger to the security of the host Member State; or is a danger to the community of the host Member State. *Id.* With regard to the first three exclusions, there must be “serious reasons” for considering a person has committed the specified act; the last two exclusions require “reasonable grounds” for the conclusion. *Id.*

196. *Id.* at art. 3(2).

197. *Id.* at art. 3(1).

198. *Id.* at art. 3(2).

199. *Id.* at art. 4 (specifying that the entry into force will be the day of its publication in the Official Journal of the European Union, which took place on March 4, 2022).

200. *Id.* at ¶ 21.

201. *Id.* These time periods track the framework set forth in the Temporary Protection Directive, *supra* note 26, at art. 6.

back provision of the Temporary Protection Directive.<sup>202</sup> Consequently, no State has the obligation to accept back into its territory a displaced person who had been there earlier. This agreement has enormous consequences for the frontline states. The four EU neighboring countries have a total of thirty-one border checkpoints with Ukraine,<sup>203</sup> and it is through these locations that millions of Ukrainians flee by foot, car, bus, or train.<sup>204</sup> Most individuals leaving Ukraine first enter Poland, Slovakia, Hungary, or Romania. If the displaced people move to other EU Member States, the four frontline countries are not obliged later to take the Ukrainians back.<sup>205</sup>

This decision to put aside the take-back provision sets temporary protection on a truly EU-wide approach. It is a stark contrast to the “Dublin system” that applies in the EU-wide asylum system. Pursuant to the Dublin system, Member States on the external borders of the European Union must take back most asylum seekers who travel from a frontline state to the interior of the European Union and are generally responsible for processing most of the asylum applications.<sup>206</sup> Because the temporary protection take-back provision is not applicable, Ukrainians need not seek temporary protection in the first EU State they enter. Ukrainians have the freedom—using their ability to travel without visas throughout the European Union—to choose the EU State in which to reside and seek temporary protection.<sup>207</sup>

Eliminating a take-back requirement does more than relieve pressure on the frontline states. As the Council recognized, it also benefits the forced migrants, who can choose where to reside. Joining their family and friends helps the new arrivals forge ties in the community and assists with the integration process.<sup>208</sup>

---

202. *Id.* at ¶ 15. Member States “will not apply Article 11 of Directive 2001/55/EC,” which states: “A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorization onto, the territory of another Member State during the period covered by the Council decision . . . Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.” Temporary Protection Directive, *supra* note 26, at art. 11.

203. Youyou Zhou, Nicole Narea & Christina Amnimashaun, *Europe’s Embrace of Ukrainian Refugees*, VOX (Mar. 19, 2022, 8:00 AM), <https://www.vox.com/22983230/europe-ukraine-refugees-charts-map>. [https://perma.cc/4JU8-FS6X] (archived Sept. 27, 2023). Most Ukrainians flee through Moldova and four EU countries, Hungary, Poland, Romania, and Slovakia. *Id.*

204. See generally U.N. High Comm’r for Refugees, Ukraine Situation: Flash Update #9 (Apr. 21, 2022), <https://data.unhcr.org/en/documents/details/92200> [http://perma.cc/3Q7R-NFCJ] (archived Sept. 27, 2023) [hereinafter Flash Update #9].

205. See EUR. UNION AGENCY FOR ASYLUM, PROVIDING TEMPORARY PROTECTION TO DISPLACED PERSONS FROM UKRAINE 15–16 (2023) [hereinafter EUAA TEMPORARY PROTECTION REPORT].

206. Eirik Christophersen, *A Few Countries Take Responsibility for Most of the World’s Refugees*, NRC (June 30, 2023), <https://www.nrc.no/shorthand/fr/a-few-countries-take-responsibility-for-most-of-the-worlds-refugees/index.html> [https://perma.cc/P4MM-4VPG] (archived Oct. 21, 2023).

207. Council Implementing Decision, *supra* note 129, at ¶ 16.

208. *Id.*

The ability to freely choose an EU destination does not mean Ukrainians will be constantly moving throughout the European Union. Once they apply for temporary residence, they generally must seek benefits, such as work authorization and access to education, only from that Member State.<sup>209</sup> Their visa-free travel status allows them freedom to travel throughout the European Union, but there will be only one Member State in which they can work, obtain social benefits, and send their children to school.<sup>210</sup>

The four operative articles of the Implementing Decision did not address the logistical challenges and financial costs of temporary protection. The Council highlighted in the preamble the enormous resource gap: Member States had reported 300,000 places available for the 2.5 million to 6.5 million Ukrainians likely to be displaced.<sup>211</sup> The Council's response was to call on Member States to exchange information and reception capabilities via a "Solidarity Platform" in order to continually update a dynamic situation.<sup>212</sup>

With regard to financial costs, the preamble declared that "[a]ll the efforts of Member States to comply with the obligations deriving from this Decision will be supported financially by the Union Funds."<sup>213</sup> The Council did not quantify the forthcoming financial assistance, but it noted that the EU Civil Protection Mechanism was already providing valuable humanitarian assistance to Moldova, Poland, Slovakia, and the Czech Republic to shelter and care for Ukrainians arriving in their territory.<sup>214</sup>

---

209. See generally *id.*; see EUAA TEMPORARY PROTECTION REPORT, *supra* note 205, at 15 ("Ukrainian nationals, as visa-free travellers, have the right to move freely within the Schengen area for a 90-day period. In practice, this allowed beneficiaries of temporary protection to choose the EU country of their preference where to receive the rights attached to temporary protection."). This provision also states that a Member State may decide to issue, at any time, a residence permit to persons already enjoying temporary protection under the Implementing Decision. Council Implementing Decision, *supra* note 129, at ¶ 16.

210. Council Implementing Decision, *supra* note 129, at ¶ 16 ("[T]he person enjoying temporary protection, whilst having the right to travel within the Union for 90 days within a 180-day period, should be able to avail of the rights derived from temporary protection only in the Member State that issued a residence permit.").

211. See *id.* at ¶¶ 6, 20.

212. *Id.* at ¶ 20.

213. *Id.* at ¶ 22.

214. *Id.* Member States with specific emergency needs related to displaced persons from Ukraine may seek support from Emergency and Flexibility Funding of the EU Multiannual Financial Framework 2021–2027. The Union Civil Protection Mechanism coordinates efforts by Member States and the EU institutions to respond to natural and man-made disasters. Regulation 2021/836 of the European Parliament and of the Council of 20 May 2021, Amending Decision No. 1313/2013/EU on a Union Civil Protection Mechanism, ¶¶ 1–2, 2021 O.J. (L 185) 1. In light of the EU experience with the COVID pandemic, Regulation 2021/836 amended the Union Civil Protection Mechanism to improve its scope and effectiveness. *Id.* at ¶ 3.

#### IV. THE ROLLOUT OF TEMPORARY PROTECTION IN THE EUROPEAN UNION

The Council's March 4, 2022, Decision predicted a "mass influx of displaced Ukrainians" in need of "immediate and temporary refuge,"<sup>215</sup> and the prediction came true at lightning speed. By March 15, 2022, 3 million had fled Ukraine.<sup>216</sup> Underscoring the tempo, one commentary noted: "It took three weeks for 3 million to leave Ukraine . . . When 3 million Syrians fled their country due to war, it took two years to reach that milestone."<sup>217</sup>

As the war accelerated, the exodus from Ukraine was greater than the Council had predicted. Eight weeks into the war, the United Nations High Commissioner for Refugees (UNHCR) reported that more than 5 million had fled Ukraine while 7.7 million remained internally displaced within Ukraine.<sup>218</sup> Record numbers of Ukrainians entered neighboring countries:<sup>219</sup>

<u>Country</u>	<u>Population</u>	<u>Ukrainians</u>
Poland	38 million	2.7 million
Romania	19 million	727,000
Hungary	10 million	447,000
Slovakia	5.5 million	330,000
Moldova (non-EU)	4 million	485,000

EU countries bordering Ukraine welcomed Ukrainians and registered them for immediate assistance. This imposed immense logistical burdens on all the frontline countries, particularly Poland, which had received close to three million displaced persons. There was some measure of relief from knowing that the primary obligation to host Ukrainians fleeing from the war would not necessarily rest with them. Indeed, government announcements indicated that many Ukrainians had departed the frontline countries. Hungary, for example, reported on March 8, 2022, that a large majority of the arriving Ukrainians had continued to other countries to stay with relatives.<sup>220</sup> Of the first 180,000 Ukrainians who crossed into Hungary,

215. Council Implementing Decision, *supra* note 129, at ¶¶ 7, 9.

216. U.N. High Comm'r for Refugees, Ukraine Situation: Flash Update #3 (Mar. 15, 2022), <https://data.unhcr.org/en/documents/details/91355> [<https://perma.cc/F6EL-PPQG>] (archived Sept. 27, 2023).

217. Zhou, Narea & Animashaun, *supra* note 203.

218. Flash Update #9, *supra* note 204.

219. *Timeline of Ukrainian Refugees Reaching EU Countries Amid Russian Invasion*, SCHENGENVISA (Mar. 24, 2022), <https://www.schengenvisa.info/news/timeline-of-ukrainian-refugees-reaching-eu-countries-amid-russian-invasion/> [<https://perma.cc/4EUX-G5R8T4FV-EQRQ>] (archived Sept. 27, 2023) [hereinafter *Timeline*].

220. *Id.* (citing to data found under the March 8, 2022 section).

only 3,200 needed government-provided emergency housing.<sup>221</sup> Around the same time, Poland reported that 200,000 Ukrainians had departed, transported free of charge by Polish Rail, for other EU Member States.<sup>222</sup> By mid-April, UNHCR reported that more than 2 million of those displaced from Ukraine had moved onward from frontline States to other EU countries.<sup>223</sup>

European countries distant from the European Union's eastern border publicly welcomed Ukrainians. In the first weeks of the invasion, France and Norway announced they were each prepared to receive 100,000 Ukrainians from the frontline countries.<sup>224</sup> At the end of the fifth week of the war, Germany, the Czech Republic, and Austria each reported that they had received more than 200,000 Ukrainians; additionally, Italy reported 60,000, and Spain reported approximately 35,000.<sup>225</sup> In fact, many thought the actual numbers were much higher. Spain's Ministry of Inclusion believed that 70,000 Ukrainians had come to Spain in the first five weeks but many had not been registered because they had traveled visa-free directly to the homes of their friends and relatives already residing in Spain.<sup>226</sup>

Many of those displaced from Ukraine found accommodations in private homes. Italy and Belgium reported that close to 90 percent of Ukrainians were living with family or friends.<sup>227</sup> In Finland and Latvia, the share of privately accommodated displaced persons was roughly 65 percent.<sup>228</sup> Poland, nearest to Ukraine, featured an

---

221. *Id.* (citing to data found under the March 9, 2022 section). For similar data, see *id.* under the March 19, 2022 section.

222. *Id.* (citing to data found under the March 22, 2022 section).

223. U.N. High Comm'r for Refugees, Ukraine Situation: Revised Supplementary Appeal 2022, at 4 (Apr. 2022), <https://reporting.unhcr.org/ukraine-situation-revised-supplementary-appeal> [<https://perma.cc/2JNJ-LDVR>] (archived Sept. 27, 2023) [hereinafter U.N. Revised Supplementary Appeal 2022].

224. *Timeline*, *supra* note 219 (citing data found under the March 11, 2022 section with respect to France, and citing to data found under the March 22, 2022 section with respect to Norway, a non-EU Member State). Latvia had received 4,300 Ukrainians from Poland. *Id.* (citing to data found under the Mar. 10, 2022 section). Germany registered 123,000 Ukrainians and was planning to receive 2,500 who had fled first to Moldova. *Id.* (citing to data found under the March 14, 2022 section).

225. Carmen González Enríquez, *The Welcome Given to Ukrainian Refugees: Some Challenges and Uncertainties*, REAL INSTITUTO ELcano (Apr. 18, 2022), <https://www.realinstitutoelcano.org/en/analyses/the-welcome-given-to-ukrainian-refugees-some-challenges-and-uncertainties/> [<https://perma.cc/5PCP-APT4>] (archived Sept. 27, 2023).

226. *Id.*

227. *Housing Support for Ukrainian Refugees in Receiving Countries*, OECD (July 27, 2022), <https://www.oecd.org/ukraine-hub/policy-responses/housing-support-for-ukrainian-refugees-in-receiving-countries-9c2b4404/#component-d1e949> [<https://perma.cc/WJS6-6T77>] (archived Sept. 27, 2023) [hereinafter *Housing Support*].

228. *Id.*



extensive network of private accommodations coordinated by nonprofit groups.<sup>229</sup>

Multiple EU Member States elected to provide temporary protection more generously than required by the Council's Implementing Decision. This benefited both short-term residents of Ukraine and Ukrainian nationals. Spain, for example, learned that 500,000 non-Ukrainians were part of the exodus from Ukraine. As a result, Spain authorized temporary protection for those holding short-term residence permits in Ukraine, as well as for Ukrainian citizens and for non-citizens with long-term permits.<sup>230</sup> In addition, the Spanish government identified roughly 15,000 Ukrainians who had entered Spain prior to February 24, 2022. Spain concluded that they would have difficulty in returning to Ukraine and ruled that they, too, were eligible for temporary protection.<sup>231</sup>

Other EU Member States also applied temporary protection more broadly than the Council's Implementing Decision required. Sweden authorized temporary protection for Ukrainians who had entered Sweden between October 2021 and February 23, 2022.<sup>232</sup> Poland allowed non-Ukrainians who had been on short-term residence permits to register for temporary protection.<sup>233</sup> Many EU States eliminated waiting periods and language requirements for Ukrainians. Finland ruled that Ukrainians are authorized to work immediately as soon as they register for temporary protection, without waiting for a residence permit.<sup>234</sup> Denmark similarly stated that Ukrainians will have immediate access to health services while the temporary protection registration process is underway.<sup>235</sup> Lithuania exempted Ukrainians from any language requirements for employment.<sup>236</sup>

The European Council developed an EU-wide program to coordinate information on beneficiaries of temporary protection and to map reception capacity available for those needing accommodations.<sup>237</sup> In early April, the EU Council adopted legislation making €17 billion in EU funds available to assist Member States in welcoming displaced persons from Ukraine.<sup>238</sup> A week later, the EU Council made available

---

229. *Id.*

230. Enríquez, *supra* note 225.

231. *Id.*

232. *Timeline, supra* note 219 (citing to data found under the April 8, 2022 section).

233. *Id.* (citing to data found under the April 4, 2022 section).

234. *Id.* (citing to data found under the April 8, 2022 section).

235. *Id.* (citing to data found under the April 12, 2022 section).

236. *Id.* (citing to data found under the April 4, 2022 section).

237. See European Commission Press Release IP/22/2152, Home Affairs Council: 10-Point Plan on Stronger European Coordination on Welcoming People Fleeing the War in Ukraine ¶¶ 1–2 (Mar. 28, 2022).

238. European Council Press Release 335/22, Ukraine: €17 Billion of EU Funds to help Refugees (Apr. 4, 2022).

an additional €3.5 billion to EU States hosting those fleeing Ukraine.<sup>239</sup>

By the end of April 2022, nine weeks after the war began, 5.5 million had escaped Ukraine.<sup>240</sup> The pace slowed, as the Russian military withdrew from the middle of the country, and there were reports that 1 million had crossed the border back into Ukraine.<sup>241</sup> No one knew whether these were quick visits to find relatives and retrieve belongings, short exploratory trips, or sustainable returns.<sup>242</sup>

Of the 5.5 million displaced from Ukraine, 2.3 million had registered for temporary protection in the European Union.<sup>243</sup> An additional 22,000 had applied for asylum.<sup>244</sup> From this vantage point, the EU's first implementation of temporary protection was an extraordinary success. The dynamic and evolving situation meant that some of the statistics might not be reliable, and the continuing aerial bombardments of Ukrainian cities and developments on the battlefield meant that the circumstances could change.<sup>245</sup> Nonetheless, the initial rollout of temporary protection throughout the European Union for millions of displaced Ukrainians was impressive.

---

239. European Council Press Release 367/22, Ukraine: EU Countries to Receive €3.5 Billion in Additional Pre-Financing for Hosting Refugees (Apr. 12, 2022).

240. See *Timeline*, *supra* note 219 (noting that as of April 29, 2022, 5,468,629 people fled the war in Ukraine beginning on February 24, 2022, to surrounding countries).

241. See Anastasia Malenko, *Returning Ukrainian Refugees Say There's No Place Like Home*, WALL STREET J. (Aug. 9, 2023), <https://www.wsj.com/articles/returning-ukrainian-refugees-say-theres-no-place-like-home-56cd2969> [<https://perma.cc/86YP-DEGG>] (archived Oct. 21, 2023); see also U.N. High Comm'n for Refugees, Ukraine Refugee Situation, <https://data2.unhcr.org/en/situations/ukraine> (last visited Sept. 19, 2023) [<https://perma.cc/TY7D-EZWE>] (archived Sept. 19, 2023) (providing general data on Ukrainian refugee numbers in EU countries and around the globe) [hereinafter Ukraine Refugee Situation].

242. See, e.g., Ayen Bior, Ari Shapiro & Matt Ozug, *Millions Rushed to Leave Ukraine. Now the Queue to Return Home Stretches for Miles*, NAT'L PUB. RADIO (May 20, 2022, 5:00 AM), <https://www.npr.org/2022/05/20/1099876370/ukraine-russia-poland-border-return> [<https://perma.cc/F3AY-HYNJ>] (archived Sept. 19, 2023).

243. See *Timeline*, *supra* note 219; see also *2.3 Million Ukrainian Refugees Are Registered for Protection in the EU, EUAA Reveals*, SCHENGEN VISA (Apr. 28, 2022), <https://www.schengenvisa.info.com/news/2-3-million-ukrainian-refugees-are-registered-for-protection-in-the-eu-euaa-reveals/> [<https://perma.cc/T4CR-UMRZ>] (archived Sept. 19, 2023).

244. *Timeline*, *supra* note 219; see *Ukrainian Refugees Have Submitted 21,700 Asylum Applications Since the War Began, EUAA Reveals*, SCHENGEN VISA (Apr. 28, 2022), <https://www.schengenvisa.info.com/news/ukrainian-refugees-have-submitted-21700-asylum-applications-since-the-war-began-euaa-reveals/> [<https://perma.cc/Z3ZA-D4EE>] (archived Sept. 19, 2023).

245. See, e.g., *Data Analysis and Research*, EUR. UNION AGENCY FOR ASYLUM, <https://euaa.europa.eu/asylum-knowledge/data-analysis-and-research> (last visited Oct. 21, 2023) [<https://perma.cc/3E34-CWSC>] (archived Sept. 20, 2023) (explaining that its reported asylum data aims to be "as consistent as possible" with statistics collected in line with European Union regulations).

At the same time, there was a recognition that greater numbers of displaced persons and long-term displacement would create many practical and political challenges for the EU temporary protection program.<sup>246</sup> Poland was a case in point.<sup>247</sup> Approximately 2 million displaced Ukrainians remained in Poland, after thousands had departed for other EU States.<sup>248</sup> In a short time, Warsaw received more than 300,000 Ukrainians, which increased the city's population by almost 20 percent.<sup>249</sup> Private families and nongovernmental groups provided accommodations to 230,000, while the city housed 70,000 in public shelters.<sup>250</sup> As the fighting in eastern Ukraine intensified in late April, UNHCR predicted that this might create even greater future displacement: 8.3 million Ukrainians might seek refuge outside Ukraine.<sup>251</sup> Warsaw officials worried that a new wave of displaced people would push the city past its breaking point.<sup>252</sup>

As spring turned to summer, economic worries mounted. Russia's war in Ukraine pushed energy and food prices higher, and inflation reached 9 percent in much of the European Union by August.<sup>253</sup> Russia reduced and then temporarily halted natural gas deliveries to Europe. This led to immediate price increases, fears for residential heating, and concerns about manufacturing capacity as the weather grows colder.<sup>254</sup> Tensions about the war in Ukraine remained high and worries mounted. Nonetheless, the temporary protection program continued to function well.<sup>255</sup>

---

246. See Omer Karaspan, *Ukrainian Refugees: Challenges in a Welcoming Europe*, BROOKINGS (Oct. 14, 2022), <https://www.brookings.edu/articles/ukrainian-refugees-challenges-in-a-welcoming-europe/> [https://perma.cc/Y7RX-6GVU] (archived Sept. 19, 2023).

247. See *Timeline*, *supra* note 219 (showing that by April 15, 2022, Poland had received 2,720,000 individuals displaced from Ukraine).

248. See *id.*

249. Andrew Higgins, *Warsaw's Welcome Mat Risks Fraying Under the Strain of a New Refugee Surge*, N.Y. TIMES, (Apr. 23, 2022), <https://www.nytimes.com/2022/04/23/world/europe/ukraine-poland-refugees.html> [https://perma.cc/8R6R-UQHK] (archived Sept. 19, 2023).

250. *Id.*

251. See U.N. Revised Supplementary Appeal 2022, *supra* note 223, at 36 (noting that this revised funding scheme reflected the needs of up to 8.3 million refugees).

252. See Higgins, *supra* note 249.

253. See Org. for Econ. Coop. & Dev. [OECD], OECD Inflation at 10.3% in August 2022, Broadly Stable for Past Three Months, at 1 (Oct. 4, 2022).

254. See *Nord Stream 1: How Russia is Cutting Gas Supplies to Europe*, BBC NEWS (Sept. 29, 2022), <https://www.bbc.com/news/world-europe-60131520> [https://perma.cc/KF3F-VV89] (archived Sept. 19, 2023).

255. See, e.g., *Ukraine: EU Temporary Protection has Given Millions Safety While Safeguarding Asylum Systems*, EUR. UNION AGENCY FOR ASYLUM (Mar. 9, 2023), <https://euaa.europa.eu/news-events/ukraine-eu-temporary-protection-has-given-millions-safety-while-safeguarding-asylum-systems#:~:text=A%20new%20European%20Union%20Agency,from%20Ukraine%20received%20immediate%20protection> [https://perma.cc/S84Y-LCWF] (archived Sept. 19, 2023).

### A. *Developments in Autumn-Winter 2022*

After eight months of war, the Russian invasion had displaced one-third of the population of Ukraine.<sup>256</sup> Almost 7.8 million people had left Ukraine for other countries in Europe, while more than 6.2 million were displaced within Ukraine.<sup>257</sup> Of those who left Ukraine, more than 4 million registered for EU temporary protection or for an equivalent national temporary protection program.<sup>258</sup>

The EU Member States contiguous with Ukraine reported the highest numbers of registrants for temporary protection:<sup>259</sup>

Poland	1,470,000
Czech Republic	455,000
Slovakia	99,000
Romania	78,000
Hungary	31,000

Many also registered for temporary protection in other states on the eastern frontier of the European Union:<sup>260</sup>

Bulgaria	145,000
Lithuania <sup>261</sup>	70,000
Latvia <sup>262</sup>	42,000
Estonia	38,000

More than a million registered for temporary protection further west in the European Union:<sup>263</sup>

---

256. U.N. High Comm'r for Refugees, *Ukraine Situation: Flash Update #34*, at 1 (Nov. 4, 2022), <https://data.unhcr.org/en/documents/details/96593> [https://perma.cc/7MJ7-FV87] (archived Sept. 19, 2023).

257. *Id.*

258. *Id.*

259. *Id.* at 5–7. Moldova, a non-EU State that borders Ukraine, registered 95,000 for temporary protection. *Id.* at 5.

260. *Id.* at 4.

261. *Id.* at 7. Lithuania's population is less than 3 million; it granted temporary protection to 69,317. *Id.*

262. *Id.* Latvia, whose population is less than 2 million, granted 42,284 individuals temporary protection. *Id.*

263. *Number of Refugees from Ukraine Recorded in Europe and Asia from February 2022 as of September 12, 2023, by Selected Country*, STATISTA, <https://www.statista.com/statistics/1312584/ukrainian-refugees-by-country/> (last visited Oct. 21, 2023) [https://perma.cc/B4BD-WJQV] (archived Oct. 21, 2023).

Germany	710,000
Italy	160,000
Spain	145,000
France	105,000

As autumn 2022 began, the Ukrainian army went on the counteroffensive to recover land captured by Russian forces.<sup>264</sup> The Ukrainian army swiftly recaptured territory in the eastern region of Ukraine.<sup>265</sup> The simultaneous counteroffensive in the southern portion of Ukraine advanced more slowly, but successfully regained control of Kherson, the only provincial capital the Russian military had occupied.<sup>266</sup> Many Ukrainians who had registered for temporary protection returned to Ukraine.<sup>267</sup> Many others expressed a desire to do so, but they feared relinquishing temporary protection status, because they feared they might face renewed danger and have to flee Ukraine again.

Indeed, Russian attacks on the power grid in Ukraine grew in intensity in October and November.<sup>268</sup> By early November, Ukraine reported that 40 percent of its energy infrastructure had been damaged or destroyed by Russian missiles.<sup>269</sup> Officials in Kiev were bracing for the possibility that a complete blackout might necessitate the evacuation of the city of three million.<sup>270</sup> These developments underscored the uncertainty of life in Ukraine.

Faced with these realities, the EU Commissioner for Home Affairs, Ylva Johansson, announced a practical solution:

264. See generally Mariano Zafra & Jon McClure, *Mapping Ukraine's Counteroffensive*, REUTERS (June 26, 2023, 11:00 AM), <https://www.reuters.com/graphics/UKRAINE-CRISIS/MAPS/klyvgwawavg/> [<https://perma.cc/7RUU-9LJM>] (archived Sept. 19, 2023).

265. See Zach Levitt & Denise Lue, *Maps Show How Ukraine Gained More Territory in the Last Week Than Russia Did in Months*, N.Y. TIMES (Sept. 12, 2022), <https://www.nytimes.com/live/2022/09/13/world/ukraine-russia-war#maps-show-how-ukraine-gained-more-territory-in-the-last-week-than-russia-did-in-months> [<https://perma.cc/8RLH-SSYL>] (archived Sept. 19, 2023).

266. See Andrew E. Kramer & Mark Santora, *Ukrainian Forces Enter Kherson City, a Strategic Prize, in a Blow to Putin*, N.Y. TIMES (Nov. 11, 2022), <https://www.nytimes.com/2022/11/11/world/europe/kherson-ukraine-russia.html> [<https://perma.cc/WLM3-BYYM>] (archived Sept. 19, 2023); Scott Reinhard, *Ukraine Has Reclaimed More than Half the Territory Russia Has Taken This Year*, N.Y. TIMES (Nov. 14, 2022), <https://www.nytimes.com/interactive/2022/world/europe/ukraine-maps.html> [<https://perma.cc/P2UZ-UUKW>] (archived Sept. 19, 2023).

267. See, e.g., Bior, Shapiro & Ozug, *supra* note 242.

268. See Ben Hubbard & Marc Santora, *Ukrainian Regions Make Contingency Plans in Case They Fully Lose Electricity*, N.Y. TIMES (Nov. 5, 2022), <https://www.nytimes.com/live/2022/11/05/world/ukraine-war-news-russia-updates?searchResultPosition=1#ukrainian-regions-make-contingency-plans-in-case-they-fully-lose-electricity> [<https://perma.cc/EF7W-U7A2>] (archived Sept. 20, 2023).

269. See *id.*

270. See *id.*

A lot of Ukrainians that have come and asked for temporary protection are now going back home, because they would like to rebuild their country, and I welcome that. [Many] are hesitant to [deregister from temporary protection] because they think that they might need to flee again. We can see this morning with bombs that are falling in Kyiv again. So that's why we have made the decision: it's not necessary to deregister, only to notify that you are leaving the EU and going back home. So it's important to notify but you can keep your card.<sup>271</sup>

The European Commission also decided to extend the duration of temporary protection for a year and to announce the extension well in advance.<sup>272</sup> Concluding that one year of protection would be insufficient and that it would be valuable to provide a measure of certainty to those granted temporary protection and to EU Member States, EU Commissioner Johansson announced the extension to March 2024 of temporary protection for those displaced from Ukraine.<sup>273</sup>

As the winter of 2022–2023 loomed, there was widespread discontent over the cost of living throughout the European Union.<sup>274</sup> The approach of cold weather heightened fears that reduced supplies of Russian gas and oil would prevent Europeans heating their homes and would lead to factory shutdowns.<sup>275</sup> The ongoing armed conflict in Ukraine, compounded by double-digit inflation, created a foreboding atmosphere.<sup>276</sup>

---

271. Vincenzo Genovese, *Brussels Extends Ukrainian Refugee Rights to Live and Work in EU Until 2024*, EURONEWS (Oct. 10, 2022), <https://www.euronews.com/my-europe/2022/10/10/brussels-extends-ukrainian-refugee-rights-to-live-and-work-in-eu-until-2024> [<https://perma.cc/JU87-62H8>] (archived Sept. 19, 2023).

272. See Council Implementing Decision, *supra* note 129, at ¶ 21. This decision initially provided a one-year period of protection, beginning March 4, 2022, renewable in two six-month increments, making the first grant of EU-wide temporary protection valid until March 2023. *Id.*

273. Genovese, *supra* note 271.

274. See Erika Solomon & Monika Pronczuk, *A New Refugee Crisis Stirs Uncomfortable Issues for Europe*, N.Y. TIMES (Nov. 3, 2022), <https://www.nytimes.com/2022/11/03/world/europe/refugee-crisis.html> [<https://perma.cc/J7PQ-8D4J>] (archived Sept. 19, 2023).

275. See generally Jeromin Zettelmeyer, Simone Tagliapietra, Georg Zachmann & Conall Heussaff, *Beating the European Energy Crisis*, INT'L MONETARY FUND (Dec. 2022), <https://www.imf.org/en/Publications/fandd/issues/2022/12/beating-the-european-energy-crisis-Zettelmeyer> [<https://perma.cc/Y24Q-XSHD>] (archived Sept. 20, 2023).

276. See Patricia Cohen, *Inflation in Europe Reaches 10.7% as Officials Face Hard Options*, N.Y. TIMES (Nov. 1, 2022), <https://www.nytimes.com/2022/10/31/business/economy/eurozone-inflation-gdp.html> [<https://perma.cc/TK6K-S89A>] (archived Sept. 19, 2023).

Other major social and political challenges also became more prominent in the European Union. The number of asylum seekers arriving in Europe rose after several years of diminished numbers due to the impact of COVID on migration. In pre-COVID 2019, the European Union received 631,000 asylum seekers.<sup>277</sup> The border closures and decrease in migration in 2020 reduced the number of asylum seekers to 417,000.<sup>278</sup> With the arrival of vaccines and the easing of the pandemic, more than 535,000 asylum seekers arrived in 2021.<sup>279</sup> The pace of arriving asylum seekers accelerated in 2022, with a total of 881,000.<sup>280</sup> Adding more than 800,000 new asylum seekers in 2022 to the 4 million Ukrainians registered for temporary protection placed great stress on the reception facilities in Europe.<sup>281</sup> There were reports that newly arrived asylum seekers were turned away from shelters in some EU countries.<sup>282</sup> Renewed Russian bombing of Ukrainian infrastructure raised concerns that more Ukrainians would flee to the European Union as winter set in.<sup>283</sup> Hanne Beirens, an expert on migration, predicted, “This is going to be a tough winter in Europe, which is facing the biggest forced displacement since World War II.”<sup>284</sup>

These pressures on the reception centers led to renewed criticism that the European Union has a double standard, preferring Ukrainians to others displaced from their homelands.<sup>285</sup> They also led to criticisms of unequal distribution of those needing protection among EU Member States. Gerald Knaus, the German chair of the European Stability Initiative, asked, “Why is it that all of France has fewer Ukrainians than just the German state of Baden Wurttemberg? And why is it that France, Italy and Spain together have fewer Ukrainians than the Czech Republic?”<sup>286</sup>

Although a querulous mood began to settle in as the war in Ukraine continued into its ninth month, EU Member States remained

277. *Annual Asylum Statistics*, EUROSTAT, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum\\_statistics&oldid=558844](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics&oldid=558844) (last visited Oct. 21, 2023) [<https://perma.cc/NG4L-G4KH>] (archived Sept. 19, 2023).

278. *Id.*

279. *Id.*

280. *Id.*

281. See Solomon & Pronczuk, *supra* note 274.

282. See *Europe Struggles to Accommodate Refugees As Number of Asylum Seekers Hits Record*, SCHENGENVISA (Dec. 7, 2022) <https://www.schengenvisa.info/news/europe-struggles-to-accommodate-migrants-as-number-of-asylum-seekers-hits-record/> [<https://perma.cc/RWD4-Z6CT>] (archived Sept. 20, 2023) (noting that “Belgium has had no more room for two months now and due to this situation, women and children are being turned away”).

283. See generally Carole Landry, *Russia-Ukraine War Briefing*, N.Y. TIMES (Dec. 2, 2022), <https://www.nytimes.com/2022/12/02/briefing/russia-ukraine-war-aid-winter.html> [<https://perma.cc/63X8-J9LP>] (archived Sept. 20, 2023).

284. Solomon & Pronczuk, *supra* note 274.

285. *Id.*

286. *Id.*

committed to backing Ukraine and providing temporary protection to those displaced by the war.<sup>287</sup> The winter did not yield cracks in the coalition to support Ukraine, despite hundreds of thousands of deaths, millions of displaced persons, and damage to the country running into the tens of billions of dollars.<sup>288</sup> Indeed, the European Union marked the anniversary of the invasion of Ukraine by imposing additional financial sanctions on Russia and its allies.<sup>289</sup>

### B. *Developments in Summer-Autumn 2023*

Twenty-two months after the Russian invasion, the war continues in Ukraine.<sup>290</sup> The Ukrainian army launched a summer 2023 counteroffensive and slowly recovered some territory in eastern Ukraine from the Russian army.<sup>291</sup> In early June, huge explosions breached the Nova Kakhovka dam controlled by Russian forces in southern Ukraine, causing extensive flooding, multiple deaths, massive damage to agricultural land and livestock, and threatening the water supply to the cooling ponds at the Zaporizhzhia nuclear plant.<sup>292</sup> The United Nations warned that up to 700,000 people might be cut off from safe drinking water, as chemicals, pesticides, dead animals, and fish flooded the countryside.<sup>293</sup> In addition, the

287. Jason Horowitz & Catherine Porter, *Even as Challenges Mount, Europeans Stick by Ukraine*, N.Y. TIMES (Nov. 7, 2022), <https://www.nytimes.com/2022/11/07/world/europe/europe-ukraine-war-support.html> [https://perma.cc/YTV5-MAG8] (archived Sept. 19, 2023).

288. Matthew Mpoke Bigg, *How Russia's War in Ukraine Has Unfolded, Month by Month*, N.Y. TIMES (Feb. 24, 2023), <https://www.nytimes.com/article/ukraine-russia-war-timeline.html?searchResultPosition=7> [https://perma.cc/E7M5-VAUA] (archived Sept. 19, 2023).

289. Monika Pronczuk, *At the 11th Hour, E.U. Ambassadors Impose New Sanctions Against Russia*, N.Y. TIMES (Feb. 24, 2023, 5:45 PM), <https://www.nytimes.com/live/2023/02/24/world/russia-ukraine-zelensky-news> [https://perma.cc/PC6S-DJMN] (archived Sept. 20, 2023).

290. See Constant Méheut, *Ukraine Hits Russian Warship, but Loses Ground in the East*, N.Y. TIMES (Dec. 26, 2023), <https://www.nytimes.com/2023/12/26/world/europe/ukraine-crimea-russia-warship-novocherkassk.html> [https://perma.cc/Y5DM-FDWR] (archived Jan. 16, 2024).

291. See Thomas Gibbons-Neff & Yurii Shyvala, *In Small Victory, Signs of Grueling Combat Ahead in Ukrainian Counteroffensive*, N.Y. TIMES (July 2, 2023) <https://www.nytimes.com/2023/07/02/world/europe/ukraine-russia-counteroffensive.html> [https://perma.cc/QE6P-LA8L] (archived Sept. 20, 2023).

292. See Nitish Pahwa, *Dam Explosion in Ukraine Unleashes 'Ecological Disaster'*, BULL. ATOMIC SCIENTISTS (June 19, 2023), <https://thebulletin.org/2023/06/dam-explosion-in-ukraine-unleashes-ecological-disaster/> [https://perma.cc/WD9K-7U75] (archived Sept. 20, 2023).

293. See *Ukraine: 700,000 People Affected by Water Shortage from Dam Disaster*, U.N. NEWS (June 16, 2023), [https://news.un.org/en/story/2023/06/1137797#:~:text=Ukraine%3A%20700%2C000%20people%20affected%20by%20water%](https://news.un.org/en/story/2023/06/1137797#:~:text=Ukraine%3A%20700%2C000%20people%20affected%20by%20water%20shortage%20from%20dam%20disaster%20in%20southern%20Ukraine%2C)



floodwaters dislodged landmines and set loose unexploded ordnance, increasing risks for the local population.<sup>294</sup> Nonetheless, these developments did not lead to a new surge of displaced persons into the European Union.<sup>295</sup>

The United Nations High Commissioner for Refugees reported in December 2023 that 5,905,000 refugees from Ukraine resided in Europe.<sup>296</sup> In addition, 403,600 refugees from Ukraine resided beyond Europe,<sup>297</sup> and 3,674,000 remained displaced within Ukraine.<sup>298</sup> The numbers registered for EU-wide temporary protection climbed to 4,240,000 by the end of October 2023.<sup>299</sup> Individual Member States reported large numbers had registered for temporary protection. Germany registered 1,215,365; Poland enrolled 960,620; the Czech Republic reported 364,450.<sup>300</sup> Further west, Spain registered 189,945 for temporary protection; Italy registered 161,660; and the Netherlands reported 139,630.<sup>301</sup>

The numbers of displaced persons who intended to return to their homes remained high. In May 2023, fifteen months after the European Union activated temporary protection, UNHCR reported that 14

20shortages%20from%20dam%20disaster,-16%20June%202023&text=UN%20humanitarians%20continue%20bringing%20life,south%20face%20severe%20water%20shortages [https://perma.cc/G3RE-C4P4] (archived Sept. 20, 2023); *Kakhovka Dam Disaster a Health Crisis in the Making: WHO*, U.N. NEWS (June 13, 2023), https://news.un.org/en/story/2023/06/1137612 [https://perma.cc/QV4L-PN5M] (archived Oct. 21, 2023).

294. Marc Santora & Maria Varenikova, *Zelensky Visits Ukraine's Flood Zone, Where Residents See 'Horror' Float By*, N.Y. TIMES (June 8, 2023), https://www.nytimes.com/2023/06/08/world/europe/zelensky-ukraine-flood-dam-russia.html [https://perma.cc/NDX5-PBYL] (archived Sept. 20, 2023).

295. See U.N. Country Team (Ukraine) Joint Analytical Note, Potential Long-Term Impact of the Destruction of the Kakhovka Dam (June 9, 2023), https://reliefweb.int/report/ukraine/potential-long-term-impact-destruction-kakhovka-dam-unct-joint-analytical-note-9-june-2023 [https://perma.cc/2QJP-HLRM] (archived Sept. 20, 2023) (reporting that the initial assessment indicated that “2,200 people have been displaced from their place of habitual residence in flood-affected areas and 81 per cent of those remain currently within Kherson region”).

296. See U.N. High Comm'r for Refugees, Ukraine Situation: Flash Update #61, at 1 (Dec. 12, 2023),

297. *Id.*

298. *Id.*

299. *More Than 4.2 Million People Under Temporary Protection*, EUROSTAT, at 1 (Dec. 8, 2023); https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20231208-2; see also *Temporary Protection for Persons Fleeing Ukraine – Monthly Statistics*, EUROSTAT (Dec. 5, 2023), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Temporary\_protection\_for\_persons\_fleeing\_Ukraine\_-\_monthly\_statistics [https://perma.cc/KUS7-ASU5] (archived Dec. 5, 2023). More than one million displaced persons received temporary protection but are not included in the Eurostat data. The scope of national temporary protection schemes in various EU Member States exceeded the categories of individuals covered by the EU Implementing Decision. When the national schemes were added to the EU-wide temporary protection coverage, 5,140,259 individuals received temporary protection in the EU. *Id.*

300. *Id.*

301. *Id.*

percent of those displaced outside Ukraine and 15 percent of those displaced within Ukraine planned to return permanently within the next three months.<sup>302</sup> Roughly 65 percent of both displaced groups planned to return in the future,<sup>303</sup> 18 percent of those displaced outside Ukraine were currently undecided about returning in the future, and 6 percent reported they had no plan or hope to return.<sup>304</sup> Individuals displaced from areas of eastern Ukraine that have been occupied by Russia since 2014 are more likely to have no plan to return or to be undecided about returning.<sup>305</sup>

Intentions to return became a reality for more than 4.6 million individuals in Ukraine.<sup>306</sup> Most of the returnees had been displaced within Ukraine; approximately 25 percent returned from beyond Ukraine's borders.<sup>307</sup> The average length of displacement was four and a half months.<sup>308</sup> Roughly 88 percent, or four million people, intended to remain in their return location; only 4 percent were considering re-displacement.<sup>309</sup> The majority of returnees resided in large cities or suburbs near large cities.<sup>310</sup> A majority of the returnees were women; 625,000 were school-age children.<sup>311</sup>

Movement across Ukraine's borders continued to be robust. In the first twenty months after Russia invaded Ukraine, there were close to 30 million border crossings from Ukraine to neighboring countries.<sup>312</sup> More than 17 million of these crossings were from Ukraine to Poland.<sup>313</sup> Notably, there were more than 14 million crossings from Poland to Ukraine during this time period.<sup>314</sup> The patterns in Romania and Slovakia were similar. There were roughly 3,600,000 crossings from Ukraine into Romania, and 3 million crossings back into

---

302. See U.N. High Comm'r for Refugees, *Lives on Hold: Intentions and Perspectives of Refugees and IDPs from Ukraine*, Regional Intentions Report #4, at 4 (July 2023) <https://data2.unhcr.org/en/documents/details/101747> [https://perma.cc/8K86-YALR] (archived Sept. 20, 2023).

303. See *id.*

304. See *id.*

305. See *id.*

306. International Organization for Migration, *Ukraine Returns Report*, General Population Survey, Round 14, October 2023, at 1, <https://dtm.iom.int/reports/ukraine-returns-report-general-population-survey-round-14-september-october-2023>.

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.* at 3.

311. *Id.*

312. See *Number of Border Crossings Between Ukraine and Central and Eastern European (CEE) Countries after Russia's Invasion of Ukraine from February 24, 2022 to November 5, 2023, by Selected Country*, STATISTA, <https://www.statista.com/statistics/1293403/cee-ukrainian-refugees-by-country/> (last visited Dec. 5, 2023) [https://perma.cc/UN4H-FSQF] (archived Dec. 5, 2023).

313. See *id.*

314. See *id.*

Ukraine.<sup>315</sup> Approximately 1.8 million crossings from Ukraine into Slovakia were registered, with 1.6 million crossings back to Ukraine.<sup>316</sup>

The war entered its second winter, with mounting lethal consequences. More than 10,000 civilians were killed and 20,000 injured in Ukraine in the first twenty-two months after the February 2022 Russian invasion.<sup>317</sup> Russian missiles caused significant numbers of civilian casualties far from the front lines,<sup>318</sup> and intense aerial bombardments took place across Ukraine as winter approached.<sup>319</sup>

Political developments in Europe were mixed. In a show of support for Ukraine and the millions displaced from Ukraine, the Council of the European Union acted in September 2023 to extend temporary protection for Ukrainians for one additional year, until March 4, 2025.<sup>320</sup> In October, Robert Fico, a pro-Russian anti-immigrant political figure, became Prime Minister of Slovakia,<sup>321</sup> after campaigning to end Slovak military aid to Ukraine.<sup>322</sup> In contrast, Donald Tusk became Prime Minister of Poland in December 2023, vowing to demand continued support for Ukraine in the West.<sup>323</sup> Doubts about Ukraine's battlefield strategy surfaced and a growing number of politicians in Europe and the United States hesitated over providing more financial assistance to Ukraine.<sup>324</sup> Domestic political

---

315. *See id.*

316. *Id.* Interestingly, there were 3.8 million border crossings from Ukraine into Hungary and close to 3 million border crossings from Ukraine into Russia, but very few returns were reported over either of those borders. *Id.* Hungary reports that most Ukrainians who crossed into Hungary moved on to other European countries. Boldizsár Nagy, *About-face or Camouflage? Hungary and the Refugees from Ukraine*, in EU RESPONSES TO THE LARGE-SCALE REFUGEE DISPLACEMENT FROM UKRAINE, *supra* note 131, at 150 (2023). As of March 29, 2022, only 7,947 had registered for temporary protection in Hungary. *Id.* at 150. By May 2023, Hungary reported that 31,000 had temporary protection. *More Than 4.2 Million People Under Temporary Protection*, *supra* note 299.

317. U.N. High Comm'r for Refugees, Ukraine Emergency, UNHCR Delivery Updates, at 1 (Nov. 24, 2023), <https://data2.unhcr.org/en/documents/details/105081>.

318. *Id.*

319. *Id.*

320. *Ukrainian Refugees: EU Member States Agree to Extend Temporary Protection* (Sept. 28, 2023), <https://www.consilium.europa.eu/en/press/press-releases/2023/09/28/ukrainian-refugees-eu-member-states-agree-to-extend-temporary-protection/>.

321. *Slovakia's Fico Appointed Prime Minister for the Fourth Time*, REUTERS (Oct. 25, 2023), <https://www.reuters.com/world/europe/slovakias-fico-appointed-prime-minister-fourth-time-2023-10-25/>.

322. *Id.*

323. Monika Scisłowska, *Eight Years of Conservative Rule in Poland Ends as Donald Tusk Becomes Prime Minister*, ASSOCIATED PRESS (Dec. 13, 2023), <https://apnews.com/article/poland-prime-minister-tusk-government-warsaw-8fd0ac25be8fee9f51ece920f493de1f>.

324. Andrew E. Kramer, *Zelensky Insists Ukraine Will Prevail Despite a Tough Year on the Battlefield*, N.Y. TIMES (Dec. 20, 2023),

disputes in the United States led Congress to recess until January 2024 without agreeing to fund additional military aid to Ukraine.<sup>325</sup>

## V. FACTORS BOLSTERING SUCCESS

The war in Ukraine grinds on and continues to evolve. Clearly, the final story of the temporary protection program for those displaced from Ukraine cannot yet be written. Nevertheless, although it is too soon to offer a definitive analysis, it is appropriate at this time to review the initial rollout of the EU temporary protection law.

The first-time deployment of an EU-wide temporary protection program has been a remarkable success. It was implemented with great speed and the scale of the EU humanitarian assistance was unprecedented. Government officials in the eastern EU States received hundreds of thousands fleeing Ukraine swiftly and smoothly in the first days of the crisis. Within a matter of weeks, they had admitted millions displaced from Ukraine. Meanwhile, many displaced individuals traveled freely from the frontline EU States to other geographically more distant EU Member States.

A major impetus behind the 2001 Temporary Protection Directive was the goal of distributing displaced persons across the European Union, rather than clustering them in the Member States nearest the crisis. The 2022 temporary protection program for those displaced from Ukraine made important strides toward this goal. EU States geographically close to Ukraine, such as Poland, Slovakia, Lithuania, Latvia, the Czech Republic, and Germany, continued to host the largest populations with temporary protection.<sup>326</sup> However, many EU States distant from Ukraine have also received a large number of temporary protection registrants. Spain, for example, hosted 190,000 temporary protection beneficiaries, and Italy hosted 161,000.<sup>327</sup> Without doubt, a better and more equitable distribution system would be desirable. Nonetheless, the results to date are a vast improvement over the relative lack of distribution of refugees in the European Union during the Balkan and Kosovo Wars in the 1990s.

From the very first days of temporary protection, civil society across all EU Member States joined with government officials to offer

---

325. Karoun Demirjian, *Congress Abandons Ukraine Aid Until Next Year as Border Talks Continue*, N.Y. TIMES (Dec. 19, 2023), <https://www.nytimes.com/2023/12/19/us/senate-ukraine-border.html>.

326. *See More Than 4.2 Million People Under Temporary Protection*, *supra* note 299 (noting that as of the end of October 2023, the 27 EU Member States hosted more than 4.2 million temporary protection beneficiaries and of these, Germany hosted 1,215,000, Poland hosted 960,000, the Czech Republic hosted 364,000, Slovakia hosted 111,000, Lithuania hosted 73,000, and Latvia hosted 43,000).

327. *Id.*

shelter, food, access to schooling, and other assistance.<sup>328</sup> Initially, many fleeing Ukraine found shelter in private homes.<sup>329</sup> Multiple nonprofits and private companies, such as Airbnb, set up networks to match available housing with displaced people.<sup>330</sup> A survey in June 2022 found that 20 percent were living with family and friends and 30 percent were staying with local families.<sup>331</sup> The reliance on private accommodations varied across EU Member States. Italy and Belgium reported that 85 to 90 percent of those granted temporary protection resided in private homes, while Finland and Latvia reported a private accommodation rate of 65 percent.<sup>332</sup> Poland, too, relied extensively on private volunteers for housing.<sup>333</sup> Within Germany there was more variability; some areas indicated that 80 percent of those displaced from Ukraine lived in private residences, while others reported only 10 percent did.<sup>334</sup> Simultaneously, some EU Member States opened new reception centers for the displaced individuals, and other States assigned displaced persons to existing centers for asylum seekers.<sup>335</sup> Still others assigned displaced persons to hostels, hotels, and schools.<sup>336</sup> Initial accommodations were often intended to be temporary. As weeks turned into months, plans for longer-term arrangements became a higher priority and governments developed more public accommodations, as well as monthly housing stipends.<sup>337</sup>

Reports indicate that registration for temporary protection proceeded in an expedited and efficient manner in many EU countries. National governments quickly rolled out instructions about how to register. By the end of two months, 2.3 million had registered for temporary protection and thus transformed themselves from visitors into lawful residents authorized to work in the European Union.<sup>338</sup> Six months after the Russian invasion, the number registered for

---

328. See e.g., Jonathan Walsh & Ania Zalenskaia, *Russian Volunteers Help Welcome Ukrainian Refugees at Paris's Gare de l'Est*, FR. 24 (Apr. 23, 2022, 12:16 PM), <https://www.france24.com/en/europe/20220423-russian-volunteers-help-welcome-ukrainian-refugees-at-paris-s-gare-de-l-est> [https://perma.cc/BZ5Q-QEWR] (archived Sept. 19, 2023) (describing the support displaced Ukrainians received upon arrival in France); Elise Allen, *Ukrainian Refugees Grateful for Warm Welcome in Italy*, CRUX (Apr. 15, 2022), <https://cruxnow.com/church-in-europe/2022/04/ukrainian-refugees-grateful-for-warm-welcome-in-italy> [https://perma.cc/KX2Z-D4SA] (archived Sept. 19, 2023).

329. *Housing Support*, *supra* note 227; Enríquez, *supra* note 225.

330. *Housing Support*, *supra* note 227.

331. *Id.*

332. *Id.*

333. *See id.*

334. *Id.*

335. *Id.*

336. *See id.*

337. *See id.*

338. *2.3 million Ukrainians have registered for protection in the EU*, EUR. UNION AGENCY FOR ASYLUM (Apr. 27, 2022), <https://euaa.europa.eu/news-events/2-3-million-ukrainians-have-registered-protection-eu> [https://perma.cc/XK36-ENJF] (archived Sept. 20, 2023) (citing EUAA Early warning and Preparedness System (EPS)).

temporary protection had risen to 3.7 million.<sup>339</sup> At the one-year anniversary, there were slightly more than 4 million temporary protection beneficiaries in the twenty-seven EU Member States.<sup>340</sup>

Member States acted promptly to provide access to schools for displaced Ukrainian children, almost all of whom did not speak the language of the locale where they temporarily lived. Furthermore, the educational systems needed to assess children traumatized by separation and war and provide support appropriate for their learning and developmental needs.<sup>341</sup> By the summer of 2022, 490,000 Ukrainian children had been enrolled in the national school systems of the twenty-seven EU Member States.<sup>342</sup> When the next school year started in September 2022, 2.25 million Ukrainian schoolchildren had arrived in the EU Member States.<sup>343</sup>

This is not to deny the enormous challenges that accompany the EU temporary protection program. Individuals uprooted from Ukraine have suffered, and are continuing to suffer, great trauma. They have witnessed deaths of family and friends in Ukraine.<sup>344</sup> They have seen the destruction of many cities and towns.<sup>345</sup> They have endured enormous losses of property, status, and stability.<sup>346</sup> Moreover, many are experiencing great economic hardship while living in the European

339. *More Than 4.2 Million People Under Temporary Protection*, *supra* note 299.

340. *Id.*

341. *See Ukrainian Children Are Back to School in EU Cities*, EURO CITIES (Sept. 21, 2022), <https://eurocities.eu/latest/ukrainian-children-are-back-to-school-in-eu-cities#:~:text=Seven%20months%20after%20the%20breakout,them%20into%20local%20education%20systems> [<https://perma.cc/H5JX-JUN7>] (archived Sept. 21, 2023). This has been particularly difficult for Poland, a country of 38 million, that hosts 1.4 million registrants for temporary protection. The challenges are immense, too, for Germany and the Czech Republic, which host very large numbers of displaced persons. *See id.*

342. *EU: Nearly 500,000 Ukrainian Children go to Schools in EU*, KYIV INDEP. (July 24, 2022, 8:05 PM), <https://kyivindependent.com/uncategorized/eu-nearly-500-000-ukrainian-children-integrate-into-national-school-systems> [<https://perma.cc/4XKL-GKZR>] (archived Sept. 21, 2023).

343. *Ukrainian Children Are Back to School in EU Cities*, *supra* note 341.

344. *See* Jamey Keaton, *The Calculus of War: Tallying Ukraine's Toll and Elusive Task*, AP NEWS (Feb. 24, 2023), <https://apnews.com/article/russia-ukraine-war-numbers-8768880034d9d7cd6ac6f3e34abd66f5> [<https://perma.cc/G965-SGP9>] (archived Sept. 21, 2023) (reporting that as of the one-year anniversary of the Russian invasion of Ukraine, Ukrainian troops suffered roughly 100,000 casualties, on top 8,000 civilian casualties); *Number of Civilian Casualties Ukraine During Russia's Invasion*, STATISTA (Sept. 12, 2023), <https://www.statista.com/statistics/1293492/ukraine-war-casualties/> [<https://perma.cc/69RZ-FPGQ>] (archived Sept. 21, 2023).

345. *See* Keaton, *supra* note 344. In the first twelve months of the invasion, Russian forces fired more than 5,000 missiles, 3,500 airstrikes, and 1,000 drone strikes on Ukraine and Russian forces occupied almost 20% of Ukrainian territory, a substantial increase from the 7% occupied in February 2022. *Id.*

346. *See id.* By February 2023, reports indicated that the war had caused \$138 billion damage to Ukraine's infrastructure, a 33% decrease in Ukraine's GDP, and a 30% decline in Ukraine's exports. *Id.*

Union. Although temporary protection authorizes them to work, many lack the language capability or the skillsets to obtain available jobs.<sup>347</sup> For example, in Germany, 350,000 Ukrainians registered as looking for work in the fall of 2022.<sup>348</sup> Acknowledging the great need for employment of beneficiaries of temporary protection, the EU Commission launched an online job tool in October 2022 to match displaced persons with employers facing labor shortages.<sup>349</sup>

#### A. *Social Solidarity and Welcome*

Throughout 2022 and 2023, blue and yellow Ukrainian flags continued to hang from European houses, public buildings continued to highlight the Ukrainian colors, and individuals sported blue and yellow scarves.<sup>350</sup> The hundreds of volunteers who had met Ukrainians at train stations in European cities in early 2022 were succeeded by nonprofit groups that gathered groceries, clothing, and other necessities for the displaced.<sup>351</sup> The great majority of those displaced from Ukraine continued to be greeted in a spirit of social solidarity and welcome in the European Union.<sup>352</sup>

347. See *Living in Limbo*, *supra* note 147, at Box 2 (reporting that as of June 2022, three-quarters of the displaced Ukrainians living in Poland reported that they spoke little or no Polish).

348. Karaspan, *supra* note 246.

349. *EU Launches Online Job-Seekers Tool for Ukraine Refugees*, REUTERS (Oct. 10, 2022, 6:30 AM), <https://www.reuters.com/world/europe/eu-launches-online-job-seekers-tool-ukraine-refugees-2022-10-10/> [<https://perma.cc/E8A4-E5NY>] (archived Sept. 21, 2023).

350. *E.g., Bundestag Raised Ukrainian Flag on First Anniversary of Russian Attack*, EURO. PRAVDA (Feb. 24, 2023), <https://www.eurointegration.com.ua/eng/news/2023/02/24/7156843/> [<https://perma.cc/CHE2-T9QU>] (archived Sept. 21, 2023) (reporting that the Eiffel Tower in France and the Reichstag in Germany displayed the Ukrainian colors in the winter of 2023); see also *Living in Limbo*, *supra* note 147 (highlighting that Poland has been particularly welcoming to Ukrainian refugees, partly because of sentiment that Russia is their common enemy).

351. See, e.g., *Helping Ukrainians: How You can Donate and Engage*, [https://eu-solidarity-ukraine.ec.europa.eu/helping-ukrainians-how-you-can-donate-and-engage\\_en](https://eu-solidarity-ukraine.ec.europa.eu/helping-ukrainians-how-you-can-donate-and-engage_en) (last visited Oct. 21, 2023) [<https://perma.cc/B5PQ-DK4V>] (archived Sept. 21, 2023) [hereinafter *Helping Ukrainians*] (highlighting EU solidarity with Ukraine); *Living in Limbo*, *supra* note 147.

352. See *Helping Ukrainians*, *supra* note 351; see also *Summer Camps for Ukrainian Children 2023*, EUR. COMM. OF THE REGIONS, <https://cor.europa.eu/en/engage/Pages/summer-camps-for-ukrainian-children.aspx> (last visited Oct. 21, 2023) [<https://perma.cc/2MDR-NGWD>] (archived Sept. 21, 2023) (describing the warm welcome by Europeans to those displaced from Ukraine continues in the summer of 2023). But see Raf Casert, *EU Warns of 'Solidarity Fatigue' Despite Warm Welcome for Millions of Ukraine Refugees*, AP (June 6, 2023), <https://apnews.com/article/eu-ukraine-refugees-solidarity-fatigue-russia-propaganda-0bfd0c6aa7538e8bd823923d82765c57> [<https://perma.cc/279N-VDZX>] (archived Sept. 22, 2023) (highlighting that EU citizens may have "solidarity fatigue" partly due to the slowing economy, which especially harms poorer families).

Similar scenes of social solidarity had occurred in August and September of 2015, when tens of thousands of Syrians walked and traveled from Greece to Hungary to Austria and on to Germany.<sup>353</sup> The media featured vivid photos of Budapest residents delivering water to the marchers, as Syrians thanked the Hungarian citizenry: “The police, they are showing us the way. God bless the Hungarian people.”<sup>354</sup> The tenor of the welcome quickly changed in 2015, however, and EU States began reimposing border controls to keep Syrian and Afghans from proceeding.<sup>355</sup> Why was the response different in 2022 and what circumstances may increase the chances that temporary protection may occur again in a future crisis?

The charismatic leadership of Ukrainian President Zelensky kept the underdog Ukrainian defense efforts in the public eye, as Zelensky’s nightly broadcasts continued to rally public support for Ukraine in EU States and across the globe.<sup>356</sup> Government leaders of EU States traveled to Ukraine to express camaraderie with the Ukrainian people’s efforts to expel invading forces from their territory.<sup>357</sup> The unearthing of evidence of apparent Russian war crimes in the zones recovered by Ukrainians forces fueled continuing outrage against the Russian army.<sup>358</sup> The geographical proximity of the Ukrainian war, anti-Russian sentiment, and the David-and-Goliath nature of the Russian invasion continued to be significant in galvanizing the EU citizenry in 2023. All of these factors resonated with positive media

---

353. See Anemona Hartocollis, *Traveling in Europe’s River of Migrants*, N.Y. TIMES (Sept. 6, 2015), <https://www.nytimes.com/interactive/projects/cp/reporters-notebook/migrants/march-budapest-hungary> [https://perma.cc/QFQ2-PD3N] (archived Sept. 22, 2023).

354. *Id.*

355. *See id.*

356. See Andrew E. Kramer, *With Speeches to Ukraine, and the World, Zelensky Shapes Narrative of the War*, N.Y. TIMES (Dec. 31, 2022), <https://www.nytimes.com/2022/12/31/world/europe/zelensky-ukraine-war.html?searchResultPosition=4> [https://perma.cc/R8NK-52G8] (archived Sept. 22, 2023).

357. See, e.g., Elisabetta Polovedo, *In Kyiv, Italy’s Prime Minister Condemns Russia and Pledges Further Support to Ukraine.*, N.Y. TIMES (Feb. 21, 2023), <https://www.nytimes.com/2023/02/21/world/europe/giorgia-meloni-ukraine-kyiv-russia.html?searchResultPosition=1> [https://perma.cc/68LC-RDQR] (archived Sept. 22, 2023) (highlighting the support that Italy’s prime minister gave Ukraine in response to the Russian invasion).

358. See Christopher F. Schuetze & Victoria Kim, *In The Hague, Zelensky Renews Call to Prosecute Russian War Crimes*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/world/europe/zelensky-ukraine-hague-netherlands.html?searchResultPosition=8> [https://perma.cc/W5GD-ZXNZ] (archived Sept. 22, 2023); Megan Specia & Oleksandr Chubko, *Bucha Gets a Remake, but Pain Lingers Behind the Façade*, N.Y. TIMES (July 8, 2023), <https://www.nytimes.com/2023/07/08/world/europe/ukraine-bucha.html> [https://perma.cc/MC92-3X8X] (archived Sept. 22, 2023).



responses and favorable EU government leaders' public statements about the individuals displaced from Ukraine.<sup>359</sup> Even in Central European EU States, such as Slovakia and Hungary, that have in recent decades been skeptical about hosting refugees, public opinion toward Ukrainian refugees has been largely positive.<sup>360</sup>

In addition, the successful rollout of EU-wide temporary protection contributed other helpful feedback. Millions of Ukrainian women and children living in EU cities and towns were visible evidence of the accomplishments the EU temporary protection program had achieved. Public perception that the EU was effectively managing the arrival of millions of displaced people contributed to positive public opinion about temporary protection for Ukrainians.<sup>361</sup>

A related helpful factor was the existence of an extensive Ukrainian diaspora throughout the European Union. There were stories about many Ukrainian families in the EU welcoming their recently arrived relatives to a respite from war.<sup>362</sup> The visa-free travel between Ukraine and the EU also had a salutary effect. Negative stories about bureaucracy and border controls were effectively nonexistent. Ukrainians could travel easily throughout the European Union and could choose the location where they requested temporary protection.<sup>363</sup>

The labor market also had a positive impact. The unemployment rates were low in Poland, Germany, and the Czech Republic, which together hosted more than 50 percent of those displaced from Ukraine.<sup>364</sup> The educational and professional experience level of adult

---

359. See Lenka Dražanová & Andrew Geddes, *Attitudes towards Ukrainian Refugees and Governmental Responses in 8 European Countries*, in EU RESPONSES TO THE LARGE-SCALE REFUGEE DISPLACEMENT FROM UKRAINE, *supra* note 131, at 136–37, 145.

360. See *id.* at 137–39, 142.

361. See *id.* at 137. Although beyond the scope of this article, the rich literature on complex factors affecting attitudes to migration and refugees raises many important questions deserving of further research. Why, for example, were the more than five million arrivals at the Ukrainian borders with EU states in 2022 perceived as less chaotic and disorderly than one million Syrians and Afghans arriving at the EU borders in 2015? *Id.* How much did the pre-existing visa-free entry agreement for Ukrainians matter? How significant was the perception that the large Ukrainian diaspora in the EU would provide private accommodations to new arrivals from Ukraine?

362. See, e.g., Emma Bubola, *For Ukrainians Abroad, War Has Also Meant a Flowering of Identity*, N.Y. TIMES (Aug. 9, 2022), <https://www.nytimes.com/2022/08/09/world/europe/italy-ukraine-war.html#:~:text=Since%20the%20war%20began%20in,relatives%20who%20already%20lived%20there> [https://perma.cc/9E8C-SUPP] (archived Sept. 22, 2023) (detailing all the support that Ukrainians have received in Italy since the Russian invasion).

363. See Dražanová & Geddes, *supra* note 359, at 144–45; see also Council Implementing Decision, *supra* note 129, at ¶ 16 (emphasizing that displaced persons have the right to choose the Member State in which to enjoy temporary protection, joining “family and friends across the significant diaspora networks that currently exist across the Union”).

364. *The Desperate Uncertainty of Ukrainian Refugees*, *supra* note 153.

Ukrainians has been higher than the EU average.<sup>365</sup> Some EU States reported that 50 percent of women displaced from Ukraine had found work in less than one year, compared to the ten years it typically takes refugee groups to reach this mark.<sup>366</sup> All these factors played a role in maintaining social solidarity with the displaced Ukrainians. Despite the immense logistical and financial challenges of hosting four million temporary protection beneficiaries, and the real worries about sustaining the effort through a long war, European support for Ukraine remained strong well into the second year of war.<sup>367</sup>

### B. *Civil Society and Private Accommodations*

Perhaps the most significant factor—even more than the political and military developments—has been the widespread engagement of civil society in welcoming those displaced from Ukraine, especially women and children. The 2001 Temporary Protection Directive does not require, or even contemplate, voluntary initiatives to welcome displaced persons into private homes. However, in considering the temporary protection plan, the Council of the European Union was well aware of the significant Ukrainian diaspora spread throughout EU Member States. Indeed, the Council highlighted the welcome Ukrainians living in EU Member States had provided in 2014 to those displaced from Crimea and the eastern Donbas region.<sup>368</sup> This led the Council to predict that a majority of those displaced in 2022 would join family members and friends already residing in the European Union.<sup>369</sup> The anticipated private response was a significant factor in deciding to implement temporary protection, but the Council did not condition temporary protection on private sponsorship. Most importantly, the voluntary private response was even more robust than anticipated.

The Ukrainian diaspora throughout the European Union provided the infrastructure that made the initial rollout smooth. The 1.3 million Ukrainians already lawfully residing in the European Union opened their doors to new arrivals, and they provided welcoming beacons to those fleeing the fog of war. Crucially, large numbers of non-Ukrainian

---

365. *Id.*

366. *Id.*

367. *E.g.*, Tarik Argaz & Yelena Sim, *Ukraine's Refugees Find Long-term Support in EU Host Countries*, U.N. HIGH COMM'R FOR REFUGEES (Mar. 30, 2023), <https://www.unhcr.org/news/ukraines-refugees-find-long-term-support-europes-host-countries> [<https://perma.cc/U2YA-EHW3>] (archived Sept. 27, 2023) (showcasing the experiences of two Ukraine refugees and how they assimilated into their new EU host countries).

368. *See* Council Implementing Decision, *supra* note 129, at ¶ 6.

369. *Id.*

EU residents also joined in the voluntary reception efforts. In Poland, for example, the government paid a modest subsidy that led tens of thousands to house Ukrainian families in their private homes.<sup>370</sup> In addition, many Poles and other Europeans continued to help in a multitude of related efforts, volunteering to collect medical supplies, deliver food, provide language lessons, and address related social needs.<sup>371</sup>

The provision of private accommodations to millions of displaced persons cannot be underestimated. It substantially reduced the logistical and financial pressures on the governments of the EU Member States. As importantly, the enormous private outreach assisted in social acceptance and integration. Many local communities welcomed Ukrainians, which helped the displaced persons to be seen more as relatives and less as unknown outsiders. In turn, the displaced Ukrainians had natural allies to turn to for answers to questions and for social support.<sup>372</sup>

Additionally, the widespread civic engagement with those fleeing Ukraine created a sense of social solidarity in the wider society. As many as two-thirds of all Poles, for example, reported that they provided help in some way to families displaced from Ukraine.<sup>373</sup> Non-Ukrainian volunteers met other non-Ukrainian volunteers who were motivated to help the displaced families and had taken active steps to help. This forged new community norms and simultaneously reinforced the pattern of voluntary private action that had been developing.

---

370. See *Living in Limbo*, *supra* note 147.

371. *Id.*

372. See Argaz & Yelena Sim, *supra* note 367. The existing visa-free travel policy for Ukrainians, together with the decision to allow displaced people to choose where in the EU they wanted to seek temporary protection, facilitated the smooth rollout of EU-wide temporary protection. See Council Implementing Decision, *supra* note 129, at ¶ 16. Individuals made decisions based on their personal circumstances and their own evaluations of their needs and resources. See Dietrich Thränhardt, *A Future for Ukrainian Refugees in Europe Beyond Temporary Protection*, NCCR ON THE MOVE (Sept. 21, 2023), <https://nccr-onthemove.ch/blog/a-future-for-ukrainian-refugees-in-europe-beyond-temporary-protection/> [<https://perma.cc/NDN4-JQL4>] (archived Oct. 21, 2023) (“The very size, openness and diversity of Europe were instrumental in facilitating their accommodation. Unlike other refugees who often remained confined to specific locations and camps, Ukrainians had the freedom to continue their journey to various destinations . . . [with] [t]he majority of Ukrainians . . . now working in Europe.”). This avoided secondary movements that would have occurred if displaced persons had been assigned to an EU State where they had no relatives or friends to welcome them or where they knew they lacked requisite language or employment skills. Many lacked language skills pertinent to all EU Member States, but at least those who had language skills pertinent to one or more EU States could travel to the selected location and register for temporary protection there.

373. *Living in Limbo*, *supra* note 147.

## VI. LESSONS FOR THE FUTURE

There are useful lessons to be learned from the initial rollout of the first EU-wide temporary protection program. Most importantly, mobilizing civil society to welcome the displaced individuals will be a key factor. Civil society cannot control the geographical proximity of military invasions, nor the reasons that people flee to the European Union. Civil society, however, created networks that provided crucial support to millions of people displaced by armed conflict from Ukraine. It now has the experience to act in similar ways in future crises. Civic groups, as well as individual citizens, can reflect on the impressive rollout of temporary protection in 2022 and remind EU political leaders of the importance—and the positive first experience—of affording short-term protection to groups that need it in the future.

Most crucially, civil society can work now to create and strengthen infrastructures in multiple EU States that could volunteer to provide accommodations during the initial phase of a future crisis. This would furnish a powerful bulwark for activating EU-wide temporary protection in the future. The engagement of civic groups would provide political support for EU leaders contemplating another temporary protection plan, as well as relieve some of the economic and operational costs that EU governments face in granting protection. Most significantly, it would assist with social support and integration while simultaneously reducing the perception that foreigners lack connections to the local community.

In 2022, the existing Ukrainian diaspora provided a valuable EU infrastructure. In the future, diaspora networks may also be useful, but the conception of civic engagement should expand beyond diaspora communities. Other types of networks, such as faith-based groups, could be activated. For example, civic and religious leaders could encourage each parish or community, acting in accord with their own religious tradition of welcoming the stranger, to sponsor a displaced family. Furthermore, non-religious civic groups could do the same.

A few prototypes of these types of civic solidarity already exist. Although created to meet needs for long-term humanitarian assistance, not for temporary protection, these models could be reimagined and adapted to respond to sudden temporary migration crises. Within the European Union, the Humanitarian Corridors concept has been active in Italy for close to a decade.<sup>374</sup> The Italian Ministry of Foreign Affairs has worked with civil society organizations and religious communities who volunteer to provide reception services

---

374. See *Humanitarian Corridors*, SANT'EGIDIO, <https://www.santegidio.org/pageID/30112/langID/en/Humanitarian-Corridors.html> (last visited Oct. 21, 2023) [<https://perma.cc/3X2X-DFKZ>] (archived Sept. 28, 2023).

for particularly vulnerable migrants. The beneficiaries are provided legal access to Italy, where they are placed with the sponsoring institutions, who receive them and provide shelter.<sup>375</sup> The communities where the migrants live assist them in applying for asylum or other legal benefits to which they might be entitled. The communities also organize cultural orientation programs, connect the migrants with medical and social assistance, and follow through on their legal applications. This initiative amplifies the opportunities for social inclusion of the migrants and energizes members of local communities who support the mission. The numbers of migrant families who have passed through these Humanitarian Corridors have thus far been small, but early successes have led to the introduction of similar approaches in France and Belgium.<sup>376</sup>

Farther from the European scene, Canada has well-established networks of private individuals and groups who sponsor refugees resettled from overseas.<sup>377</sup> This type of civic engagement has been supporting the reception and integration of refugees for more than four decades, and has resettled more than 300,000 refugees in Canada.<sup>378</sup> The sponsoring groups include faith-based organizations, cultural heritage societies, social service associations, and others.<sup>379</sup> In addition, any group of five Canadian citizens or permanent residents over the age of eighteen can join together to sponsor a refugee.<sup>380</sup> In general, the sponsors agree to provide financial support and social

375. See *Humanitarian Corridors*, HUMANITARIAN CORRIDOR, <https://www.humanitariancorridor.org/en/homepage/> (last visited Oct. 21, 2023) [<https://perma.cc/6HG8-TLAG>] (archived Oct. 21, 2023).

376. *Italian Humanitarian Corridors Awarded UN Refugee Prize*, INT'L CATH. MIGRATION COMM'N (Sept. 23, 2019), [https://www.icmc.net/2019/09/23/italian-humanitarian-corridors-awarded-un-refugee-prize/?gclid=Cj0KCQiAveebBhD\\_ARIsAFaAvrEviP9pHHUPun4tcCeyIMrOF\\_9XvM9ufktLsb\\_9UppJRZAO7r4vICEaAr6HEALw\\_wcB](https://www.icmc.net/2019/09/23/italian-humanitarian-corridors-awarded-un-refugee-prize/?gclid=Cj0KCQiAveebBhD_ARIsAFaAvrEviP9pHHUPun4tcCeyIMrOF_9XvM9ufktLsb_9UppJRZAO7r4vICEaAr6HEALw_wcB) [<https://perma.cc/8NTR-FNEM>] (archived Sept. 23, 2023).

377. See *Sponsor a Refugee*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program.html> (last visited Oct. 21, 2023) [<https://perma.cc/JSL3-KVEN>] (archived Sept. 28, 2023).

378. *Private Sponsorship Pathways*, U.N. HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/complementary-pathways-admission-third-2> (last visited Oct. 21, 2023) [<https://perma.cc/378P-F5ZD>] (archived Sept. 28, 2023).

379. See *What is the Private Sponsorship of Refugees?*, U.N. HIGH COMM'R FOR REFUGEES: CAN., <https://www.unhcr.ca/in-canada/other-immigration-pathways-refugees/private-sponsorship-refugees/#~:text=Privately%20sponsored%20refugees%20are%20approved.ethnocultural%20groups%20or%20settlement%20organizations> (last visited Oct. 21, 2023) [<https://perma.cc/F8XC-DYHW>] (archived Sept. 28, 2023).

380. *Group of Five (G5)*, REFUGEE SPONSORSHIP TRAINING PROGRAM, <https://www.rstp.ca/en/infosheet/group-of-five-g5/> (last visited Oct. 21, 2023) [<https://perma.cc/AFF8-2LNS>] (archived Sept. 28, 2023).

assistance for one year.<sup>381</sup> Australia has also initiated a private sponsorship program for special humanitarian resettlement.<sup>382</sup>

The United States appears to have taken note of the outpouring of private assistance in the European Union to Ukrainians seeking temporary protection. After facing criticism for its initial offer to shelter only 35,000–60,000 Ukrainians for temporary protection,<sup>383</sup> U.S. officials launched a new private sponsorship program, *Uniting for Ukraine*, which features government vetting and voluntary private placements.<sup>384</sup> U.S. citizens, lawful permanent residents, lawful temporary residents, TPS-holders, DACA-recipients, and other residents of the United States can apply to sponsor Ukrainians displaced by the Russian invasion.<sup>385</sup> By the end of the first year of the

381. *Private Sponsorship of Refugees*, CANADIAN COUNCIL FOR REFUGEES, [https://ccrweb.ca/en/private-sponsorship-refugees?utm\\_source=Google&utm\\_medium=Search&utm\\_campaign=Information\\_HubEN\\_RefProgCan\\_Ad3&gclid=Cj0KCQiAveebBhD\\_ARIsAFaAvrGeRC8fSLHj1Z13Xypkh\\_D5qKjHFendFcTC6Et3Ng5DsoDiDNk4cB8aAi1rEALw\\_wcB](https://ccrweb.ca/en/private-sponsorship-refugees?utm_source=Google&utm_medium=Search&utm_campaign=Information_HubEN_RefProgCan_Ad3&gclid=Cj0KCQiAveebBhD_ARIsAFaAvrGeRC8fSLHj1Z13Xypkh_D5qKjHFendFcTC6Et3Ng5DsoDiDNk4cB8aAi1rEALw_wcB) (last visited Oct. 21, 2023) [<https://perma.cc/4XH4-SDEA>] (archived Sept. 28, 2023).

382. *See The Special Humanitarian Program (SHP)*, AUSTRAL. GOV'T DEP'T OF HOME AFFS., <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/the-special-humanitarian-program> (last visited Oct. 21, 2023) [<https://perma.cc/6JD7-6DQB>] (archived Sept. 28, 2023).

383. The U.S. announced Temporary Protected Status (TPS) for Ukrainians on March 3, 2022, which would benefit Ukrainian nationals already present in the U.S. as of March 1, 2022. *Secretary Mayorkas Designates Ukraine for Temporary Protected Status for 18 Months*, U.S. DEP'T OF HOMELAND SEC. (Mar. 3, 2022), <https://www.dhs.gov/news/2022/03/03/secretary-mayorkas-designates-ukraine-temporary-protected-status-18-months> [<https://perma.cc/5BHX-DBK6>] (archived Sept. 28, 2023). The initial prediction was that 35,000 would be eligible. Criticism of the small endeavor led the Biden administration to extend the deadline for presence in the U.S. to April 19, with a new prediction that up to 60,000 Ukrainians would be eligible. 87 C.F.R. § 23211 (2022).

Public criticism of the small numbers of Ukrainians eligible for TPS in the U.S. led President Biden to announce that the U.S. would accept 100,000 Ukrainians fleeing the Russian invasion. Miriam Jordan, Zolan Kanno-Youngs & Michael D. Shear, *United States Will Welcome Up to 100,000 Ukrainian Refugees*, N.Y. TIMES (Mar. 25, 2022), <https://www.nytimes.com/2022/03/24/us/ukrainian-refugees-biden.html> [<https://perma.cc/T6CP-BJ49>] (archived Sept. 28, 2023). In August 2023 the U.S. extended TPS for 18 months, through April 19, 2025, for Ukrainians in the United States. *Secretary Mayorkas Extends and Redesignates Temporary Protected Status for Ukraine*, U.S. DEP'T OF HOMELAND SEC. (Aug. 18, 2023), <https://www.dhs.gov/news/2023/08/18/secretary-mayorkas-extends-and-redesignates-temporary-protected-status-ukraine>.

384. *Uniting for Ukraine*, a humanitarian parole program, anticipates that U.S.-based sponsors will apply to provide financial support for two years for Ukrainians seeking temporary refuge from the war in their country. *See Uniting for Ukraine*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/ukraine> (last visited Oct. 21, 2023) [<https://perma.cc/L7B2-TMKE>] (archived Sept. 28, 2023).

385. *See Frequently Asked Questions about Uniting for Ukraine*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/uniting-for-ukraine/frequently->

Russian military attack on Ukraine, close to 300,000 Ukrainians had entered the United States.<sup>386</sup> More than 200,000 Americans had sought to serve as sponsors.<sup>387</sup> Several months later, when the United States announced a new private sponsorship program for individuals displaced from Cuba, Haiti, Nicaragua, and Venezuela, more than 1.5 million Americans expressed interest in being sponsors.<sup>388</sup>

Whether civic solidarity with future migration crises builds on one of these models or grows out of a diaspora or an unforeseen set of circumstances, the fundamental lesson from the EU's temporary protection program is that private citizens played the key role. Although the future of the EU-wide temporary protection program for those displaced from Ukraine remains to be seen, the initial rollout was remarkably successful and smooth. The most notable aspect of its deployment was the extraordinary outpouring of private assistance to displaced families from Ukraine. This set a marker for civic engagement with mass influxes in the European Union. For the future, civil society needs to build structures to enable private volunteers to join in an EU-wide effort to welcome those needing temporary protection from armed conflict, endemic violence, and systemic violations of their human rights.

---

asked-questions-about-uniting-for-ukraine (last visited Oct. 21, 2023) [https://perma.cc/VR74-J49W] (archived Sept. 28, 2023).

386. See Julia Ainsley, *U.S. Has Admitted 271,000 Ukrainian Refugees Since Russian Invasion, Far Above Biden's Goal of 100,000*, NBC NEWS (Feb. 24, 2023, 10:15 AM), <https://www.nbcnews.com/politics/immigration/us-admits-271000-ukrainian-refugees-russia-invasion-biden-rena72177> [https://perma.cc/35CU-9K3E] (archived Sept. 28, 2023).

387. *Id.*

388. See Camilo Montoya-Galvez, *1.5 Million Apply for U.S. Migrant Sponsorship Program With 30,000 Monthly Cap*, CBS NEWS (May 22, 2023, 9:56 PM), <https://www.cbsnews.com/news/us-migrant-sponsorship-program-cuba-haiti-nicaragua-venezuela-applications/> [https://perma.cc/X6BC-RG49] (archived Sept. 28, 2023).