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Mass influx of people from Ukraine: social entitlements and access to the labour market

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1

Mass influx of people from Ukraine: social entitlements and access to the labour market: Introduction.

Jakub K. Adamski* - Izabela Florczak**

1. General framework of the book. 2. Relevance of the issues analysed. 3. Technical information and acknowledgements.

1. General framework of the book.

It is symbolic, but in our view, important to say that we would have preferred that this book had never been written. So that it would not have been necessary to analyse the situation of those fleeing war in Ukraine,¹ so that it would not have been necessary to even consider the need for Council Directive 2001/55/EC.²

However, the realities of the modern world have made it necessary to deal with what we believe to be an important and socially momentous topic – the social consequences of the war in Ukraine. The consequences are presented in this book from a number of different perspectives, with a particular focus on the labour market.

From a nomenclatural standpoint, it is imperative to accurately classify individuals arriving from Ukraine. It is insufficient to classify them solely as *refugees* due to their displacement resulting from the war. Consequently, we have opted to use the terms *war migration* or *war migrants* in general reference to those escaping the conflict in Ukraine, without placing them in a legal category. Other terms used in this book, including *displaced persons* and *refugees*, are used within the legal context discussed and given their respective meanings. At the same time, it has been assumed that the considerable influx of individuals from Ukraine since 24

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¹ Given that the war in Ukraine waged by the Russian Federation has been ongoing since 2014, this book focuses on the escalation of the conflict since 24 February 2022.

² 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

February 2022 ought to be categorized as *forced migration* according to the definition provided by the International Organization for Migration.³

The book is divided into two parts, which, due to the subject matter, differ significantly in terms of volume. The first part should be regarded as the background to the problems presented in the second part. The issues addressed focus on various aspects of the functioning of temporary protection and the social consequences of the war in Ukraine. This part gives the reader an overview of the implementation mechanisms of Directive 2001/55 (the chapter by Nuria Arenas-Hidalgo), reveals contexts related to the consequences of fleeing the war (the chapter by Olena Fedyuk and Anastasia Ryabchuk), and presents considerations related to the possibility of using the mechanisms in place during temporary protection in the long term (the chapter by Karen Geertsema, Tesseltje de Lange, and Ricky van Oers). The first part is also a highly relevant commentary on the Ukrainian perspective of the consequences of the war that are noticeable in the labour market (by Ilona Voitkovska), a topic that is often overlooked in other analyses.

The second part of the book consists of country studies prepared within a predetermined thematic framework but differing in detail. The authors focused on numerous aspects when presenting the national perspective of the mass influx. The presentation of them could not be unified, if only because not all of the countries described in the book are members of the EU – so EU regulations do not apply to them. Of the non-EU countries, Moldova, Switzerland, Turkey, the United Kingdom and the United States of America were included. Thus, countries of significant importance for the mass influx of people from Ukraine due to either the scale of the Ukrainian war migration (Moldova, Turkey), significant previous experience in receiving migrants, which is worth contrasting with the situation of people fleeing war from Ukraine (Turkey, the UK, the USA), or high standards in creating social policies that have a significant impact on the situation of the war migrants from Ukraine (Switzerland).

Countries subject to EU legislation were selected where significant numbers of people from Ukraine had arrived due to the war⁴ or that were specifically implementing EU legislation on mass influxes of people (Denmark and Ireland). From a research point of view, it did not seem necessary to present the perspectives of all EU countries, as in some of them, the scale of the influx is negligible.⁵

³ International Organization for Migration, *Glossary on Migration*, Geneva, 2019, 77.

⁴ Based on the available data, as of 31st July 2022, Poland had a total of 1.3 million Ukrainians benefitting from temporary protection. The other Member States with the highest total numbers of Ukrainian beneficiaries of temporary protection were Italy (142,330), Spain (131,705), Bulgaria (125,275), Slovakia (82,995), and Austria (73,785). Eurostat, *Ukrainians granted temporary protection in July*, 7 September 2022, available at <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20220907-2> (last accessed 2 November 2023).

⁵ Data from July 2023 show that the following countries had significant numbers of temporary protection beneficiaries: Greece (25,740), Croatia (22,330), Cyprus (17,920), Luxembourg (4,190), Iceland (3,330), Malta (1,850), and Liechtenstein (520). Interfax, *Number of Ukrainian refugees with temporary protection in EU up by 41,300 in Aug - Eurostat*, 11 October 2023, <https://interfax.com/newsroom/top-stories/95351/> (last accessed 2 November 2023).

While the authors had complete freedom in choosing content for the chapters, we aimed to structure the analyses in several areas:

1) A general framework, including issues such as identifying the source of law in which the Directive and the Council Implementing Decision 2022/382⁶ were implemented, estimating the scale of the influx and its changes, and determining the time frame resulting from national protection;

2) The personal scope of applicable support measures, including issues such as identifying who is covered by national measures, the mechanisms of confirming the status of displaced persons, and the mechanisms of the loss of status of a displaced person;

3) Social policy measures for Ukrainian war migrants, including issues such as financial support, housing, and access to healthcare and education;

4) Social policy measures for Ukrainian war migrants to support their professional activity, **including issues such as displaced persons' right to work, the scale of entry into the labour market by people with the status of displaced person, and special rules for recognising qualifications/diplomas/admission to professions.**

The chapters have deliberately been structured in such a way that, on their own, they provide an excellent source of knowledge about national regulations, while the analysis of several/all chapters gives a broad perspective of the introduced mechanisms.

We have consciously decided not to make a distinction between the application and non-application of European Union regulations to the discussed topic. The proposed structure facilitates the comparison of the mechanisms functioning in different countries.

1) countries fully covered by Directive 2001/55 and Decision 2022/382;

2) those that have opted-out from Directive 2001/55 (Denmark and Ireland);

3) countries not covered by Directive 2001/55.

2. Relevance of the issues analysed.

The data on the scale of the influx of people from Ukraine leave no illusions that we are dealing with a phenomenon of enormous impact. At the end of October 2023, there were 6,232,000 such people worldwide, including 5,839,900 in Europe.⁷ On 19 October 2023, when the substantive work on all chapters of the book had already been completed, the Council of the European Union (EU) decided to extend the temporary protection until 4 March 2025.⁸ The October decision indicated that:

- There are approximately 4.1 million displaced persons who currently benefit from temporary protection in the EU. The situation in Ukraine does not allow them to return

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁷ UNHCR, *Ukraine Refugee Situation*, <https://data.unhcr.org/en/situations/ukraine>, (last accessed 2 November 2023).

⁸ Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382, OJ L, 2023/2409, 24.10.2023.

there under safe and durable conditions. The International Organization for Migration estimates that, as of 25 May 2023, 5.1 million people are internally displaced within Ukraine. More than half of all internally displaced persons reported having been displaced for one year or longer. The United Nations High Commissioner for Refugees estimated that more than 5 million people are displaced inside Ukraine and that over 17 million people are in need of urgent humanitarian assistance. In June 2023, in view of the situation in Ukraine, the United Nations High Commissioner for Refugees reiterated its previous position on returns to Ukraine, which called upon States not to forcibly return nationals and former habitual residents of Ukraine, including those who have had their asylum claims rejected;

- The overall number of registrations of persons that enjoy temporary protection has remained stable at around 4.1 million, with low numbers of persons reporting having returned to Ukraine on a permanent basis. Moreover, the risk of a future mass influx and displacement of more people fleeing from Ukraine to the EU remains due to the volatility and uncertainty of the situation in Ukraine as a result of hostile actions by Russia. Heavy fighting continues in many areas, and the risk of escalation remains. This, combined with the difficult humanitarian situation in Ukraine, could lead to a sudden and further increase in arrivals into the EU that could reach the level of a mass influx. At the same time, the risk to the efficient operation of the national asylum systems would remain if temporary protection were to cease soon and all those people were to apply for international protection at once;

- The high number of displaced persons in the EU who benefit from temporary protection is not likely to decrease as long as the war against Ukraine continues. Extending temporary protection is, therefore, necessary to address the situation of people who currently benefit from temporary protection in the EU or who will need such protection as of 4 March 2024, as it provides for immediate protection and access to a harmonised set of rights whilst keeping formalities to a minimum in a situation of mass influx to the European Union. Extending temporary protection will also help to ensure that the asylum systems of the Member States are not overwhelmed by a significant increase in the number of applications for international protection that could be lodged by people who benefit from temporary protection until 4 March 2024, if temporary protection were to cease by then or by people fleeing the war in Ukraine that arrive in the EU after that date and before 4 March 2025.

It follows, therefore, that the standards outlined in the book that relate to the situation of displaced persons will apply until March 2025. After that date, it will become crucial to decide which entitlements these people should enjoy in the longer term. Relevant guidelines are presented by several authors of national chapters, including Anatolie Cosciug, Alexandra Porumbescu, and Alan Hyde.

This book is not the only study to cover the topic.⁹ However, it fills a gap in the accumulation of cross-cutting knowledge that focuses on social rights (including, in

⁹ See Mantu S., Zwaan K., Strik T. (eds), *The Temporary Protection Directive: Central Themes, Problem Issues and Implementation in Selected Member States*, Ipskamp Printing, Nijmegen, 2023.

particular, access to the labour market)¹⁰, going beyond the regulations in force in the Member States.

3. Technical information and acknowledgements.

Substantive work on the chapters was completed at the end of August 2023 (except for the chapter on Germany, which was submitted with an effective date of the end of October 2023 or in case the authors have indicated otherwise).

A huge amount of technical editorial work was provided by the publisher – Italian Labour Law e-Studies, which assisted the authors and editors in proofreading some of the chapters.¹¹

The editors would like to express their great gratitude to all those involved in the process of publishing the book, particularly the authors, for their work and exceptional commitment.

This publication would not have been possible were it not for the commitment of the team involved in the publication of Italian Labour Law e-Studies, in particular, Professor Emanuele Menegatti and Dr Leonardo Battista. We thank you immensely for making it possible for us to publish such an important publication, showing your support and assistance at the various stages of its preparation.

¹⁰ Research has also been published in this area, but less extensive and detailed, such as Katsiaticas C., Segeš Frelak J., Güzelant G., Pilat A., *Creative approaches to boosting the employment of displaced Ukrainians in Central and Eastern Europe*, in *International Centre for Migration Policy Development, ICMPD, Briefing Note*, September 2023.

¹¹ The burden of proofreading was shared between the authors, the editors and the publisher. Any linguistic errors should not affect the substantive perception of the content of the book, which was published with the hard work of those involved in the publishing process, without the use of external funding.

PART 1

General remarks on the concept of massive influx and its social consequences

2

The unprecedented granting of temporary protection in Europe. Grounds for issuing Directive 2001/55 and reasons for its activation *just now*. Nuria Arenas-Hidalgo*

1. Introduction. 2. Origins: adoption of Directive 2001/55 as a tool in the service of the Common European Asylum System in the event of a mass influx of displaced persons. 3. First activation of Directive 2001/55. Beyond compliance with the legal framework in the case of the large-scale refugee displacement from Ukraine. 4. Conclusions.

1. Introduction.

The Russian war on Ukraine has led to the forced displacement of a population on such a scale that, as the Secretary-General of the United Nations stated, it has become Europe's worst humanitarian and refugee crisis in decades.¹ If we consider the speed and dimension of the exile, it is undoubtedly the fastest-growing forced migration crisis since the Second World War.² The particularities of the invasion, and the mass displacement it has provoked, have given rise to comprehensive and united support from the European Union (EU) and inspirational solidarity displayed by individual Europeans.³ Within this framework of solidarity, the Temporary Protection Directive⁴ has played a special role.

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¹ UN – Secretary General, *United Nations Secretary-General's remarks to the General Assembly Emergency Special Session on Ukraine*, 28 February 2022, available at <https://www.un.org/sg/en/content/sg/speeches/2022-02-28/remarks-general-assembly-emergency-special-session-ukraine> (accessed 24 April 2023).

² UNHCR, *News Comment: Without international solidarity, Ukraine's displacement crisis could turn into catastrophe*, 24 March 2022, available at <https://www.unhcr.org/news/press/2022/3/623ce1e44/news-comment-international-solidarity-ukraines-displacement-crisis-turn.html> (accessed 24 April 2023).

³ European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: European solidarity with refugees and those fleeing war in Ukraine, COM (2022), 107 final, 8.3.2022.

⁴ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

Directive 2001/55 is a procedure of exceptional character of the Common European Asylum System (CEAS). It was adopted following the large-scale displacement due to the war in the former Yugoslavia to provide temporary protection in the event of a mass influx of displaced persons from third countries. It also tries to balance efforts between Member States (MS) in receiving and bearing the consequences of receiving such people.⁵ Against all the odds and in record time, overcoming all the obstacles that had been considered insurmountable for activation over the years, the European Commission proposed initiating the procedure on 2 March 2022.⁶ Only two days later, Council Implementing Decision (EU) 2022/382⁷ was adopted. It acknowledged the mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and resulted in the introduction of temporary protection. More than 20 years after it came into force, the first norm adopted at the outset of the construction of the CEAS has finally demonstrated its worth by providing temporary protection to almost five million people while simultaneously avoiding the collapse of national systems of international protection.⁸

This study analyses the context in which Directive 2001/55 was adopted to understand the ultimate aim of this legal instrument and how it provides essential support to the CEAS. Given that it had never been activated before, this study looks at the obstacles that hindered its implementation in the previous displacement crises that have affected Europe in recent years and how the crisis in Ukraine fits with the instrument's conditions for activating the temporary protection. The contribution concludes with the hope that the EU's response will be seen as a paradigm shift in European asylum policy and not a confirmation of its drift towards restriction.

2. Origins: adoption of Directive 2001/55 as a tool in the service of the Common European Asylum System in the event of a mass influx of displaced persons.

The cornerstone of International Refugee Law – the 1951 Convention on the Status of Refugees and its 1967 optional Protocol⁹ – permits the granting of refugee status to entire groups of displaced persons (*prima facie*).¹⁰ Nevertheless, States have regularly rejected this

⁵ See Article 1 of Directive 2001/55.

⁶ European Commission. Proposal for a Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection. COM (2022) 91 final. Brussels, 2 March 2022. Proposal Implementing Decision.

⁷ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁸ According to UNHCR, 5,008,482 refugees from Ukraine have been registered for Temporary Protection or similar national schemes in Europe. Last updated 28 March 2023. See <https://data.unhcr.org/en/situations/ukraine> (accessed 24 April 2023).

⁹ United Nations, Treaty Series, 189, 137.

¹⁰ A *prima facie* approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum seekers, their

possibility, resorting instead to formulas that provide temporary refuge. Temporary protection has a long history at national and international levels, yet there is no internationally accepted definition or agreement on its minimum content or the situation or people to whom it could apply.¹¹ International legal instruments specifically dedicated to confronting large-scale displacements are lacking, and there is considerable reliance on *ad hoc* responses.¹²

The first appearance of the then-called “temporary refugee” came shortly after the adoption of the Geneva Convention, with the displacement of populations from Hungary and Czechoslovakia. Around 2% of the Hungarian population fled to Austria and Yugoslavia, where they were granted interim protection in accordance with the national legislation of those two States.¹³ Later, mass displacements in Southeast Asia led to the need to provide refuge in such circumstances. Experience in dealing with the “temporary refugee” led to the establishment of a clear distinction between permanent and temporary asylum, which is not granted under the Geneva Convention, but which is based on the principle of *non-refoulement* as its basic legal foundation. A significant consensus on the characteristics of admission and the basic status of rights coalesced around the famous High Commission Executive Committee’s Conclusion N° 22, later widely applied, even serving as a control parameter in preparatory work for Council Directive 2001/55.¹⁴

The 1990s saw a new phase in the evolution of this form of protection, as a consequence of the war in former Yugoslavia. Before the conflict broke out, the United Nations High Commissioner for Refugees (UNHCR) insisted that the nature of the conflict was such that a flexible system of temporary protection would respond adequately to the emergency.¹⁵ Despite initial resistance from some countries, European states hosted these populations, thus confirming the general obligation of all States to allow entry and, at least, temporary refuge, whenever the principle of *non-refoulement* could be affected in the case of mass influx.

In the absence of the necessary legal basis that would enable a common European approach, the MS adopted national measures that varied so greatly that it led to a significant imbalance in the granting of protection. The application of different regimes started to produce visible undesired effects, e.g., large discrepancies between the numbers of people

country of former habitual residence. UNHCR. Guidelines on International Protection n° 11: *Prima Facie* Recognition of Refugee Status, HCR/GIP/15/11, 25 June 2015, 2.

¹¹ UNHCR, *Discussion Paper – Roundtable on Temporary Protection*, International Institute of Humanitarian Law, San Remo, 20 July 2012, 1.

¹² Arenas-Hidalgo N., *El sistema de protección temporal europeo. El resurgimiento de una renovada acogida territorial como respuesta a los desplazamientos masivos de población*, in *Revista Española de Derecho Internacional*, 56, 2003, 747.

¹³ Legislation approved in Austria in 1968 can be considered among the first antecedents. See Hartman J.F., Perluss D., *Temporary Refuge: Emergence of a Customary Norm*, in *Virginia Journal of International Law*, 26, 1986, 559.

¹⁴ UNHCR, *Protection of Asylum-Seekers in Situations of Large-Scale Influx*, 22, 1981, available at: <https://www.unhcr.org/excom/exconc/3ae68c6e10/protection-asylum-seekers-situations-large-scale-influx.html> (accessed 24 April 2023).

¹⁵ UNHCR, *Statement of the United Nations High Commissioner for Refugees to the International Meeting on Humanitarian Aid for Victims of the Conflict in the Former Yugoslavia*, Geneva, 29 July 1992, available at: <https://www.unhcr.org/admin/hcspeeches/3ae68fac1a/statement-mrs-sadako-ogata-united-nations-high-commissioner-refugees-international.html> (accessed 24 April 2023).

seeking refuge in the different MS, as well as secondary movements. It also revealed the dire need for harmonisation.¹⁶

The experience in granting temporary protection to the populations of Bosnia and Kosovo, with its successes and failures, pointed to the need for a common approach.¹⁷ With the entry into force of the Treaty of Amsterdam and the convening of the Tampere European Council, legal conditions changed to the extent that would lead to the adoption of a Directive on this issue, and with it came the first phase of the construction of the CEAS.¹⁸ Directive 2001/55 was a response to the need for a coordinated approach, and it was to play an essential role in conforming the general obligation to grant asylum in these cases, as well as a legal reference for the international context.

Temporary protection as defined in Directive 2001/55, is a procedure for tackling the mass displacements of people, from the perspective of protective refuge in the MS territories. It uses an exceptional instrument that was initiated at the behest of the EU and which provides temporary protection based on sharing the responsibility for this influx. It aims to act as a support in an exceptionally grave situation that requires the attention of the EU, which, in these cases, provides immediate protection for a group of subjects considered to be beneficiaries of the statute foreseen in Directive 2001/55. It is thus the essential complement that enables the system to guarantee the right of international protection, regardless of the context in which the exile has occurred.

The argument put forward by the Commission for the creation of a new asylum system has been borne out by the very survival of this new medium of protection. As the MS had rejected the possibility of recognising refugee status for entire groups of people *prima facie*, it could have meant that the procedures for determining individual cases of asylum, in line with European traditions, would have been inoperable in the face of a mass influx. This would be against the interests not only of States but also of other people seeking protection outside the mass influx. Consequently, as a complementary measure to safeguard the European asylum system, a new instrument was created to provide a legal basis for dealing with the problem of mass exodus. This instrument was intended to serve the CEAS and facilitate the full operation of the Geneva Convention.¹⁹ According to van Selm, a major intention of

¹⁶ Beirens H., Maas S., Petronella S., van der Velden M., *Study on the Temporary Protection Directive. Final Report. European Commission, Directorate-General for Migration and Home Affairs*, January, 2016, 5, available at: <https://op.europa.eu/en/publication-detail/-/publication/1c753fe9-9aab-11e6-868c-01aa75ed71a1> (accessed 24 April 2023).

¹⁷ On the experience of granting temporary protection in light of the former Yugoslavia crisis, see: van Selm-Thorburn J., *Refugee Protection in Europe. Lesson from the Yugoslav Crisis*, Martinus Nijhoff, Leiden, 1998.

¹⁸ The TPD was the first asylum Directive adopted by the Council based on art. 63 para. 2 lit. a) and b) TEC (now art. 78 paras. 1 and 2 lit. c) and g) TFEU.

¹⁹ European Commission. Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Explanatory Memorandum/* COM/2000/0303 final - CNS 2000/0127, 31 October 2000, para. 1.4. The specific aims of the Directive are listed in the Commission proposal: To avoid a total blockage in national asylum systems in the event of a mass influx, which would have negative effects on the Member States, the persons concerned and other persons seeking protection outside the context of the mass influx, and thereby support the viability of the common European asylum system; To secure immediate access to protection and fair rights to the persons concerned; To clarify the link between temporary protection and the Geneva Convention, safeguarding the full application of the Convention; To contribute to achieving balance between the efforts made by the

Directive 2001/55 is the idea that Temporary Protection should not be an alternative to refugee status (as it had been cast during the 1990s) but an administrative prelude to the application of the Convention.²⁰ The Commission failed to explain sufficiently the refusal of States to use the determination of group *prima facie* in the Geneva Convention framework. In my opinion, tradition, reasons of personal convenience, the need for harmonisation and having a system of shared responsibility weighed on the decision to opt for a specific mechanism.²¹

In effect, as a result of its exceptional character, Directive 2001/55 incorporates the obligation to promote a balance of efforts between Member States in receiving such people and bearing the consequences thereof. The mandate of the Treaty of Amsterdam supposed that MS would go beyond mere cooperation to achieve community solidarity. Hence, a **specific chapter, entitled “solidarity”, was added to enable a fair sharing of responsibilities** – not only financially but also in the numbers of displaced people, with the aim of distributing the burden associated with granting protection. Financial solidarity had already been institutionalised (by the European Refugee Fund); however, no predetermined formula had been established to deal with the potential distribution of those entitled to refugee status among MS. Instead, it was left to be determined during the implementation phase of Directive 2001/55. The Secondary Law includes two conditions for this distribution to take place: the consent of both the States granting refuge and the people displaced, and **the “rule of double voluntarism”** (art. 25 of the Directive 2001/55). Undoubtedly, the principle itself, and the binding nature of establishing interstate solidarity, was a novel aspect compared to the rest of the CEAS. It amounted to a transcendental shift in the assumption that crises of such magnitude should be the responsibility of the EU as a whole. Nevertheless, its dependence on the expressed will of the MS case by case would blunt its advance. Solidarity is compulsory, but only with the activation of Directive 2001/55 would it become clear how deep that solidarity was and who would provide it.

Member States to receive the persons concerned by offering coordination facilities in the event of a mass influx in the European Union and in implementing temporary protection; To give practical expression to solidarity in the reception of the persons concerned by means of financial solidarity and the double voluntary action in receiving them (5.1).

²⁰ Van Selm J., *Temporary Protection for Ukrainians: Learning the Lessons of the 1990s?*, in Carrera S., Ineli-Ciger M. (eds.), *EU Responses to the Large-Scale Refugee Displacement from Ukraine. An Analysis on the Temporary Protection Directive and Its Implications for the Future EU Asylum Policy*, European University Institute, Brussels, 2023, 367, 368. According to Skordas, though it is often said that temporary protection is not a third form of protection, along with refugee status or subsidiary protection, it cannot be denied that the Directive 2001/55 creates a temporary legal status for the protected group, reflecting rights and benefits on the persons concerned under European Law. See also Skordas A., *Temporary Protection Directive 2001/55*, in Hailbronner K. (ed.), *EU Immigration and Asylum Law*, Nomos, Baden-Baden, 2010, 820.

²¹ Arenas-Hidalgo N., *El Sistema de Protección Temporal de Desplazados en la Europa Comunitaria*, Universidad de Huelva Publicaciones, Huelva, 2005, 101.

3. The first activation of Directive 2001/55. Beyond compliance with the legal framework in the case of the large-scale refugee displacement from Ukraine.

Considering the objectives set out in the Directive 2001/55, it could well have been framed as the logical response to the war in Ukraine, but nothing presaged its application in this case. After all, Europe had lived through years of recurrent migratory crises, some specifically characterised by the European Court of Justice as a “**massive inflow of nationals of third countries**”. Nevertheless, they did not lead to the activation of this regulation.²² Various initiatives to do so, in 2011 and 2014, or within the framework of the particularly dramatic crisis of 2015, had been frustrated, either because they supposedly failed to meet the necessary presuppositions²³ or because the characteristics of this procedure in relation to particular case hindered the provision of an effective response.²⁴ In reality, the lack of political will to take advantage of the potential of the Directive 2001/55 to provide protection and encourage solidarity made it seem inoperable, obsolete, excessively dependent on political will, and scarcely effective, to the extent that its derogation was foreseen in the New Pact on Migration and Asylum presented in 2020.²⁵

However, the crisis in Ukraine radically changed the situation. A policy based on measures for *non-entrée*, the externalisation of migration control, and the criminalisation of search and rescue gave way to a policy of open doors and the immediate granting of refuge. Geographic and cultural proximity, the history of migration in recent years, and the geopoliticisation of

²² ECJ, Judgement 6 September 2017, *Slovak Republic and Hungary v Council of the European Union*, (c-643/15 y C-647/15, ECLI:EU:C:2017:235).

²³ Following the displacement of more than 650,000 people from Libya in 2011, some members of the European Parliament, and the Italian and Maltese governments, called on the Commission to propose the activation of Directive 2001/55. However, Commissioner Malmström responded: “It is still premature to activate the Temporary Protection Directive and there are other ways to help Malta and Italy”. In 2014, despite a 277 % increase in arrivals in Italy compared to 2013, Commissioner Avramopoulos considered that: “In view of the scale of the influx and the manner in which these persons’ asylum applications have been handled, the Commission considers that a proposal to trigger the EU wide temporary protection regime provided by the TPD would not be justified in the present circumstances”. Likewise, in 2015, and after the displacement of more than one million people, European Parliament member Gardini asked the Commission if the conditions were now right to activate the device; once again, however, the procedure was not activated. Ineli-Ciger M., *Time to Activate the Temporary Protection Directive. Why the Directive can Play a Key Role in Solving the Migration Crisis in Europe*, in *European Journal of Migration and Law*, 18, 2016, 13. See also Ineli-Ciger M., *5 Reasons Why: Understanding the Reasons behind the Activation of the Temporary Protection Directive in 2022*, EU Immigration and Asylum Law and Policy, 7 March 2022, available at <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/> (accessed 24 April 2023); Beirens H., Maas Sh., Petronella S., van der Velden M., nt. (16), 14.

²⁴ ECJ, Judgement 6 September 2017, *Slovak Republic and Hungary v Council of the European Union*, nt. (22).

²⁵ The greatest difficulties for activation were the failure to determine the concept of “mass influx”, the supposedly long and complex procedure of activation, the difficulty in obtaining a qualified majority in the Council, the device’s potential to attract more migrants to Europe, the broad standard of rights, and the double willingness requirement of States and displaced persons in order for it to take effect. Ineli-Ciger M., *Temporary Protection in Law and Practice*, Brill, Leiden, 2018; Beirens H., Maas S., Petronella S., van der Velden M., nt. (16), 34-36. The Proposal for a Regulation addressing situations of crisis and force majeure states that it has been almost impossible to achieve Member State agreement on the possible activation of the Directive 2001/55. Thus, “the Staff Working Document therefore concludes that the Temporary Protection Directive no longer responds to Member States’ current reality and needs to be repealed”. European Commission. Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and *force majeure* in the field of migration and asylum. COM (2020) 613 final. 23 September 2020, 10.

asylum are some of the reasons that explain this change in perspective.²⁶ Although welcome, it is open to criticism for the double standards applied by the EU compared to previous migratory crises.²⁷

In any case, it needs to be asked whether the basic requirements for activating this type of procedure were met and what reasons were put forward by the Decision 2022/382 in doing so.

For the purposes of Directive 2001/55, “**temporary protection**” means, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, an exceptional procedure to provide immediate and temporary protection to such persons, in particular, if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the people concerned and other people requesting protection (art. 2a).

Thus, Directive 2001/55 requires a complementary norm by which there is verification of a mass influx or imminent mass influx of displaced persons fleeing specific harms. This verification should be carried out in relation to a certain time and geographical coordinates and should consider potential adverse effects on the asylum system and the people affected. All this would cause the temporary protection procedure to be initiated.

In terms of the “mass influx” requisite, Decision 2022/382 states: “The existence of a mass influx into the EU of displaced persons who have had to leave Ukraine as a consequence of an armed conflict is hereby established.” However, Directive 2001/55 does not define with sufficient precision what is understood as a “mass influx”. Article 2d) only indicates that it will be a “large number of displaced persons”, which renders it an indeterminate legal concept whose application to a specific case adds to the margin of appreciation enjoyed by the Council.²⁸ No further data are provided to help us understand when a displacement attains the quality of a *mass* displacement or when these numbers are considered to be *large*.

²⁶ Various news media and political leaders have alluded to how “These are not the refugees we are used to... These people are Europeans”, marking a clear difference that references geographic and cultural connection (Bulgarian Prime Minister Kiril Petkov told journalists about the Ukrainians, as reported by the Associated Press). At the same time, it is true that Ukraine citizens have been traditional – and welcome – economic migrants to the EU, which has allowed them to travel visa-free throughout the territory and to create a network of welcoming fellow citizens in several MS. In addition, this crisis has reignited the geopoliticisation of the issue of asylum. In other words, the question is not only one of guaranteeing the right to asylum and doing so for those whom European states perceive as more deserving. The question is also one of showing the world that the West, in particular the EU, is founded on a guarantee of freedoms and rights in the face of illiberal and autocratic regimes. As in the second half of the 20th century, asylum becomes a tool of moral and ideological competition. Garcés Mascareñas, B., *¿Por qué esta crisis de refugiados es diferente?*, CIDOB Opinión, March 2022, available at:

https://www.cidob.org/es/publicaciones/serie_de_publicacion/opinion_cidob/2022/por_que_esta_crisis_d_e_refugiados_es_distinta (accessed 24 April 2023).

²⁷ Various academic works have analysed the EU response to displacement from Ukraine compared to previous migratory crises, seeing it as an example of discrimination and institutionalised racism in the guarantee of asylum in Europe. See chapters 1, 24 and 25 in: Carrera S., Ineli-Ciger M. (eds.), *EU Responses to the Large-Scale Refugee Displacement from Ukraine. An Analysis on the Temporary Protection Directive and Its Implications for the Future EU Asylum Policy*, European University Institute, Brussels, 2023.

²⁸ Arenas N., *The Concept of “Mass Influx of Displaced Persons” in the European Directive Establishing the Temporary Protection System*, in *European Journal of Migration and Law*, 7, 2005, 438.

In the preparatory work for Directive 2001/55, the Commission had already announced that the gradual arrival of asylum-seekers, refugees or displaced persons from a single country or region of origin cannot justify the introduction of such temporary protection, and except that the number of people must be substantial, it is impossible to quantify in advance precisely what constitutes a mass influx.²⁹ Thus, there is an express refusal to establish a pre-defined set of conditions confined to numerical thresholds or linked to specific indicators. So, it comes down to the Institutions that participate in the decision-making that will establish, case by case, whether these circumstances have been met and the variables on which it is based. This *ad hoc* dependence is one of the singularities of this procedure.³⁰

The decision of the Institution is to be based on data from contrasting sources previously determined by Directive 2001/55 (art. 5.4), and which oblige the Council to be in possession of this information and to have dialogued with such sources to commit to the motivation that these acts demand. Thus, the Decision will be based on: (a) an examination of the situation and the scale of the movements of displaced persons; (b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures; (c) information received from the Member States, the Commission, the UNHCR, and other relevant international organisations.

In the case of Ukraine, the Council examined the situation and magnitude of the displacement in recital 5. It stated that, as of 1 March 2022, more than 650,000 displaced persons had arrived in the EU, and it calculated that those numbers were expected to increase (to between 2.5 million and 6.5 million, according to recital 6). An assessment of the convenience of initiating temporary protection can be found in recital 16, which states that this was the most appropriate instrument for the current situation, given the extraordinary and exceptional situation, including the **Russian Federation's** military invasion of Ukraine and the scale of the mass influx of displaced persons. The Council must undertake this assessment considering the potential for emergency aid and action on the ground or the inadequacy of such measures. However, there is no mention of these conditions.

The speed and substance of the displacements made it impossible to adopt preventive measures *in situ* that, to some extent, would have avoided the adoption of the decision to initiate the procedure. Within a few days of the Russian invasion, people were amassing on the border, and there was no alternative but to enable immediate refuge. The humanitarian aid that had already been activated, as a complementary action, to attend to those affected by the war, was made possible by a package of immediate humanitarian finance. Food, water, medicines, healthcare capacity, refuge and protection were provided through the Union Civil Protection Mechanism.³¹ However, there was mention of the information communicated by

²⁹ European Commission. Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Explanatory Memorandum/* COM/2000/0303 final - CNS 2000/0127, 31 October 2000, art. 2 d).

³⁰ Arenas N., nt. (28), 438.

³¹ European Commission, *Communication European solidarity with refugees and those fleeing war in Ukraine*, 9 March 2022, 3, 4.

the MS. The High Commissioner (as stated in recital 6) did provide some estimates of displacement numbers, and there was also an urgent call for humanitarian aid by the United Nations for protection and assistance needs in Ukraine. Furthermore, a Regional Refugee Response Plan for Ukraine was established that provided details on the numbers of people in need and those to be targeted by assistance (recital 8).

Since Directive 2001/55 does not have the necessary indicators to measure the magnitude of the influx, the Council can exercise discretionary authority. The procedure holds certain guarantees that allow compliance with rules of control, i.e., **the Commission's proposal** contains basic content that limits the capacity of the Council to avoid a proposal that is sufficiently detailed; the Council must assess the data issued by certain subjects and that it is not a question of freedom of disposition but one of compulsory compliance; and, finally, **in terms of the motivation behind the Council's decision, there is the supposition of a guarantee** that it had understood the information provided and had entered into dialogue concerning this information.³² Yet recent experience shows that these guarantees are relative, given that the Commission seems unwilling to present a proposal without prior majority support on the Council. Consequently, the latter is not in a position where it has to substantiate a decision against the European Commission's proposal or the reports issued by the specialist Institutions. Without devaluing the fact that clearer indicators would limit discretionary capacity, I do not believe the Council is willing to deny itself the wide margin of appreciation conceded.

In the case that concerns us here, both the Commission and the Council place great importance on the cause behind the displacement. For the former, the probability that the EU is facing a situation characterised by a mass influx is not only based on figures but also on the gravity of the war and its proximity to external EU borders.³³ On the other hand, the Council insists that the decision to activate temporary protection be based on the extraordinary and exceptional situation caused by **the Russian Federation's military invasion** of Ukraine and the scale of the mass influx of displaced persons (recital 16). This leads to consideration of the doctrine of the aggressor, Russia – a determining factor in the activation of the Directive 2001/55.³⁴

Regarding the time and geographical coordinates, Decision 2022/382 applies to different categories of people displaced from Ukraine on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date (art. 2.1). In effect, Directive 2001/55 demands that the influx must be from the same country or geographical **area. Cases of "cumulative influx" from different geographical regions should not fall under** Directive 2001/55. This Directive does not restrict geographical origin to the European setting. However, the reluctance to initiate the instrument in previous crises and the fact that the first case of activating the norm was Ukraine could lead to this conclusion.

³² Arenas, N., nt. (28), 446, 449.

³³ European Commission. Proposal Council Implementing Decision, 2.

³⁴ Ineli-Ciger M., *5 Reasons Why: Understanding the Reasons behind the Activation of the Temporary Protection Directive in 2022*, EU Immigration and Asylum Law and Policy, 7 March 2022, available at: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/>

While drafting Directive 2001/55, the Economic and Social Committee warned that the norm should not be a “Balkan Directive” but a “geographically neutral” instrument to be deployed as and when it is needed. Directive 2001/55 was not conceived as an urgent protection response for direct neighbours. The “proximity argument” has no legal basis in Directive 2001/55.³⁵

Apart from these variables, Directive 2001/55 also refers to the “consequences” of this mass displacement. Article 2a) establishes that immediate temporary protection will be guaranteed, particularly if there is also a risk that the asylum system will be unable to process this influx without “adverse effects” for its efficient operation, in the interests of the people concerned and other people requesting protection. Considering the “adverse effects” on the proper functioning of the asylum system, this condition is coherent with the creation of an instrument whose main aim was to guarantee the functioning of the system and to avoid its collapse in the face of mass influx. In any case, it is unclear what is understood by “adverse effects” to the proper functioning of the asylum system and to those concerned. Nothing in Directive 2001/55 suggests that something must cause a collapse in MS capacity.³⁶ And given that the mechanism incorporates a system that promotes a balance of efforts between MS, it would be logical for it to be sufficient that only one State suffer adverse effects.³⁷

Decision 2022/382 establishes that introducing temporary protection is also expected to benefit MS. The rights that accompany temporary protection limit the need for displaced persons to immediately seek international protection, and thus the risk of overwhelming their asylum systems, as they reduce formalities to a minimum because of the urgency of the situation (recital 16). At the time of adopting the decision, nothing seems to indicate that the capacity to provide refuge is compromised. On 8 March 2022, the capacity to provide refuge was sufficient, as those who arrived moved on quickly to join friends or family. Hungary, Slovakia, Poland and Romania stated that they had sufficient capacity.³⁸ A reading of Decision 2022/382 shows that the adverse effects variable has acquired a certain singularity. It has become an indicator that must be checked when contrasting migration data to justify activating the instrument. However, uncertainty around the nature of a displacement for it to be considered on a mass scale or how it could trigger adverse effects in the asylum system or in the people affected still requires greater clarification.

Finally, Directive 2001/55 demands that exile be associated with flight from certain “harms” specified by the norm. From its definition of a displaced person, and linked to the

³⁵ van Selm suggests that a major reason why the Directive was not applied in 2015 was that the situation was not an immediate displacement crisis that required the urgent protection response of direct neighbours; van Selm J., nt. (20), 371. However, the proximity argument does not correspond to the letter and spirit of the Directive and would conceal differential treatment based on geography that would be contrary to European and international obligations. Arenas-Hidalgo N., *The Eternal Question. What does “Mass Influx” Really Mean? Reflections After the First Activation of the Temporary Protection Directive 2001/55*, in Carrera S., Ineli-Ciger M. (eds.), *EU Responses to the Large-Scale Refugee Displacement from Ukraine. An Analysis on the Temporary Protection Directive and Its Implications for the Future EU Asylum Policy*, EU Migration Policy Centre, 2023, 89.

³⁶ Ineli-Ciger M., *Time to Activate the Temporary Protection Directive. Why the Directive can Play a Key Role in Solving the Migration Crisis in Europe*, in *European Journal of Migration and Law*, 18, 2016, 15.

³⁷ Gluns D., Wessels J., *Waste of Paper or Useful Tool? The Potential of the Temporary Protection Directive in the Current “Refugee Crisis”*, in *Refugee Survey Quarterly*, 36, 2017, 63.

³⁸ European Commission, nt. (31), 3.

conclusions drawn from articles 2a), d), 3.4, 7 and 28, it can be deduced that the procedure will be aimed at: 1. People who are potential refugees (people displaced from third countries that could be considered refugees, according to article 1 A 2 of the Refugee Convention); 2. People who may fall within the scope of other international or national instruments giving international protection; 3. Particular cases: people who have fled areas of armed conflict or endemic violence or have been at serious risk of systematic or generalised violations of their human rights.

As seen here, the scope of application intended for Directive 2001/55 goes beyond the classic protection categories of the 1951 Convention or even the current definition of “subsidiary protection”,³⁹ especially when considering systematic or generalised violations of their human rights not directly associated with an armed conflict. Nor does it demand a specific degree of discrimination associated with such conflicts. In this case, Decision 2022/382 alludes to the existence of an “armed conflict” as the harm that lies in the origin of the existence of a mass influx of displaced persons who had to abandon Ukraine (art. 1). Both the Proposal of Council Implementing Decision and Decision 2022/382 itself state clearly that: a) the armed conflict is a consequence of a large-scale invasion of Ukraine from the Russian Federation and Belarus; b) it is an unprovoked and unjustified military aggression; c) it is a gross violation of International Law and the principles of the UN Charter; and d) it seeks to undermine European and global security and stability.⁴⁰ Mention of the gravity of the illegal act and the direct involvement of the EU are not inconsequential. Nor is the fact that armed conflicts are one of the serious harms that qualify a person for international protection in Europe. It remains to be seen whether, in circumstances involving systematic or generalised human rights violations not directly related to the traditional grounds for granting refugee status or subsidiary protection, the EU would respond in the same manner as contemplated by Directive 2001/55.

³⁹ Remember that, given that art. 2 f) of Directive 2011/95 of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), person eligible for subsidiary protection’ means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. According to art. 15, serious harm consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. OJ L 337, 30.12.2011.

⁴⁰ See recitals 1, 2 and 3 of the Council Decision. The European Commission alludes specifically to how the aim of this invasion was to destabilise the European security architecture. European Commission. Communication European solidarity with refugees and those fleeing war in Ukraine, *op. cit.*, 1. Both the Proposal and Council Implementing Decision 2022/382 mostly allude to the fact that the ultimate reason for the armed conflict is the military invasion by Russian armed forces, and that it is not an armed conflict caused by the action of both parties. Council Implementing Decision 2022/382 clearly states that the armed conflict – these two words are mentioned less – is a consequence of the illegal invasion and is the ultimate responsibility of the Russian Federation.

4. Conclusions.

The activation of Directive 2001/55 in the case of mass displacement of people obliged to uproot as a consequence of the invasion of Ukraine has resulted in a positive paradigm shift in the granting of refuge in Europe to large groups of forcibly displaced citizens.

The lack of sufficient political consensus to initiate this procedure in the past undermined the virtues of an instrument that allows for the granting of immediate protection and guaranteed legal status, prevents the collapse of asylum structures, and provides support in the sharing of efforts to accommodate displaced persons among all MS. Nevertheless, there is no doubt that this procedure represents an abuse of concepts that remain undefined and leaves the Council with a wide margin of manoeuvre. This prevents us from anticipating the conditions in which the effects of this instrument, as an essential complement to the CEAS, could unfold. Except in the case of the threats from which displaced persons must flee and whether this enables a greater degree of precision, the other requisites, such as the dimensions of the influx or how adverse effects could influence the asylum system, are decisions subject to discretionary interpretation. The dimensions of the influx from Ukraine show that this procedure was conceived for truly exceptional crises, but we cannot forget that there have been other similar crises in the past. The potential geopolitical deployment of asylum somewhat tarnishes what should have been a logical EU response. The response aligns not only with the legal obligations that the MS have undertaken but also with international obligations that call for the granting of protection, at least temporarily, alongside commitment to the principle of *non-refoulement* in cases of mass influx.

3

Fragmentation of old and new networks: contextualising the situation of the Ukrainians fleeing the war into the older mobility networks to the EU.

Olena Fedyuk* - Anastasia Ryabchuk**

1. Introduction. 2. Looking beyond the trends: fragmentation. 3. Navigating the labour market: considerations for employment. 4. Invisible networks that catch. 5. Conclusions.

1. Introduction.

Russia's full-scale invasion on Ukraine on February 24, 2022, shook the world by bringing war into the heart of Europe and took most of Ukrainians by surprise.¹ In the scales of its brutality, destruction and targeting of the civil population, it pushed an estimated 7.8 million Ukrainians to search for shelter in the European countries.² It also made the EU review its reception policies as well as change, - at least for the time being, - the way it responds to the influx of people fleeing their home countries. Displacement by war massively transformed mobility flows from Ukraine, a country which since its independence in 1991 became one of the key sending countries of the labour force to the EU.³ The post-February movement of people, drastic and unprecedented as it is, thus did not emerge ahistorically. First, since the annexation of Crimea by Russia in 2014 and the beginning of the war in the east of Ukraine,

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¹ Kulick O., *Gender and violence in Ukraine: changing how we bear witness to war*, in *Canadian Slavonic Papers*, 64, 2-3, 2022, 190-206.

² See UNHCR, *Operational Data Portal: Ukrainian refugee situation*, <https://data2.unhcr.org/en/situations/ukraine> (last accessed 11 April 2023).

³ Fedyuk O., Kindler M. (eds), *Ukrainian Migration to the European Union. Lessons from Migration Studies*, in *IMISCOE Research Series (IMIS)*, Springer, Cham, 2016.

Ukraine had one and a half million internally displaced people from the war zones.⁴ This large-scale experience of displacement and related challenges to livelihood, social reproduction, employment and dealing with war-related traumas remained overwhelmingly invisible to the EU publicity.⁵ Meanwhile, military actions in the east of Ukraine triggered some of the displaced people to search for work in the EU already in 2014; as they failed to see equally attractive opportunities within Ukraine and in the light of the dropping migration volume to Russia, they added into the larger outward, mostly labour migration, flows.⁶

Second, it is important to remember that Ukraine has an extensive history of migration throughout the late 19th and 20th centuries,⁷ with rich experience of inter-USSR mobility for work before 1991⁸ and post-1991 transnational labour migration, particularly to the EU. Thus, before February 2022, the Institute of Demography of Ukraine estimated 4 million people employed abroad in general, with about 2,7-3 million working abroad at any given time.⁹ February 2022 brought a dramatic change to the volume of mobility, but also to the demographic characteristics of people on the move, their needs and intentions, the way they move and integrate, and the way they plan their (non-)return.

In this chapter, we reflect on the current situation of Ukrainians fleeing the war and their decision-making as to employment and settlement. We map out three areas that require further careful examination and more empirical research, but which so far seem to fail to get due attention in the current literature. The first is the fragmentation of the experience of those who flee the war. In other words, we ask why it is so hard to (and important not to) **speak of a unified profile of a “Ukrainian refugee.”** The second issue we discuss is about decision-making and experiences linked to the labour market integration of those who fled the war, particularly in connection to fragmented experiences of war and diversity of needs and various forms of resources. Within the third area, we contextualize how the already existing networks of labour migrants in the EU responded to and were affected by the war in Ukraine. With this last topic, we seek to make visible the contribution and the cost of this contribution on those actors of the reception effort that remains consistently invisible - Ukrainian labour migrants. The chapter is structured into consequent 3 subsections with an introduction and conclusions. These reflections are based on the ongoing research, desk research and in-depth, semi-structured interviews conducted with Ukrainian citizens fleeing the war (16) and those involved in various relief-providing institutions and initiatives (10).¹⁰ The interviews were conducted between March 2022 and February 2023 in Hungary (10), Poland (13) and Italy (3). We also base our reflections on our personal experience of

⁴ Numbers for November 2020. See Vakhitova H., Fihel A., *International Migration from Ukraine: Will Trends Increase or Go into Reverse?*, in *Central and Eastern European Migration Review*, 9, 2, 2020, 125–141.

⁵ See also Slobodian O., *How to Measure Integration of Internally Displaced Persons*, in CEDOS, 27 December 2019, <https://cedos.org.ua/en/researches/yak-vymiryaty-intehratsiui-vnutrishno-peremishchenykh-osib/>.

⁶ Vakhitova H., Fihel A., nt. (4).

⁷ Shybko V., Khomra O., Ozhevan M., Prymak O. (eds), *Trudova mihratsija hromadjan Ukrajiny* (Labour Migration of Ukrainian Citizens), Kyjivskij Universytet, Kyiv, 2006.

⁸ Vollmer B., Malynovska O., *Ukrainian Migration Research Before and Since 1991*, in Fedjuk O., Kindler M. (eds), nt. (3).

⁹ Лібанова Е., *Зовнішні трудові міграції українців: масштаби, причини, наслідки* (Ukrainian labour migration: scale, reasons, consequences), in *Демографія та соціальна економіка*, 33, 2, 2018, 11–26.

¹⁰ All names have been changed to ensure anonymity.

volunteering during 2022 (OF) and our experience of being displaced because of the war (AR).

2. Looking beyond the trends: fragmentation.

Perhaps, the first contextualisation that needs to be done is about the number of 7.8 million Ukrainians that have fled to European countries. About two-thirds of those who fled the war did so in March (84% by the end of April), and only as little as 15% of Ukrainians left their country from May onwards.¹¹ In the consequent months, the EU witnessed the return of Ukrainian war migrants back to their home country. From May onwards, the State Border Service of Ukraine reports that the number of border crossings into Ukraine began to exceed the number of crossings to leave the country. Therefore, it makes more sense to talk of the 4.5 million Ukrainian displaced persons with temporary protection status in the EU, a status that was activated for the first time in the EU, as a response to the influx of people fleeing Ukraine. Oksana Dutchak,¹² in her analysis of enforced single motherhood and Ukrainian **war migrants'** care networks, highlights one of the main characteristics of the migrant flow from Ukraine, i.e. more than 80% are women, and two-thirds have children. At the same time, among those Ukrainians who are returning to Ukraine, only one-third are with children [United Nations High Commissioner for Refugees (UNHCR) research at the border with those returning to Ukraine, carried out on April 3-27]. This is quite expected: mothers with children are more hesitant to return to Ukraine while the war is still ongoing, fearing for their **children's safety**. **Younger single people who feel they will be able to adapt** to the new war reality, as well as the elderly, who find it difficult abroad and miss their homes, are more likely to return at this stage.

And yet, it is important to mark here an incredible fragmentation of personal experiences of war that accompanied people and their journeys to safety. Mobility is a privilege that necessitates certain resources; to be able to leave, one needs to have the means to do so, skills, social capital networks, and certain financial safety. The first ones to leave Ukraine were better off economically and had more social and cultural capital to consider moving abroad. The first wave of migrants was more likely to have personal savings to cover basic needs while waiting for temporary protection confirmation to be processed. A UNHCR survey¹³ of 34,145 Ukrainian war migrants found that 12% of them had relatives in receiving countries and that 56% already managed to find private housing for rent (although 29% were still in reception centres and this figure is higher for the newly arriving refugees). They were more likely to have private vehicles (so could leave the country in the first days of the war),

¹¹ Ryabchuk A., *Who will Stay and Who Will Return? Divergent Trajectories of Ukrainian War Refugees in the EU*, in *LeftEast*, 17 January 2023, available at <https://lefteast.org/divergent-trajectories-of-ukrainian-war-refugees-in-the-eu/>.

¹² Dutchak O., *Together We Stand: Enforced Single Motherhood and Ukrainian Refugees' Care Networks*, in *LeftEast*, 19 January 2023, available at <https://lefteast.org/enforced-single-motherhood-and-ukrainian-refugees-care-networks/>.

¹³ UNHCR, *Ukraine Situation: Regional Refugee Response Plan - March-December 2022*, 26 April 2022, available at <https://data.unhcr.org/en/documents/details/92257>.

some prior contacts in receiving countries - either personal or professional, knowledge of at least one foreign language, higher education, etc. Razumkov Centre study¹⁴ found a higher percentage of managers (14% compared to 1.5% of the Ukrainian population as a whole) and private entrepreneurs (14% compared to 4% of the Ukrainian population as a whole), with a further 12% self-identifying as skilled workers, and another 11% as housewives. Thus, those who left Ukraine often had a higher socio-economic status compared to those who remained. They are also more likely to come from urban areas (nine in ten respondents in the Razumkov study) and have higher education (86% have either completed or were in the process of obtaining higher education). Those who decided to leave at a later point in time were more likely forced to do so by a deteriorating safety situation, loss or damage to their homes, and other “push out of Ukraine” factors.

Geography played another pivotal part - whether people were fleeing from those parts of Ukraine that had sporadic bombardments or none at all, or they had to leave under the shelling or even escape the occupation. The availability of vehicles and fuel for them, and networks of friends that could provide shelter en route turned out important in enabling **people’s mobility**.¹⁵ In this context, one of the author's first meetings with a person fleeing the war was revealing. A woman with two teenagers, whom Olena met in Budapest on February 24, **said that the night before she packed her lunch for the next day’s work - “My salmon - avocado salad into my bento box” - while the next morning, she put her kids into the car and drove straight to the border, instead of work.** The shock of the social class proximity and the experience of losing its privilege was probably the strongest feeling while listening to her story. When asked if they needed any help, the woman said she was going to her friends in Germany and needed nothing. In Budapest, when one of the authors (OF) volunteered in humanitarian relief, some other colleagues remarked on the rising number of expensive new cars with Ukrainian license plates, while the 7th District Budapest municipality had to remove a Ukrainian Porsche from a free parking lot, claiming that **“the owner is probably capable of paying parking fees”**. In the following weeks, we witnessed many people, whose status and needs were much harder to decode: owners of a private school in Irpin, fleeing with three kids and a dog and seeing the bridges exploding right behind their cars and stopping en route to their friends in Texas. A bank manager, Olya, fled the Kyiv region after hiding for weeks in a country-side house and then driving a car with two of her children and two others entrusted to her through a forest and across a nearly collapsed bridge. As she was settling for a night in a temporary flat in Budapest - five people in a tiny bedroom, Olya commented ironically: **“That feeling when you have three flats in Ukraine, and you have to share a bedroom with four other people”**.

These ethnographic anecdotes are important on several levels, as they flash out the crumbling contexts in which settled ideas of social class and social capital become shaken, reconfigured, and obscure the needs of displaced people. The sum of these reconfigured contexts makes up the outcome of the total experience of displacement and affects decision-

¹⁴ Razumkov Centre, *Sentiments and evaluations of Ukrainian refugees, July-August 2022*, 30 August 2022, available at: <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/nastroi-ta-otsinky-ukrainskykh-bizhentsiv-lypen-serpen-2022p>.

¹⁵ Ryabchuk A., nt. (11); Dutchak O., nt. (12).

making as to the daily matters but also such bigger questions as return or labour market integration. For one, the war set in motion many people who never intended to leave, who had differentiated resources in terms of social and financial capital and thus, different levels of needs and dependencies. Furthermore, besides the initial resources to start the move, the experience of war and violence put everyone in a very differentiated position in terms of physiological vulnerability and endurance. Further lines of fragmentation that play a crucial role is responsibility within familial and larger social care networks: in other words, people who had only themselves or their nuclear family to care for, became responsible for previously independent family and community members (including friends **and relatives'** children), responsible for those who could not or chose not to move from Ukraine, for family properties and financial assets, and often even pets.

The war and the experience of fleeing also vastly exacerbated the vulnerability of many groups of the population, calling for special assistance: EU has better healthcare, facilities for special needs children, and better provisions for people with chronic illnesses and life-threatening diseases like cancer. As time goes by, **“Pull into EU factors” may also dominate** for youth without a family of their own and without a permanent need to care for family members in Ukraine (university students, single people). They see the economic support of family members who remain in Ukraine as a valuable contribution and a reason to remain in the EU (“I can send my parents money and help them in this way”). Furthermore, the decision to stay in the EU is stronger, if the family unit remains intact, as in cases where the father was able to join his wife and children in the EU (cases of 3+ children, children with disabilities, or if the father left the country before February 24) or cases where grandparents were able to settle with their children to help out with household and childcare duties.

A second reason why fragmentation is important to remember is that individual goals and contexts, although seemingly minor in the scale of real-time military threats, are important for a more constructive conversation around how the reception can be done in the most supportive and sustainable way in the long term. Finally, it can help us tackle the question which we hear so often from our non-Ukrainian volunteer colleagues: **“How can these people choose to go back to a war-torn country?”** In all these, the issue of temporality, especially the duration of the war and the pace of the following reconstruction period, becomes a crucial factor.¹⁶ Here, temporality has more dimensions: who could flee and at what stage, how long can they afford to stay outside of Ukraine (socially, emotionally and financially), who will consider the return in the light of the prolonged conflict, especially, if children start schooling in the receiving countries, and how the integration in the receiving countries is happening. For instance, the Razumkov Centre survey of Ukrainian war migrants found that 42% of respondents had problems finding a job, 32% - housing for rent, with a further 21,5% lacking any housing, and 15% claiming uncomfortable housing conditions. In the UNHCR research carried out in May 2022 at the border in Zakarpattia region about reasons for Ukrainian **war migrants'** return home, only one-third indicated a perception of safety in the area of return (particularly for Northern regions and Kyiv that had been recently liberated) as a main reason, while another one-third mentioned family reunification as the

¹⁶ Ryabchuk A., nt. (11).

main reason. As research shows, existing reception trends in countries “filter out” Ukrainian war migrants into the more or less “desirable” - further integrating those who managed to find employment and housing, but limiting social benefits to all others, thus forcing some of them to return home. Secondly, they make it more difficult for the newly arriving refugees - who are often a more vulnerable subcategory than the first wave.¹⁷

3. Navigating the labour market: considerations for employment.

Such drastic fragmentation of resources, goals, plans and trajectories among the mobile populations was not such a pronounced issue prior to 2022 when Ukrainian workers were coming to Europe to fill in often ethnicized and gendered sectors of segmented labour markets. In 2020, the main spheres that employed Ukrainians outside of Ukraine were building and construction (predominantly men), agriculture in crop times (men and women), domestic and care work (mostly women), services and tourism (mostly young men and women), transnational transportation services (predominantly men), and various “low-skilled” jobs (factories, warehouses, post and packaging) (men and women).¹⁸ Since about 2010, we have seen an increasing role of transnational employers and recruiters, looking for workers in Ukraine for fixed-term and seasonal employment that do not lead to longer forms of residency.¹⁹ Temporary protection status, activated for the first time to protect a group of people based not on the individual revision of circumstances, but for a collective threat, granted Ukrainians fleeing the war a possibility not only to move across the borders and get social protection but also the right to employment. Therefore, the ability to join the labour market became an important topic of integration and support strategies discussed in the EU. Work.ua study²⁰ showed that 59% of Ukrainian war migrants were already searching for employment under temporary protection status. Of course, the latter figure could be due to insufficient support in the hosting countries, but also, because temporary protection status, unlike the status of a refugee, allows for employment.

The rise of temporary and seasonal employment of Ukrainians abroad before February 2022 also meant that many Ukrainians who came to work in the EU left their families and children back at home, relying on care networks across the border and effectively separating social reproduction from the site of their employment. In the current context of the demographic profile of women and children and the further burden of various fragmented familial obligations of those fleeing the war, it is important to emphasize that the question

¹⁷ *Ibidem*.

¹⁸ Андреев В., Борисов О. (упоряд.), *Трудові права, умови праці українських трудових мігрантів в країнах ЄС та вплив пандемії COVID - 19 на трудову міграцію* (Labour rights and work conditions of Ukrainian labour migrants in the EU and the impact of COVID-19 on labour migration), in *м. Київ: Профспілка працівників будівництва і промисловості будівельних матеріалів України*, 2020, 55.

¹⁹ Fedyuk O., Volodko V., *Bargaining for working conditions and social rights of migrant workers in Central East European countries (BARMIG), National report: Ukraine*, Research Report 51, Central European Labour Studies Institute (CELSI), 2020.

²⁰ *Ukrainians want to return: 86% of citizens who left, plan to return* (Українці хочуть додому: 86% громадян, що поїхали, планують повернутися), in *Work.ua*, 2022, <https://www.work.ua/articles/work-in-team/2900/>.

of employment cannot be seen outside or apart from the question of social reproduction. Difficulties in finding a job involve not only barriers to employment - no knowledge of local languages, need to confirm skills/qualifications, **unwillingness to accept “humiliating” offers** (i.e. farm work for urban middle-class migrants) but also the negative experiences of bureaucracy that takes too long, difficulties in finding housing, securing childcare, but also in some cases better employment prospects in Ukraine. They are aggravated by problems securing childcare needs: cases where preschools only accept children if mothers are employed, or where one needs to have a permanent address before applying for a place at a preschool, where working hours don't correspond to hours of schools and preschools, or where school fees are unaffordable (esp. in nurseries for young children). 14% of Ukrainian war migrants **from the Razumkov study had difficulties in securing children's education, and 13,5% - in securing their leisure and after-school activities.** Not only schools and nurseries' operating hours, but also those of bureaucratic institutions, shops, pharmacies, etc. often overlap with working hours, so a single mother cannot secure her household's needs, look after the children, and keep a job. Mothers with preschool-age children, interviewed by the authors, confirmed that the lack of childcare options was the main barrier to finding employment, limited their choice of a place of residence, and was likely to push them back to Ukraine. Social ties are much more limited in hosting societies, whereas in Ukraine other family members or social networks can be of help. There are also emotional and **psychological difficulties: understanding how the system operates in Ukraine (“like a fish in the water”)** *vs.* needing to figure everything out from scratch that takes up time and resources (“fish taken out of the water”). **Difficulties in securing childcare and lack of family support** in case of family separation may push women to return even to a context that is not perceived as safe. With older children and youth, there is also a possibility of the mother's return while the child remains in the EU.

Again, it is hard to discuss a unified picture or a profile of a Ukrainian war migrant with fixed goals and needs, and yet, employment often meant more than just paid work for our interlocutors. In several of our interviews, they expressed particular pride in what they called **“Ukrainians are not lazy”**. **One of our respondents in Italy mentioned how Italian social workers expressed appreciation for how quickly Ukrainians started searching for jobs and kept asking for jobs.** In Poland, my interlocutor Zenya said that before any other support, **new arrivals from Ukraine asked for available jobs, “encouraging each other to work, taking each other by the hand to the employers”**. **These accounts, however, are just fragments of a very diverse picture in which location, access to childcare, school, internet for online schooling, and transportation play crucial roles.** For instance, Nadia, a mother of two kids of elementary school age who settled in Hungary, described to us her aspiration to work, but her daily routine consisted of a 2-hour daily commute to school and only half a day of schooling for one child. For months Nadia was frustrated with an effort to find a job for the 3-5 hours that she had for employment and her sense of obligation to give her children some sense of stability through a good schooling environment. For many of those who received accommodation and shelter in small urban centres or rural areas, these questions became central. Even though temporary protection status offered an opportunity for independence and dignity through earned income, many questions related to social reproduction obstructed

this opportunity. The role of such factors may grow over time. Firstly, people may be more willing to accept inadequate living conditions in reception centres in the short-term, but not in the long-term perspective. Secondly, the social benefits offered to Ukrainian war migrants in the first weeks and months are being drastically reduced, which makes survival without full-time employment more difficult. In the end, it is not surprising that many decide to return: no housing/ difficulty finding housing in the receiving country (5%), or lack of employment opportunities in the receiving country (among those returning to Kyiv this was the reason for 5% - even during the war, Kyiv could offer some people better working conditions than EU countries).

Temporality again played an important and diverse role in the decision to search for employment with our interlocutors. In the first place, the question about the length of the conflict was central, as all of our respondents noted that they expected that war would be a matter of days or weeks.²¹ The second aspect related to temporality was the time needed to process what has happened and to regain the capacity to act after the experience of fleeing and the traumas of the journey. One of the volunteers, who helped run a shelter in Budapest, remarked that one of the tasks that they had to do in the first weeks was to check on people in their rooms. The new arrivals would spend hours on end alone, letting children play in the common areas outside, but seemingly not able to talk or socialize for days after their arrival. This echoes the comment of my interlocutor Nina, who left Kyiv with two teenage children to settle in a small town in Italy. Nina, in her early 40s and a practising psychologist, noted that after arrival and getting a room in the dormitory for refugees, she spent two weeks “glued to bed, not being able to sleep or to talk”. Nina remarks: “Only after this time, I started crying and saying that I can also help”. To our question about when she started to look for jobs, Nina said that in those days, she couldn't even take care of her own basic needs, not to mention think of the future or search for a job. Importantly Nina remarks that for her, these stages of mental and physical fatigue have a repetitive form; triggered by the images of liberating Bucha and Irpin, later, by massive bombardments of the infrastructures in the winter of 2022, sent her into periodic lapses of apathy. Thus, it is important to note that despite their willingness to work, Ukrainians fleeing the war often face considerable psychological traumas, which can take various lengths of time to deal with or can be repetitive thus abstracting their ability to work.

Furthermore, for those who fled Ukraine the decision to stay or start looking for a stronger integration through the **labour market does not depend on them alone**. People's decisions might not be linked to just war but relative safety of the location of their homes in Ukraine, properties that are left behind, relatives that might or might not need immediate care, even pets, emotional attachments, relationships, businesses, jobs. Even if the war continues, some people see a chance to obtain a new or continue their old job when they return, depending on the military actions, or even the availability of electricity in the region. For some, it is a question of temporary care arrangements they have in place for those who stayed behind but can become unavailable due to further mobility of people, or partners' decisions (“My husband told me not to come back, but I really want to”), perceptions of

²¹ See Ryabchuk A., nt. (11).

relative safety. As one of our interlocutors described: “We are in a permanent stress and basic concern for survival on so many levels”.

For those who felt they could make a more independent decision about their (non)return to Ukraine, the questions of available resources and investment into integration were closely linked to employment. In other words, “If I stay, where do I work?” becomes a question which requires a longer-term strategy, and when asked, many of our interlocutors did not see themselves working typical immigrant jobs but would rather like to invest in making proper professional CV, having their qualifications recognised or considering alternative locations to initial ones for their settlement, with more matching employment opportunities. For many, deciding to switch a job and investing in requalification meant a much longer and more serious investment which they couldn't make due to changing prospects, obligations, and strategies.

A feeling of deskilling, coupled with an expectation that the new arrivals would take “typical” immigrant jobs was very prominent among our respondents, the majority of whom were white-collar professionals. Besides the already mentioned availability of material resources to “hold on” a few months without work, it is important to mention that some Ukrainians remained employed by their transnational employers (particularly true for the IT sector) or maintained paid distant work from Ukraine (for instance, many educational institutions in Ukraine made immediate arrangements for online education for both its students and teachers). In our interviews, we could clearly feel interlocutors' resistance to take up the jobs that are traditionally associated with Ukrainian labour migrants, coupled with expectations and in some cases open pressure to do so, from the hosting communities. One interlocutor, a bank manager from Kyiv, Olya, whom we have mentioned earlier and interviewed on her en route to the UK through Budapest, was very clear from the start that she would not accept any jobs below her professional level. Having worked for years in the transnational banking system she had both professional and social capital to activate networks that would help her to get a matching job. However, she met a complete misunderstanding with her UK sponsors once she moved there with her two children and the other two who were entrusted to her by her relatives, using the UK sponsorship program. She recalls in our telephone follow-up interview:

“I immediately started applying for jobs [in the UK] but the first offer I had didn't suit me. My host sponsor was appalled by the fact that I rejected it and said I had to take the job. When I said that it didn't suit me, he replied that there was no such thing, I needed to be grateful, take the job and not hand-pick. When after only 3 weeks of further applications I got my current job offer in London and showed him what they offered me as a salary, the guy went mad with fury. He started yelling that it was not possible that I came from nowhere and got this job, that I didn't deserve it, that I needed to start small and work my way up, that it was not fair I got a job like this straight away. I told him that probably he was confused in his head; there is a difference between coming to a new country when you are 21 because you want to see the world, and being torn out of your professional life at 46 when you have already built an entire life and know exactly what you can do and how things work. [...] Obviously, we

couldn't stay at his place, so we had to move out and look for accommodation. But those few weeks he almost made me doubt my common sense and sanity with this nonsense".

This account resonates with other accounts we heard from our respondents in Italy. Snizhana, who settled in the south of Italy, commented that for Ukrainians there seem to be only jobs in the cleaning and domestic sector, and these were constantly pushed onto the people in the reception dorm where she stayed for the first 4 months. She, however, relied on her own, transnational professional networks to remain in paid employment through freelancing. In fact, Snizhana, who is a single woman in her 40s, chose to quit the collective housing provided for her with other Ukrainians, as she felt that the caring obligations for the children of others were taking a toll on her time and preventing her from doing her hour-pay-based job. Nina, whose story we have recalled earlier in the text and who is responsible for two teenage children, felt that an organization that provided accommodation for them in the north of Italy for free exerted open psychological pressure on her, pushing her to search for a job “in a bar or as a *badante*”. Upon her arrival, Nina however committed to be, what she calls, “more useful”. She wrote a psychological help program for Ukrainian arrivals, which, with the help of a local volunteer, she translated into Italian and managed to get a local municipal grant for it. Despite her being employed in this program through this grant, as well as in an online platform of psychological help and volunteering the rest of her time, the manager of the refugee help organization that offered them housing exerted everyday pressure on her “to get a proper job”. Nina recalls:

"They kept telling me that I did nothing and that I had to get a job. I kept repeating to them that I did have a job, I worked in a program that provides psychological help, I also had an online job, and I was happy to pay for my accommodation, but they just kept saying that I didn't have the right to sign a contract for accommodation and that I needed to get a "proper" job. They almost made me believe that I didn't do enough. At some point I even thought, ok, I can go and work in a bar, cleaning tables, if this is how it works here, but once I made that decision my whole self just revolted against this. I mean, I have three diplomas: I am an obstetrician, economist, and psychologist. I have been studying for 20 years, I can be much more useful in a more skilled way, so why should I do something useless? [...] Maybe because I am a psychologist and I have learnt to respect myself, I wouldn't want to take any other job. It would feel very sad to go and start cleaning, and if I did, I wouldn't stop searching for a job more suited to my skills".

Three factors seem to have collapsed in this excerpt of Nina’s story: 1) an expectation that Ukrainians would join the workforce, especially in those sectors that are already employing many Ukrainian workers by Ukrainian workers; 2) differentiated integration of the newly arrived people into the workforce; and 3) post-covid drain of “essential workforce” in Europe. These observations would surely need more analytical and thorough investigations, but at least at first glance, they echo the swift responses from, for instance, temporary work agencies that right after February 2022 seemed eager to advertise jobs specifically for newly arrived Ukrainians. When we called some of these job ads in Hungary

and asked what special provisions they make considering the needs of, for instance, single mothers with children, many could offer only permission to stay with the family in the workers' dorms with no further vision of reliable care and educational opportunity for children. As one of the agency operators replied: "We are employers, we can only offer jobs. That's what we can do". To us, this eagerness to quickly react spoke rather of their shortage and eagerness to absorb excess workforce, than of longer-term integration of workers through labour market participation.

4. Invisible networks that catch.

We open this section with the story of Valya, whom one of the authors knew from her previous research on Ukrainian domestic workers in Italy. Valya, in her early 60s, worked in Naples as a caregiver for over 15 years. Since the beginning of the full-scale war in February 2022, she managed to bring over from Kyiv her mother, who was a cancer patient, her daughter – a 35-year-old lawyer from the Kyiv area – and her two teenage grandchildren. They all now lived with Valya in the south of Italy, all surviving on her income alone. Her mother needed surgery. Her daughter was thinking about going to earn money elsewhere, alone, leaving her two teenagers with Valya. And then, there was Valya's job to attend to.

Emerging literature about the reception effort of Ukrainians in the EU, features the legislation frameworks, volunteering and humanitarian relief organizations that provided help, as key actors.²² Stories like that of Valya's stay off the radar, and yet, we argue that as in Valya's case, the war has pushed much of the financial, emotional, and social responsibilities of support to the networks well beyond the Ukrainian borders onto the already existing diasporic communities and less defined informal networks of labour migrants. Much of the costs of new mobility, precipitated by the crisis, became individualised and redistributed further along these already asymmetric transnational networks of care. While EU States provided the opening for easier mobility, we argue that the already established networks of labour migration bore the bulk weight of managing this crisis in two distinct ways; first, through multiplications of obligations, and second, through the multiplication of vulnerabilities.

Like in the case of Valya - her contribution is not changing the cause of history but, for the members of her family, she provided the first safety point, making them not dependent on the State's support, allowing them to consider employment. In this, Valya's contribution is not just to her family members' independence, but to the economy of the receiving state. Valya is providing unpaid, invisible work of care for their grandchildren and her elderly sick mother, while carrying much of the financial burden of the displaced family members. Similarly, one of my interlocutors in Poland (Tanya, 37), working at a factory, spoke of a

²² For instance, see Ociepa-Kicińska E., Gorzalczyńska-Koczkodaj M., *Forms of Aid Provided to Refugees of the 2022 Russia-Ukraine War: The Case of Poland*, in *International Journal of Environmental Research and Public Health*, 19, 12, 2022; Carta S., Hahn H., Heidland T., Kaczmarczyk P., Lücke M., Łukasiewicz K., Maru M.T., Pachocka M., Ruhs M., *Refugee protection in the EU: building resilience to geopolitical conflict*, in *Mercator Dialogue on Asylum and Migration (MEDAM)*, Assessment Report, 266254, 2022.

workers' dormitory as an unexpected network of solidarity in which women who just arrived and had children were better off than those living outside the dorms:

"It was much better to stay in the dorm than to stay alone. In the dorm you have people who lived here for longer, you could get advice on everything, even the haircut, or get some contacts. Your kids were never alone - someone would look after them, see that they stayed out of trouble, and give them some food if needed. These women then could take work in any shifts. Outside of the dorm, you needed to solve childcare".

In this quote, Tanya points again to invisible unrecognized and unpaid caring work, shared by the workers to enable each other to join paid employment. Again, besides the financial independence of the worker, this creates a convenient situation for the employer and the receiving State, in which the social reproduction for the worker lies on the burden shared within the networks of solidarity.

The true role of the existing networks in the reception of the Ukrainians fleeing the war requires much more research and data; it is hard to generalize the engagement of individuals due to the low profile, lack of formal status of some, sporadic and non-continuous nature of their help that always depends on personal economic, emotional and social resources at a given time. Furthermore, the help they provide is often very personalised and goes to the heart of the needs of particular individuals. It is done through individual and informal **networks of communication and often doesn't leave any digital or other trace. And yet, we argue it is important to see the weight of this contribution, to identify the social and economic-political value of this fragmented help.** Migration from post-1991 Ukraine has been traditionally framed in terms of economic or labour migration, a perspective that has consistently ignored the contribution of the Ukrainian migrants to Ukrainian internal affairs and active transnational political participation. In particular, it can be relevant to look into the role a mobile population may play in shaping political opinions at home, the forms of political and civic engagement of these mobile populations and the choice of resistance or exit strategies at times of various political crises that stir the mobility decisions of individuals.²³ This role can be examined by looking at the emerging diasporic communities, as a means of asserting a political identity, which can be taken up by groups as a source of empowerment.²⁴ In the 32 years of Ukrainian independence, we have witnessed a significant surge of transnational political activism coming precisely from otherwise individualised and dissociated labour migration networks, especially in times of such political crises as the Orange Revolution²⁵ and Maidan.²⁶ To leave these contributions unseen and unrecognized

²³ Karolak M., "Once you see that it can be otherwise, then you expect something else": the labour experience of Polish migrant returnees from the UK, in Fedyuk O., Stewart P. (eds), *Inclusion and exclusion in Europe: Migration, work and employment perspectives*, Rowman & Littlefield International, London, New York, 2018.

²⁴ Adamson F., *Constructing the Diaspora: Diaspora identity politics and transnational social movements*, in Lyons T., Mandaville P. (eds), *Politics from afar: transnational Diasporas and networks*, Hurst&Company, London, 2012, 25–41.

²⁵ Solari C., *Transnational politics and settlement practices: post-Soviet immigrant churches in Rome*, in *American Behavioral Scientist*, 49, 11, 2006, 1528–1553.

²⁶ Fedyuk O., *The digital power of Ukrainians abroad: social media activism and political participation*, in Oleinikova O., Bayeh J. (eds), *Democracy, Diaspora, Territory*, Routledge, London, 2019.

means to continue the legacy of non-participation, and non-recognition of the needs and interests of people who make en masse major contribution to Ukrainian political, economic and social life, creates a whole “category” of people who by leaving Ukraine are delegitimised in their rights and voice. This topic can become particularly acute in the post-war reconstruction effort of Ukraine but also matters for the reception efforts of EU States in the current situation.

In our conversations with those labour migrants who came to the EU before February 2022, there was a similar surge of activity; men who were travelling back to Ukraine to fight or to the borders of Ukraine to help transport their families, an explosion of social media and IT communication channels support groups, are to name a few. Tanya, whom we have mentioned before and who worked in a factory, remarked that their factory manager allowed **Ukrainian workers to take “phone call breaks”** - to keep monitoring the situation back at home and provide on-spot support to their family members - another form of care and responsibility that weight heavy on those who were abroad when the full-scale war broke off. To map out the most common forms of responses that we have observed, but also to give a sense of the intensity and wide spectrum of the activities, we grouped them in a chart below. We further grouped them according to the level of personal proximity to those to whom the support was extended.

Table 1. *Types of solidarity activities by Ukrainians living abroad, grouped according to the level of personal proximity to those to whom the support was extended.*

<p>Obligations within the family; personal networks-based solidarities</p>	<p>Financial help to those member who were previously independent, activated networks of former colleagues and classmates, relatives, neighbours, who asked for various forms of help and support; organizing safe route for leaving Ukraine (checking safe routes, finding networks that could accompany individuals in need en route, financing mobility before and after the border); organizing care arrangements for people who stayed and contacts to those who found themselves in occupation; taking care of the safety of properties, and pets; providing shelter and advice for those who were en route to specific destination and places; providing or sharing home with those who decided to come over; integration effort of those newly arrived family / social network members (depending on their personal, at times medical needs); supporting financially the newly arrived; helping with the paperwork, translation, job search, experience sharing; psychological support (including keeping in touch with and double-checking on those who stay in Ukraine).</p>
<p>Transnational solidarity activities</p>	<p>Donations to relief organizations, the Ukrainian Army, small grassroots collection campaigns for the support of individuals and specific local causes through social media; collecting and transporting humanitarian aid and other items requested by volunteers from</p>

	Ukraine (medicine, various forms of equipment, vehicles), volunteering at the reception points (translation, paperwork, humanitarian relief); help with finding schools, accommodation, job advice, doctors, veterinarian, advice on small aspects of daily life through Telegram chats “Ukrainian help in...”, Facebook and Viber groups, local church communities, etc.
Advocacy and political activism	Participation in protests; information campaigns in hosting societies; and “placing Ukraine on the map”, i.e. having talks with neighbours, employers, and colleagues from different countries about the current situation in Ukraine.

Source: *Authors*.

Many labour migrants saw their obligations multiply, and their financial, time and emotional resources stretched in a daily effort to cover many emerging needs. In these times, the informal networks of material, social and moral support built over the last 30 years of extensive Ukrainian labour migration not only became the networks that caught and supported those fleeing the war. In many places, these same networks applied political pressure that helped shape local and national responses of EU States to the war in Ukraine.

The second way in which the already existing labour migrant networks carried the burden of the war was through the multiplication of their vulnerabilities (immobilisation, loss of jobs, ability to work and generate pre-war level of incomes, crumbling of the established patterns of earning, loss of accommodation).

In the last decade, Ukrainian migration experienced the rise of short-term, seasonal employment mediated specifically through temporary work agencies, catering for the needs **of the EU capital in flexible, “just-in-time” labour.**²⁷ These patterns of employment are characterized by periods of intense employment that allow to make wage minimum through a system of over-time, group accommodation on-the-site and maximisation of other labour-intensive short-term strategies.²⁸ This pattern also required outsourcing of care and other **familial obligations across the border, concentrated in alternating periods “at home” and in** between employment. In assisting their families flee the war and reuniting with them in destination countries, many migrants found their jobs and ability to earn and provide for their families compromised. For instance, many Ukrainians who came to work in Hungary before the war **stayed in workers’ dormitory accommodations, where life regimes** were subjected to the rhythms of production and the opportunity to maximise income to support distant families. Reuniting with family members and dependents revealed how much these housing options function as an extension of production regimes, shaping migrants into a particular working subject²⁹, and how they are incompatible with family life and work-life

²⁷ Polkowska D., Filipek K., *Grateful precarious worker? Ukrainian migrants in Poland*, in *Review of Radical Political Economics*, 52, 3, 2020, 564-581.

²⁸ Meszmann T., Fedyuk O., *Snakes or Ladders? Job quality assessment among temp workers from Ukraine in Hungarian Electronics*, in *Central and Eastern European Migration Review*, 8, 1, 2019, 75–93.

²⁹ Schling H., *(Re)production: Everyday life in the workers’ dormitory*, in *Society and Space Magazine*, 7 November 2017.

balance. Furthermore, night work shifts and extra hours that previously guaranteed relatively good income through the accumulation of over-time bonuses also became unsustainable with new family life rhythms, thus reducing their income below a subsistence level.

To illustrate what we mean, we narrate here a situation with a factory worker in Budapest, whom we call Ihor. Ihor lost his job at a factory, where he had been working for two years through a temporary work agency over a fight with his dorm management. Since February 2022 his employer allowed him to host in the same dorm his wife and a 5-year-old son, as well as his mother. Losing employment in the temporary agency that provided accommodation for Ihor meant a loss of housing for the entire family. Furthermore, since he arrived in Hungary before February 2022, Ihor was not eligible for the temporary protection status, and he lost his permission to stay based on his employment at the factory. For Ihor, who was the main breadwinner, returning to Ukraine, where he had no job, was not an option; it would mean leaving his wife, his mother and child alone without a source of income and resources abroad. In the summer of 2022, when we have interviewed workers at a factory dorm in Budapest, there were already several men, who moved from other countries due to similar to Ihor's situation; having started their jobs before February 2022 they were not eligible for the temporary protections status, while the seasonal nature of their employment in the previous days was solved by their cyclical returns home for the periods of unemployment. The restrictions on the trans-border mobility of men in Ukraine exacerbated the vulnerability of these workers and dependent on their income families. It also made these men more vulnerable to the threat of firing, and thus, more willing to put up with bad working conditions and low pay.

Similarly, women like Valya, who provide care and domestic services, found it hard to reconcile full-time domestic sector jobs with the care for their own families. Paradoxically, the arrival of families and dependents into the established migration networks brought to light the true cost of labour migration regimes. These jobs are made sustainable mostly due to the sacrifice of any semblance of a work-life balance among labour migrants. This has resulted in an instrumentalised turnover of people, bringing in those who can entrust highly gendered tasks of care along their family networks being thus able to separate the time and space of work from the time and space of "life" back at home.

5. Conclusions.

Russia's full-scale war on Ukraine on February 24, 2022, led to up to five million Ukrainians obtaining temporary protection status in the EU. People fleeing the war differed from the earlier waves of migration from Ukraine, being much more fragmented and heterogeneous, but also dependent on the available diaspora networks formed by previous waves of labour migration.

This chapter focused on three areas that require further careful examination and more empirical research. First of all, we highlighted the fragmentation of the experience of those who fled the war, based on demographic characteristics, class differences, and the situation at home from which they were fleeing. Among Ukrainian war migrants there is a much higher

percentage of urban dwellers, people with higher education, managers, and private entrepreneurs than the population of Ukraine as a whole. The region from which people fled, the time when they reached this decision (right away in the first days of the invasion, or at a later stage), and whether they have a home and a job to return to, are some of the other differentiating factors.

The second area for further research is related to the experiences of labour market integration of those who fled the war, particularly in connection to fragmented experiences of war and diversity of needs and various forms of resources. Among Ukrainians with temporary protection, a significant number insists on their qualifications and are unwilling to take on jobs that were stereotypically offered to Ukrainian labour migrants (cleaning, caring for children and elderly, unqualified factory work, etc.). Furthermore, some keep their online jobs (in the IT sector, online education, accounting, etc.), and yet others do not have the resources or motivation to pursue employment and are waiting for a possibility to return to Ukraine.

Finally, the third question worth exploring further is how the already existing networks of labour migrants in the EU responded to and were affected by the war in Ukraine. It is important to make visible the contribution of those actors in the reception effort that remains consistently invisible - Ukrainian labour migrants. While the role of national governments and NGOs is relatively well-documented, the activation of and impact of the war on already existing networks and the role they play in the reception of the new wave of arrivals remains mostly invisible. At the same time, many of our informants suggested that their migrant relatives and friends were their first contacts in the EU, and this contributed to their decision to flee Ukraine, as well as to the specific migration routes they undertook.

In connection to the last critical point, it is crucial we recognize the contribution, status, and rights of Ukrainian citizens abroad. We must refrain from turning a blind eye and absorbing remittances without due acknowledgement. It is important to recognise their status and address their needs, through the negotiation of bilateral agreements, simplification of paperwork processes, ensuring pensions, recognising work experience, facilitating employment, and validating diplomas. Additionally, we should foster better cooperation with solidarity networks, such as the UGCC, trade unions and cultural collectives.

4

Labour market participation by beneficiaries of temporary protection in the Netherlands: a natural pilot for policy change.

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1. Introduction. 2. Temporary Protection Directive and the right to work in the Netherlands. 2.1. Implementation of the Temporary Protection Directive. 2.2. Access to the Labour Market. 3. Reception Conditions Directive and the right to work in the Netherlands. 4. Aligning the rights of temporary protection beneficiaries and asylum seekers: an ongoing debate. 5. Conclusions.

1. Introduction.

Soon after the Russian war against Ukraine started on 24 February 2022, the Netherlands was called on to offer protection to around 90,000 displaced people from Ukraine.¹ The Netherlands was just coming out of the COVID-19 pandemic at that time. Like many other European countries, it was facing two crises, which are relevant for understanding the Dutch response to the activation of the Temporary Protection (TP) Directive.² The first crisis that affected the Dutch response was related to the asylum procedure. In the summer of 2022, the Dutch authorities admitted they were unable to deal with the vast backlog in the decision-making process and the housing shortage for asylum seekers. The second crisis was high levels of labour shortages, especially in low and medium skilled jobs.

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¹ On 7 April 2023, as many as 91,930 beneficiaries of temporary protection (hereinafter as: TP beneficiaries) – both nationals and non-nationals from Ukraine – were registered in the Dutch municipal registration system.

See:

<https://www.rijksoverheid.nl/onderwerpen/opvang-vluchtelingen-uit-oekraïne/cijfers-opvang-vluchtelingen-uit-oekraïne-in-nederland> (accessed 27 April 2023).

² 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

The labour shortages are only incidentally addressed through labour migration. Dutch admission policy for labour migrants from outside the EU into low and medium skilled jobs remains restrictive.³ There is some social resistance to the prospect of increased labour migration from outside the EU. This is especially true regarding migration for unskilled labour, which would resemble the ‘guest worker’ scheme introduced in the 1960s.⁴ Foreigners already present in the country, such as those who seek or have received international protection, face legal and practical barriers to accessing the Dutch labour market.

Against the background of these crises, the Netherlands – like other EU countries – prepared for the arrival of Ukrainian displaced people, mainly women and children. These people were seeking protection from the Russian war of aggression that raged in their country. After the decision was made to apply the Directive 2001/55 for the first time since its entry into force, the Dutch Government was able to quickly to offer protection to Ukrainians.⁵ The explanation lies in the substantial role which from the beginning fell to municipalities and employment agencies to create housing, offer an administrative procedure, and coordinate labour participation. This role would prevent putting extra pressure on the already overburdened asylum system. Despite the restrictive labour migration regulations in force in the Netherlands, labour market access for displaced persons was arranged within two weeks after the Russian invasion. This step was an all-time record in labour market policy change.

This immediate access of temporary protection beneficiaries to the Dutch labour market provides an example that could inspire a policy change, long overdue, regarding asylum seekers’ right to work under the Reception Conditions Directive.⁶ The policy on labour market access for Ukrainians in the Netherlands can thus essentially serve as a pilot project. The policy was unplanned and thus qualifies as a ‘natural’ pilot. However, like a planned pilot project, it offers the possibility to test potentially problematic elements of policy prior to full-scale adoption.⁷ This natural pilot allows for at least a cursory analysis of the effects and potential to entice full-scale policy change. In our case, that would be to grant labour market access for all people seeking protection in the Netherlands. Such a policy change has been called for in recent years in academic literature and reports.⁸ However, the Dutch

³ De Lange T., *Is het Europese en nationale arbeidsmigratiebeleid toekomstbestendig?* in *Asiel & Migrantenrecht*, 2021, 12(4), 188-194.

⁴ De Lange T., *Staat, Markt & Migrant. De Regulering van Arbeidsmigratie naar Nederland*, Boom, Den Haag, 2007.

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁶ 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), hereinafter referred to as Directive 2013/33.

⁷ Nair S., *Policy experiments and pilots as tools for decision-making*, in Howlett M. (ed.), *The Routledge Handbook of Policy Tools*, Routledge, London, 2022, 282-293.

⁸ De Lange T., Özdemir E., *Asielzoekers en daadwerkelijke toegang tot werk in Nederland*, 2020, Nijmegen, Centrum voor Migratierecht, and the first Ben & Jerry’s campaign “Waiting Doesn’t Work” with employer toolkit; *Landsadvocaat Advies verenigbaarheid 24-weeken met de Opvangrichtlijn* (Advice Compatibility 24-week requirement with the Reception Conditions Directive), attachment to Parliamentary Documents 2021-2022, 35680, nr. 21.

Government has tried to ignore socio-legal arguments toward agenda setting that would favour policy change.⁹

This chapter develops as follows. Firstly, we map the policy and practice of labour market access in the Netherlands for people who fled the war in Ukraine, Ukrainian nationals and third-country nationals alike, as well as for ‘regular’ asylum seekers. We start by mapping the implementation of the Decision 2022/382 in the Netherlands, with a focus on the right to work (section 2). This discussion is based on a study of legislative documents, parliamentary debates, gray literature, and input from experts during a seminar we organized on the Directive 2001/55 in selected EU Member States.¹⁰ Next, we present the implementation of Directive 2013/33 in the Netherlands. This discussion builds on a study from 2020 and parliamentary debates and gray literature that have appeared since, as well as an expert meeting we organized on 7 February 2023 (section 3).¹¹

Section 4 contains a discussion of the pressure that has arisen following the ‘natural pilot’ to open up access to the labour market for ‘regular’ asylum seekers. Using Kingdon’s multiple streams model, we posit that the natural pilot project, through the unlimited access to the labour market granted to displaced people from Ukraine, in combination with the labour market crisis, has triggered new agenda-setting efforts.¹² Such efforts could lead to a policy change regarding the right to access the labour market following from Directive 2013/33 for asylum seekers (other than those fleeing Ukraine) whose application for protection is pending. Our work thereby aims to contribute to the scholarly literature on the theory of agenda setting and policy making processes.¹³

2. Temporary Protection Directive and the right to work in the Netherlands.

2.1. Implementation of the Temporary Protection Directive.

As soon as the European Commission activated the Directive 2001/55 by Decision 2022/382, the Dutch authorities offered the displaced persons housing, social rights, a residence right, and access to the labour market.¹⁴ It is important to note that the Dutch implementation of the Directive 2001/55 and the legal status of temporary protection have

⁹ We answer to the call by ignorance researchers to establish a dialogue between the fields of migration and ignorance studies to theoretically advance both fields, Mica A. et al, *Ignorance and Change. Anticipating knowledge and the European Refugee Crisis*, Routledge, London, 2021, 10.

¹⁰ The seminar was held in Nijmegen on 20 January 2023. Its results are published in Mantu S., Zwaan K., Strik T., *The Temporary Protection Directive Central Themes, Problem Issues and Implementation in Selected Member States*, Ipskamp Printing, Nijmegen, 2023.

¹¹ The expert meeting brought together some 30 public and private sector experts in the field; it was held at the venue of the social enterprise Refugee Company on 7 February 2023, in Utrecht, co-hosted by the University of Utrecht:

<https://www.ru.nl/rechten/cmr/actueel/archief-mappen/archief-2023/7-2-23-seminar-asielzoekers-recht-werk/> (accessed 17 April 2023).

¹² Kingdon J., *Agendas, alternatives and Instability in American Politics*, HarperCollins College Publishers, New York, 2003.

¹³ Birkland T. A., *Focusing Events, Mobilization, and Agenda Setting*, in *Journal of Public Policy*, 1998, 18(1), 53-74.

¹⁴ Letter of the secretary of Justice of 30 March 2022, Parliamentary Documents 2021-22 19637, nr. 2839.

always been minimal.¹⁵ In 2004, the Directive 2001/55 was implemented in the Dutch Aliens Act 2000 by means of the construction of legal stay. Temporary protection beneficiaries (hereinafter TP beneficiaries) legally are asylum seekers and do not receive a residence permit.¹⁶ In 2022, upon its activation, this approach resulted in a procedure that required displaced people fleeing Ukraine to first register at the municipality.¹⁷ Next, the immigration authorities would invite the TP beneficiary to sign the formal asylum application form. The authorities would then either give the beneficiary a sticker in their passport or, in cases where a passport was lacking, would issue a ‘displaced-card.’¹⁸

The substantial role for municipalities arose because of the earlier-mentioned national crisis in the asylum system. The result was a procedure that would greatly reduce the burden for immigration authorities. Nevertheless, as the immigration authorities were short-staffed, a delay occurred in issuing the stickers or cards. This delay caused problems not only for the beneficiaries but also for employers, who needed proof of the legal right to residence in the Netherlands before offering an employment contract. We elaborate further on the opportunity to work that was given to TP beneficiaries in the next section (2.2).

At first, the Dutch authorities implemented the Decision 2022/382 generously, extending its application to 90 days before 24 February 2022, the date of the invasion (i.e., as of 27 November 2021). Moreover, protection was also offered initially to third-country nationals who held temporary residence permits in Ukraine as (short-term) labour migrants or international students.

A year later, in April 2023, this personal scope of the Directive 2001/55 and Decision 2022/382 became heavily debated after the secretary of state reported signs of (unspecified) misuse of the temporary protection in the summer of 2022 by TP beneficiaries being third-country nationals with temporary residence in Ukraine, a group of about 6,000 persons.¹⁹ The personal scope for beneficiaries was therefore restricted by Ministerial Regulation in August 2022.²⁰ From then on, third-country nationals with temporary residence in Ukraine could no longer apply for temporary protection. Furthermore, the secretary of state announced that as of March 4, 2023, the protection for third-country nationals who had received temporary protection during March-August 2022 would end.²¹ The decision caused chaos and distress within that group, as the authorities sent letters to announce the withdrawal without clarifying whether a legal remedy was available.²²

¹⁵ See Franssen K., *Tijdelijke bescherming van asielzoekers in de EU* (dissertation Radboud University), The Hague, BJU, 2011.

¹⁶ Art. 1 and art. 8(f) or (h) Aliens Act (Vreemdelingenwet) 2000.

¹⁷ To obtain a social security number and registration in the Personal Records Database (BRP).

¹⁸ The so-called O-document; the procedure is laid down in an informal policy document, a so-called Working Instruction, WI 2022/17 (4 August 2022), available at www.ind.nl.

¹⁹ Letter of the secretary of state for Justice and Security of 18 July 2022, Parliamentary Documents 2021-22 19637, nr. 2945.

²⁰ Art. 3.9a *Voorschrift Vreemdelingen* (Regulations on foreign nationals), State Gazette 2022, 22623, published 25 August 2022.

²¹ *Ibid.*

²² See Grütters C., *Beëindiging Tijdelijke bescherming van ontheemden die in Oekraïne tijdelijk verblijfsrecht hadden is onrechtmatig*, in *Asiel- en Migrantenrecht*, 2023, 2, 81-87.

The Dutch Government did not consult with the European Commission on the choice to end temporary protection for third-country nationals who were first included in the scope of the Directive 2001/55.

For our contribution, it is relevant to point out that the chaos was also felt by employers who had already offered employment to these TP beneficiaries. The Dutch authorities maintained that the withdrawal of temporary protection of third-country nationals with a Ukrainian temporary residence permit was lawful, yet they postponed the actual withdrawal to 4 September 2023.²³ Nonetheless, the move caused insecurity for TP beneficiaries and employers.

At the time of writing, the TP status of some 2,900 temporary protection beneficiaries who are third-country nationals with temporary residence rights in Ukraine has been withdrawn, or they received a letter in which the intention of withdrawal was announced. The legal arguments have been tested in courts in a pilot of thirteen cases. One lower instance court ruled that the withdrawal of TP status of a third-country national with temporary residence rights in Ukraine did not infringe Directive 2001/55; the reasoning was that extending the scope of protection under Directive 2001/55 is a facultative decision. The applicant appealed that judgment.²⁴ Another lower instance court later came to an opposite conclusion by deciding that withdrawing the TP status does infringe the Directive 2001/55 and the Decision 2022/382. The reasoning was that the ending of temporary protection can only be reached by a qualified majority in the Council of Europe.²⁵ The highest court, the Council of State, has to give the final word.

Regarding the employment of this group of TP beneficiaries, the secretary of state of Justice and Security stated that this group will follow the regular asylum procedure after their TP status is withdrawn. Hence, the same rules regarding access to the employment market would apply to them as to other asylum seekers. This means that they will only be allowed to work for a maximum of 24 weeks per year (the 24-week requirement; *see* paragraph 3 below).²⁶

In terms of housing, by way of emergency law, municipalities managed quite smoothly to arrange both private and municipality-run housing for around 90,000 displaced persons.²⁷

²³ Letter of the secretary of state for Justice and Security of 10 February 2023, Parliamentary Documents 2022-23 19637, 3070.

²⁴ Court of the Hague at Rotterdam, 9 August 2023, ECLI:NL:RBDHA:2023:11897. An interim measure was given by the Council of State on 1 September 2023, ECLI:NL:RVS:2023:3349.

²⁵ Court of The Hague at Roermond, 30 August 2023, ECLI:NL:RBDH:2023:21692.

²⁶ Letter of the secretary of state for Justice and Security of 29 August 2023, <https://www.rijksoverheid.nl/onderwerpen/opvang-vluchtelingen-uit-oukrajne/documenten/kamerstukken/2023/08/29/tk-verzamelbrief-opvang-oukrajne>, (accessed 30 August 2023).

²⁷ Decree of 31 March 2022, activating Art. 2c and 4 Law Population Displacement (*Wet verplaatsing bevolking*), State Gazette 2022, 133 in use as of 1 April 2022; extension of this law was accepted by parliament on 4 April 2023, Parliamentary Documents 2022-23, 36081.

Table 1: *Housing for registered asylum seekers and temporary protection beneficiaries as of 14 April 2023.*

	Total registered, with right to housing	Beds in use in governmental reception centers ²⁸	Beds in use in other facilities (private housing)
TP beneficiaries	91,980	72,710	Est. 19,270
Asylum seekers	52,810	45,663	7,147

Source: *Rijksoverheid.nl* and *COA.nl*.²⁹

The wide discretion offered to municipalities to arrange housing was crucial. National legislation governing the reception conditions was issued on 1 April 2022 in the form of the Ministerial Regulation for the Reception of Displaced Persons from Ukraine (hereinafter ROO).³⁰ The ROO gives mayors the responsibility for meeting the minimum requirements for the reception centers and the competence to grant financial allowances to TP beneficiaries who stay in private homes and municipal centers. Another crucial change – which could potentially lead to chaos – in the regulation on reception was the withdrawal, as of February 2023, of financial allowances from TP beneficiaries who are employed or have a family member who is earning an income.³¹

Table 2: *Financial allowances for temporary protection beneficiaries before and after 1 February 2023, and for asylum seekers.*

	TP beneficiaries Until 1 February 2023	TP beneficiaries After 1 February 2023	Asylum seekers in general procedure
Food	€205 pp/month	Sliding scale depending on household size, between €215,06 pp/month and €150,45 pp/month	€198,52 pp/month
Clothing	€55 pp/month	€56,12 pp/month	€51,80 pp/month
Extra for private housing	€215 adult, €55 child		€100/€125 pp/month
Influence of work	No influence	Stops financial allowance for TP beneficiary and family members	Lowers financial allowances

Source: *ROO and Rva regulation.*

²⁸ For TP beneficiaries, these are municipality centres; for asylum seekers, these are central reception centres.

²⁹ <https://www.rijksoverheid.nl/onderwerpen/opvang-vluchtelingen-uit-oekraine/cijfers-opvang-vluchtelingen-uit-oekraine-in-nederland>. And <https://www.coa.nl/nl/lijt/capaciteit-en-bezetting> (accessed 1 May 2023).

³⁰ Regulation on the Reception of Displaced from Ukraine (*Regeling Opvang Ontbeelden Oekraïne*), Government Gazette 2022, 9469.

³¹ Change of Regulation on the Reception of Displaced from Ukraine (*Wijziging regeling Opvang Ontbeelden Oekraïne*), Government Gazette 2022, 31970.

At the time of writing, we have no data regarding the effect of this measure on beneficiaries' labour participation. We imagine that, as is the case with Dutch nationals earning the minimum wage, the lack of additional financial support for housing means it will be financially less profitable for them to work than to receive additional welfare benefits. Until now, access to the labour market for beneficiaries of Directive 2001/55 has helped many people to take up employment. We next elaborate on this point.

2.2. Access to the Labour Market.

According to art. 12 Directive 2001/55, the EU Member States “shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience.” However, for reasons of labour market policies, Member States may give priority to EU/EEA citizens and legally resident third-country nationals who receive unemployment benefits. Directive 2001/55 furthermore stipulates that the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply, which we refer to as ‘the equivalence test.’³² When the Directive 2001/55 was implemented in Dutch law in 2004, the implementation included a work permit requirement with a full labour market and equivalence test. This would make it highly unlikely that employers would receive a work permit given the restrictive Dutch priority workforce check, which requires scrutinizing the availability of nationals, workers available in the European Economic Area as well as third-country nationals living in the Netherlands with unrestricted labour market access (so not just those receiving unemployment benefits).³³

After activation of the Directive 2001/55 in 2022, the Dutch authorities however immediately decided to give beneficiaries of temporary protection who came from Ukraine access to the labour market. They waived the work permit requirement, and with it the stringent labour market test, as well as the other restrictions applicable to asylum seekers. Examples of the waived items were the six-month waiting time and the limited right to work for 24 weeks, followed by 26 weeks of idleness (*see* section 3 below). No language test is required for access to the labour market, and measures regarding social benefits were effected as of 1 July 2022.³⁴ Overall, the TP beneficiaries were welcomed, unlike asylum seekers, who

³² Article 12 of Directive 2001/55.

³³ Art. 3.71(h) Aliens Decree 2000, *see* also the explanatory note in the Official Gazette *Staatsblad*. 2005, 25, 10; Article 8 and 9 Dutch Migrant Employment Act (Wet Arbeid Vreemdelingen). On the Dutch priority test *see* De Lange, T. et al., *Labour Migration and Labour Market Integration of Migrants in the Netherlands: Barriers and Opportunities*, SEO, Amsterdam, 2019.

³⁴ Letter of the secretary of state of Finance and ministers of Social Affairs and Employment and Housing 15 June 2022, Parliamentary Documents 2021/22, 36045 and 26448, nr. 95. Formal legislation regarding childcare benefits and rental benefits for TP beneficiaries is, a year after their arrival, still being prepared: *Wijziging wet kinderopvang*, Parliamentary Documents 2022/23, nr. 36241 and *Wijziging wet op de huurtoeslag*, Parliamentary Documents 2022/23, nr. 36301.

have limited rights in this respect (as we elaborate in the next section). Given the shortages in the Dutch labour market after COVID-19, the Dutch response to the arrival of displaced persons clearly also served some self-interest.

The decision to open up the labour market has been framed by the authorities as fulfilling the purpose of the Directive 2001/55. That purpose is to promote a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.³⁵ As mentioned, the responsible minister of Social Affairs and Employment changed the legislation directly upon the implementation of the Decision 2022/382. This step resulted in TP beneficiaries having free access to the labour market for salaried employment immediately upon their arrival.³⁶

Employers are still required to register the employment of TP beneficiaries by notifying the Employee Insurance Agency (hereinafter UWV) two days prior to the commencement of the work.³⁷ The UWV provides a special form for employers for this purpose, and since April 2022 an online dashboard has been tracking the number of notifications.³⁸ This dashboard is a unique initiative by the UWV and is welcomed from a research perspective. The notification enables the authorities to verify whether the TP beneficiaries are working in accordance with collective employment agreements, laws, and regulations on proper working conditions. It also allows the authorities to keep track of the working TP beneficiaries. As the minister of Social Affairs and Employment has explained, the risk of abuse – such as underpayment and poor working conditions – can be detected and reduced.³⁹ Failing to register constitutes illegal employment, which can be sanctioned with an administrative fine of up to € 8.000 per worker.⁴⁰

While salaried employment is facilitated in many ways, self-employment is not encouraged, and strict conditions apply. These conditions are similar to those that apply to all third-country nationals who request entry for the purpose of self-employment or to create a startup.⁴¹ Existing problems in the Netherlands – specifically abusive working conditions for mobile EU citizens in low-wage jobs and the often-cited issue of labour exploitation through fake self-employment – have been given as reasons to prohibit the beneficiaries of temporary protection from becoming self-employed.⁴² We find that logic unconvincing. We believe the decision to open the labour market only for salaried employment can be explained by enforcement deficiencies, rather than abuse.

³⁵ Letter of the secretary of state for Justice and Security of 30 March 2022, TK 2021-2022 19637, nr. 2839, reference to art. 1 Directive 2001/55.

³⁶ *Wijziging BuWAV 2022 tijdelijke vrijstelling tewerkstellingsplicht ivm Uitvoeringsbesluit*, Stb. 2022,130.

³⁷ Regulation changing the Regulation notification Migrant Employment Act exemption employment permit (*Wijzigingsregeling Regeling melding Wav tijdelijke vrijstelling twv plicht*), Government Gazette 2022, 8954. The Employment Agency is known as the UWV.

³⁸ <https://www.werk.nl/arbeidsmarktinformatie/dashboards/vluchtelingen-oekraine>, (accessed 12 April 2023).

³⁹ Regulation changing the Regulation notification Migrant Employment Act exemption employment permit.

⁴⁰ Policy Guidelines on administrative fines Migrant Labour Act 2020.

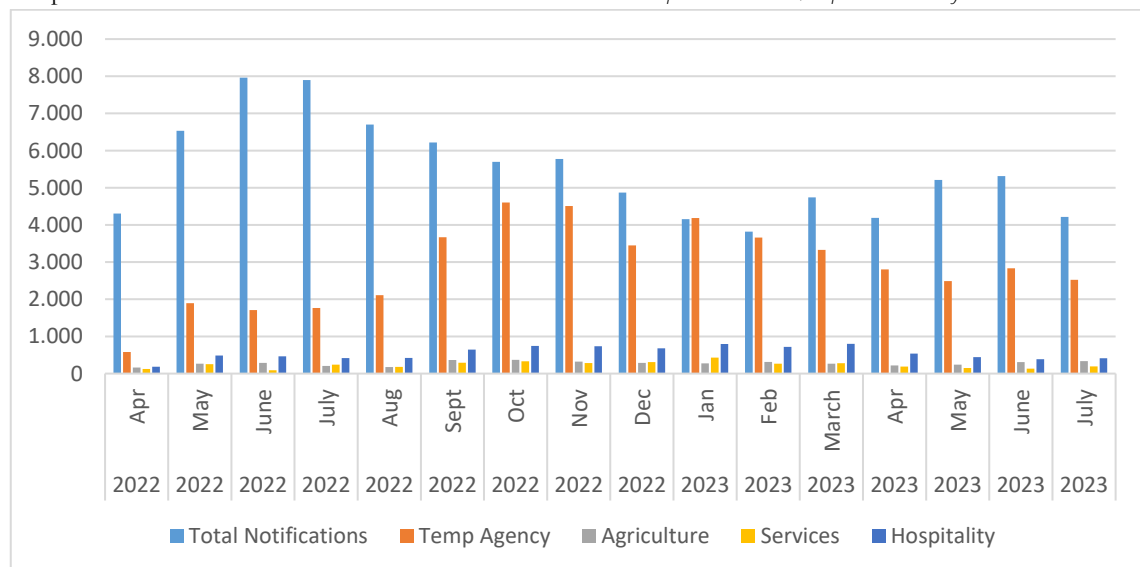
⁴¹ On which: de Lange T., *Welcoming talent? A comparative study of immigrant entrepreneurs' entry policies in France, Germany and the Netherlands*, in *Comparative Migration Studies*, 2018/6, 27.

⁴² Letter of the secretary of state of Justice and Security 30 March 2022, Parliamentary Documents 2021-22 19637, nr. 2839, 19.

Nevertheless, according to the authorities, self-employment is still possible under the existing legal framework, which fulfills the minimum requirement of art. 12 Directive 2001/55.⁴³ A member of parliament has requested to exempt self-employed Ukrainian psychologists, at least, from fulfilling the strict requirements, so that they can assist with the mental wellbeing of the displaced persons. This would prevent extra pressure being placed on the already overburdened regular care.⁴⁴ As of May 2023, special arrangements have been in place for the diplomas of psychologists to be recognized, along with setting up a special structure for mental healthcare for displaced persons from Ukraine.⁴⁵

Despite the strict approach regarding self-employment, the proactive legislation resulted in high participation in the labour market. As of 1 November 2022, 46% of the registered displaced persons from Ukraine who were aged between 15 and 65 years were in salaried employment.⁴⁶ The OECD reported that the highest level of labour market integration in the EU occurred in the Netherlands. The figures indicated that 40,000 adult TP beneficiaries, out of 55,000, were engaged in paid employment.⁴⁷

Graph 1: Number of Ukrainians at work in the Netherlands: total and per main sector, April 2022-July 2023.



Source: Authors' own compilation.⁴⁸

⁴³ Explanatory note, State Gazette, 2022, 130.

⁴⁴ Motion by MP Podt et al of 7 July 2022, Parliamentary Documents 2021-22, 19637 nr. 2926, Answer of secretary of state of Justice and Security, 16 December 2022, Parliamentary Documents 2022-23 19637, nr. 3021, 7.

⁴⁵ Letter of secretary of state of Justice and Security, 12 May 2023, Parliamentary Documents 2022-23 19637, 3106.

⁴⁶ <https://www.cbs.nl/nl-nl/nieuws/2023/05/aandeel-oeckraiense-vluchtelingen-met-werk-toegenomen> (accessed 14 August 2023).

⁴⁷ OECD report 5 January 2023, *What we know about the skills and early labour market outcomes of refugees from Ukraine*. See also: Thränhardt D., *Mit offenen Armen – die kooperative Aufnahme von Kriegsflüchtlingen aus der Ukraine in Europa*, FES Diskurs, February 2023, 25.

⁴⁸ See <https://www.werk.nl/arbeidsmarktinformatie/dashboards/vluchtelingen-oeckraiense> (accessed 14 August 2023).

Most salaried employment is performed through temporary employment agencies (temp agencies). They have assumed the role often performed by public employment services, dominating the Dutch temporary labour market. Data regarding the labour market sector in which beneficiaries employed through temp agencies are not available, but they were probably production workers (e.g., wrapping food), cleaners, or warehouse workers (e.g. order pickers).⁴⁹ Sectors in which employers directly contract beneficiaries include agriculture, commercial services (e.g. IT and web-based services), and hospitality (e.g., restaurants, hotels). These sectors face high labour shortages, which could explain why they welcomed the arrival of the TP beneficiaries.

Finally, we note that job placement is stimulated through municipalities organizing ‘meet & greets’ for employers and TP beneficiaries. Uniquely, the existing framework of public employment services was made available to support the employment of TP beneficiaries.⁵⁰

The minister of Social Affairs and Employment informed parliament in February 2023 about the ‘lessons learned’ through receiving displaced persons from Ukraine.⁵¹ Although good results had been achieved regarding their early entry into the labour market, the minister paid attention to reported exploitation and the lack of Dutch language skills. According to the minister, scant support for learning Dutch was the main obstacle to Ukrainians utilizing their previously acquired qualifications and finding sustainable employment reflecting their actual skill profiles.

Dutch language courses are not obligatory for access to the labour market, and TP beneficiaries fall outside of the scope of the Integration Act. This act obliges ‘newcomers’ with a residence permit in the Netherlands to fulfill an integration requirement. The Dutch government left it to municipalities and employers to offer language education, which resulted in multiple programs.⁵² In February 2023, the minister for Social Affairs and Employment announced that **one-time funding of €15 million would be made available for ‘accessible’ language courses for Ukrainians.**⁵³ Furthermore, some employers offered ‘language buddies’ in the workplace.⁵⁴

As mentioned, another obstacle that TP beneficiaries and other refugees face when seeking employment that matches their skills is a lack of recognition for their diplomas. The recommendation and communication by the European Commission on the recognition of qualification for displaced persons from Ukraine was met by offering one free diploma recognition to every TP beneficiary.⁵⁵ Still, the government recognizes the fact that the

⁴⁹ OECD report 5 January 2023, *What we know about the skills and early labour market outcomes of refugees from Ukraine*, 11.

⁵⁰ Wijziging Besluit SUWI, Parliamentary Documents 2021-22, 19637, nr. 2942.

⁵¹ Letter of minister of Social Affairs and Labour Affairs to Parliament 22 February 2023, Parliamentary Documents 2022-23, 36045, nr. 149.

⁵² Berenschot Onderwijsmonitor januari 2023, *Eerste Monitor Taalonderwijs volwassen Oekraïense ontbeelden*, Parliamentary Documents 2022-23, 19637, 3071.

⁵³ <https://www.rijksoverheid.nl/actueel/nieuws/2023/02/23/meer-ondersteuning-voor-oekraïense-vluchtelingen> (accessed 14 August 2023).

⁵⁴ 13 March 2023, Parliamentary Documents 2002-23, 32824 nr. 381, *Plan van aanpak ‘Statushouders aan het werk’*, 6.

⁵⁵ European Commission Recommendation of 5 April 2022 on the recognition of qualification for people fleeing Russia’s invasion of Ukraine, EU 2022/554, L 107/1; *Communication on Guidance for access to the*

procedure is an obstacle to finding employment that reflects the person's actual skills profile. The process is slow, and the level of Ukrainian diplomas do not always fulfill the Dutch requirements, as is the case for degrees obtained by psychologists.⁵⁶

3. Reception Conditions Directive and the right to work in the Netherlands.

Directive 2013/33 provides standards for the reception of people seeking asylum in the EU, inter alia by obliging Member States to promote their self-sufficiency.⁵⁷ This point is enshrined in article 15 of the Directive, which provides that applicants shall have access to the labour market “no later than nine months from the date when the application for international protection was lodged” (paragraph 1). Furthermore, although Member States shall decide the conditions, this access needs to be ‘effective’ (paragraph 2). By referring to effective access, Directive 2013/33 makes clear that access needs to be provided not merely in the legal sense but also guaranteed in practice.⁵⁸

The Dutch Migrant Employment Act (MEA) contains the rules relating to access to the employment market for people who lack Dutch nationality. These rules are further specified in the MEA Implementing Decree (hereafter the Decree), which provides that asylum seekers whose application for a residence permit has not yet been decided on are allowed to work, with time restrictions.⁵⁹ While a priority workforce check does not apply, as mentioned above, the right to work is limited to 24 weeks in a year, known as the ‘24-week requirement.’⁶⁰ Since 2014, Dutch legal scholars and individual employers have been arguing that the 24-week limit jeopardizes the effect utile of article 15 of Directive 2013/33⁶¹ as it

Labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine, 14 June 2022, C(2022)4050.

⁵⁶ *Ze willen graag, maar makkelijk is het niet voor Oekraïense psychologen om hier betaald werk te krijgen*, in *Volkscrant*, 17 February 2023.

⁵⁷ Directive 2013/33/EU laying down standards for the reception of applicants for international protection, point 23 preamble.

⁵⁸ De Lange T., Özdemir E., nt. (8).

⁵⁹ Article 6.2 paragraph 1 under a of the Decree.

⁶⁰ Article 6.2 paragraph 1 under c of the Decree. For applicants working as an artist or a musician (or offering technical support to artists or musicians), or as a collaborator in a movie project, the maximum period is limited to 14 weeks a year. Until 2008, the period during which asylum seekers were allowed to work was restricted to 12 weeks per year.

⁶¹ Slingenberg L., *Asylum seekers' access to employment: Tensions with human rights obligations in the recast of the directive on reception conditions for asylum seekers*, in Matera C., Taylor A. (eds.), *The Common European Asylum System and human rights: enhancing protection in times of emergencies*, Cleer Working papers 2014/7, 94. De Lange T., Besselsen E., Rahouti S., Rijken C., *Van Azc Naar Een Baan*, Universiteit van Amsterdam, Amsterdam, 2017; e De Lange, T., *Asylum seekers' limited right to work in the Netherlands*, in Rijken, C., De Lange, T. (eds), *Towards a Decent Labour Market*, AUP, Amsterdam, 2018; De Lange T., Özdemir E., *Asielzoekers & Daadwerkelijke Toegang Tot Werk in Nederland*, 2020. <https://repository.uibn.ru.nl/handle/2066/220303>; Dutch Advisory Committee on Migration Affairs (ACVZ), legislative advice: <https://www.adviesraadmigratie.nl/publicaties/publicaties/2020/03/03/advies-voorstel-wet-tot-wijziging-van-wet-arbeid-vreemdelingen> (accessed 24 March 2023), 7-8.

constitutes a barrier to effective labour market access. They have tried to set an agenda for policy change through legal proceedings and an awareness-raising campaign.⁶²

The Dutch government in turn has argued that the limited duration for asylum seekers to be employed is justified because an extension of the period could be interpreted as a ‘public signal’ that permanent residence in the Netherlands is probable. Furthermore, the longer a person works, the less time and energy they would be able to invest in preparing for return should their application be denied.⁶³ Moreover, the government has sustained that a right to unemployment benefits would arise in cases where someone is employed for more than 26 weeks (in a period of 36 weeks). The right to unemployment benefits will be terminated if the residence permit was then denied; nevertheless, the government deems that such cases would create ‘complex situations.’⁶⁴

Following discussions in the framework of changes proposed to the MEA, the 24-week requirement has received political attention both within and outside of parliament. Several members of parliament have raised the question of whether the 24-week requirement is compatible with article 15 of Directive 2013/33.⁶⁵ In response, the minister displayed ignorance and turned to the state attorney for legal advice, who concluded that access to the labour market may not be made impossible or excessively difficult.⁶⁶ For the 24-week requirement to be justified, it needs to be clear that such a period would contribute to the objectives it is supposed to serve and that the effects produced by the requirement would not infringe the EU principle of proportionality. Infringement would occur in case the requirement would, in practice, discourage asylum seekers from seeking entry to the labour market. According to the state attorney, an empirical investigation would be required to find out whether this would be the case.⁶⁷

Subsequently, the minister commissioned a study into practical barriers that asylum seekers face when accessing the Dutch labour market, including the 24-week requirement.⁶⁸ In March 2023, as in many earlier studies, researchers found that asylum seekers encounter a multitude of challenges and obstacles when entering the Dutch employment market, which

⁶² Ben & Jerry’s first small campaign “Waiting isn’t working” started in the COVID-19 summer of 2020 and was accompanied by a toolkit telling employers how to apply for a working permit for asylum seekers. One legal procedure is discussed by De Lange et al 2017. The case was deemed inadmissible for a lack of procedural interest. From informal conversations in the field, we learned of several other cases, either inadmissible because a status was denied, or granted or withdrawn through fear of the asylum claim being rejected. More recently, however, in April and June 2023, a first instance court deemed the 24-week requirement void because it unnecessarily limits effective access to the employment market, thereby infringing article 15 of the directive (District Court The Hague at Arnhem, 18 April 2023, ECLI:NL:RBDHA:2023:54582 and District Court The Hague at Utrecht, 21 June 2023, ECLI:NL:RBMNE:2023:4728). The Dutch Government appealed both decisions. See also below.

⁶³ Parliamentary Documents 2006-07, 29861 (30 573), nr. 17, 10-11.

⁶⁴ And 16 weeks for musicians, artists, and the like. TK 2006-2007, 29861 (30 573), nr. 17, 11. Van Winden-Spaans, E.M., *Asielzoekers aan het werk?*, *ArbeidsRecht* 2002/46, 2022.

⁶⁵ Parliamentary proceedings 2020-21, 35680 nr. 89, item 3.

⁶⁶ State Attorney, *Advies verenigbaarheid 24-weken-eis met de Opvangrichtlijn*, 2021, attachment to Parliamentary Documents 2020-21, 35680, nr. 21.

⁶⁷ State Attorney 2021, 2-3.

⁶⁸ Parliamentary Documents 2021-22, 35 680, nr. 22, 8-9.

all compound each other.⁶⁹ These barriers relate to laws and regulations, with the biggest hurdle being the 24-week requirement, which has no equivalent in other EU Member States bound by Directive 2013/33. The researchers concluded that abolishing this requirement would constitute ‘a very important step’; however, other practical barriers that prevent asylum seekers accessing the employment market would also need to be addressed. These include the requirement to obtain a work permit and delays in obtaining a social security number, which is necessary to open a bank account – which in turn is required to receive a salary. These delays are due to reported ‘capacity problems’ within the Dutch government.⁷⁰ The researchers did not draw firm conclusions about whether the 24-week requirement is compatible with Directive 2013/33.

A week after the publication of the above study, a case was initiated by the NGO and matchmaker Refugee Connect. A first instance court deemed the restriction void because it unnecessarily limits effective access to the employment market, thereby infringing article 15 of the Directive.⁷¹ Two months later, with reference to the study mentioned above, another first instance court pronounced a similar verdict.⁷² The government appealed both decisions and declared that the 24-week requirement would remain in force until the Council of State, the highest Dutch administrative court, could decide on the matter.⁷³ At the time of writing, the Council of State had not yet passed judgment.

4. Aligning the rights of temporary protection beneficiaries and asylum seekers: an ongoing debate.

The provisions related to the right to access the labour market have similar wording in both the Directive 2001/55 and Directive 2013/33. Nonetheless, the Dutch government has repeatedly justified the difference in treatment of asylum seekers versus beneficiaries of temporary protection by referring to the ‘nature’ of Directive 2001/55. The government has argued that Directive 2001/55 requires immediate protection as well as immediate access to the labour market and is of a temporary nature.⁷⁴ The right to access employment as enshrined in Directive 2013/33, by contrast, according to the government, refers to labour market access while awaiting the outcome of the procedure relating to protection.⁷⁵

The government thereby seems to be implying that the target group of the latter Directive concerns a less ‘deserving’ group of people. To our knowledge, there is no justification for this distinction in EU law. Furthermore, as explained above, the limitation to work for only

⁶⁹ Report Regioplan, *Belemmeringen Asielzoekers bij het toetreden tot de Arbeidsmarkt*, 2023, attachment to Parliamentary Documents 2022-23, 32824, nr. 384.

⁷⁰ Report Regioplan, nt. (69), 42.

⁷¹ District Court The Hague at Arnhem, 18 April 2023, ECLI:NL:RBDHA:2023:5458.

⁷² District Court The Hague at Utrecht, 21 June 2023, referred to in the government reaction to the Regioplan report (Parliamentary Documents 2022-23, 29544, nr. 1213, 4).

⁷³ Letter of the minister of Social Affairs and Employment of 17 May 2023 concerning the appeal against the first instance court decision of the Hague regarding the 24-weeks-requirement, Parliamentary Documents 2022-2023, 32824, nr. 387.

⁷⁴ Explanation for changes made to the Decree, *Official Gazette* 2022, nr. 130, 7.

⁷⁵ *Ibid.*

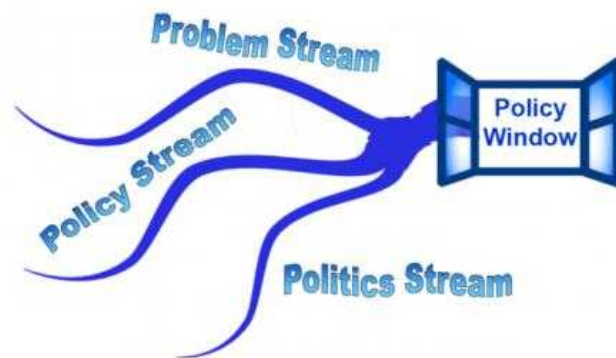
24 weeks per year is likely to infringe Directive 2013/33, which has prompted scholarship and reports in recent years calling for a policy change.⁷⁶ The Dutch government has, however, chosen to remain ignorant of socio-legal arguments that support policy change.⁷⁷

As mentioned, the 24-week requirement and other barriers that asylum seekers face regarding employment have received renewed attention because of the ‘natural pilot’, namely the easy access to the employment market awarded to TP beneficiaries. This scenario enables a test for potentially problematic elements of the policy, ‘of opening up labour market access for ‘regular’ asylum seekers prior to full-scale adoption.’⁷⁸ Problematic elements relate to concerns of the government about the abuse of workers, workers abusing the welfare system or claiming the right to remain in order to receive unemployment benefits, integration, and failure to leave if an application is denied.

So far, the natural pilot has shown a high level of labour market participation and relatively few reports about the abuse of workers or of benefits. Thus, the pilot allows for at least a cursory positive evaluation of immediate labour market access.

The question remains whether this pilot has prompted momentum for policy change.⁷⁹ To answer that question, we employed the policy streams approach developed by Kingdon, which describes policy formation as the result of the flow of three ‘streams,’ which evolve separately and show distinct dynamics:

1. The problem stream, consisting of problem perceptions among policymakers;
2. The policy stream, consisting of proposals for government action;
3. The politics stream, consisting of political activities and developments such as elections, lobbying campaigns, and shifts in public opinion.⁸⁰



Source: Kingdon 2003.⁸¹

⁷⁶ De Lange T., Özdemir E., 2020 and the first Ben & Jerry’s campaign “Waiting Doesn’t Work” with employer toolkit; report Landsadvocaat November 2021.

⁷⁷ We answer the call from ignorance researchers to establish a dialogue between migration and ignorance studies to serve the theoretical advancement of both fields, Mica A. et. al., *Ignorance and Change. Anticipating knowledge and the European Refugee Crisis*, Routledge, London, 2020.

⁷⁸ Nair S., *Policy experiments and pilots as tools for decision-making*, in Howlett M. (ed.), *The Routledge Handbook of Policy Tools*, Routledge, London, 2022, 282-293.

⁷⁹ Here we describe developments that have not been resolved. The closing date of the research we conducted for this chapter of the book was 1 September 2023.

⁸⁰ Kingdon J., *Agendas, alternatives and Instability in American Politics*, HarperCollins College Publishers, New York, 2003; Princen S., *Agenda Setting*, in Versluis E., van Keulen M., Stephenson P. (eds.), *Analyzing the European Union Policy Process*, Palgrave Macmillan, Basingstoke, New York, 2011, 115-116.

⁸¹ Image retrieved from <https://rameshdthakur.wordpress.com/2014/03/30/kingdons-three-stream-policy-window-model-and-cardiac-rehabilitation-policy/> (accessed 25 August 2023).

Although these streams develop separately, sometimes they merge, opening a policy window that could lead to policy change. The question is whether the natural pilot of open access to the labour market for Ukrainians could enable the three streams to flow together in the direction of policy change.

Starting with the problem stream, we conclude that it was already flowing in the right direction. Shortages in the labour market had been widely acknowledged as a problem and even a crisis that required a solution. By itself, the crisis proved insufficient to prompt policy change or to make the policy and political streams start flowing in the right direction for a policy window to open.

Will the natural pilot of giving TP beneficiaries unlimited access to the labour market provide what is required to get the other two streams flowing? As mentioned above, the results of the pilot roughly a year after its start indicate that the pilot has succeeded. Almost half of all TP beneficiaries have made use of the right to work, without substantial problems of abuse and misuse arising. This fact might inspire government to change the policy to improve the access to the labour market for all people seeking international protection in the Netherlands.

A member of parliament submitted a memorandum on “Participating from Day One,” containing proposals to open up access to employment for asylum seekers.⁸² The memorandum contains a clear reference to the situation of TP beneficiaries and calls for an evaluation of the ‘pilot’ and lessons to be drawn for all asylum seekers, based on the experiences with Ukrainians. The natural pilot therefore might provide the required impetus for the policy stream to align with the problem stream.

Will this also apply to the politics stream? The successful labour market integration of Ukrainians has promoted group mobilization and agenda setting to drive policy change to allow ‘regular’ asylum seekers access to the labour market.⁸³ Firstly, the labour market participation of Ukrainians prompted employers who face labour market shortages to advocate for policy change, not only through the above mentioned court proceedings but also through lobbying initiatives toward members of parliament and the minister. For example, a seminar we organised on 7 February 2023 inspired the ice-cream company Ben & Jerry’s – which had previously developed a toolkit to guide employers through the process of applying for a work permit for asylum seekers – to bring other employers on board. Their aim was to lobby in parliament for an abolishment of the 24-week requirement.⁸⁴ Employers, NGOs, and academic experts joined forces by launching a petition campaign called ‘Waiting Does Not Work’, which culminated in offering the petition to parliament in June 2023.⁸⁵ In

⁸² Parliamentary Documents 2021-22, 36139, nr. 2.

⁸³ Relevant to policy change, as introduced by Birkland T.A., *Focusing Events, Mobilization and Agenda Setting*, in *Journal of Public Policy*, 1998, 18(1), 53-74.

⁸⁴ <https://www.benjerry.nl/wat-is-nieuw/2020/06/cone-together-toolkit-voor-werkgevers> (accessed 19 April 2023). Information on lobbying project obtained via conversations between representatives of Ben & Jerry’s and the authors in April 2023.

⁸⁵ <https://werkenasielzoekers.petities.nl/>, signed by 4,238 persons, site accessed 14 August 2023. The petition was closed on 25 June 2023.

addition, an entrepreneurial opinion leader expressed support for tackling barriers that prevent asylum seekers from taking up employment.⁸⁶

Furthermore, various governmental actors have spoken out in favour of policy change. Several municipalities have called for changes to the regulations or permission to start pilot projects to help asylum seekers access the labour market.⁸⁷ The province of Utrecht, on behalf of all municipalities in the province, has asked the ministers of Justice and Security and of Social Affairs and Employment for permission to start a three-year pilot project aimed at opening up access to employment for asylum seekers. They referred to positive experiences related to Ukrainian beneficiaries of TP who have been allowed to start working immediately after arrival.⁸⁸ Lastly, the government agency responsible for the reception of asylum seekers has voiced its support for policy change.⁸⁹ By offering an opportunity for pro-change groups, including employers, NGOs, and parliamentarians, to unite forces to advocate for policy change, the success of the natural pilot has thus largely redirected the politics stream in the direction of policy change.

Despite these pushes for change, the position among political parties that oppose the abolishment of the 24-week requirement appears to remain unchanged. Statements by a member of parliament for the Conservative Liberal VVD, the largest political party in the parliament and a member of the (then) coalition government, indicated that this party still opposed opening access to the labour market for all asylum seekers. The fear was that such access might lead to claims to residence rights even if the applications were later denied.⁹⁰ The minister in charge announced the government would consider expanding the right to work for asylum seekers and referred to the positive experience in the natural pilot. However, she also announced yet another investigation, which would focus on the long-term effects of unrestricted access to labour market regarding the integration of Ukrainians.⁹¹

Nevertheless, abolishing the 24-week requirement was part of a package deal that the coalition government wanted to clinch in July 2023. The deal contained measures that were supposed to provide control over migration to the Netherlands. However, the coalition parties could not agree on the measures included in the deal, and the government dissolved on 7 July 2023. In her reaction to the above mentioned study of March 2023 on the barriers facing asylum seekers in accessing the employment market, the outgoing minister stated that ‘given the political situation,’ it was not possible to make a ‘choice’ regarding the 24-week

⁸⁶ Anne-Marie van Gaal, *Asielzoeker moet snel aan het werk*, in *de Telegraaf*, 16 January 2023.

⁸⁷ See, for instance, <https://www.coa.nl/nl/nieuws/asielzoekers-en-statushouders-makkelijker-aan-het-werk-almere>, site visited 18 April 2023, <https://zaanstad.nieuws.nl/actueel/103139/pilot-om-asielzoekers-eerder-aan-werk-te-helpen/>, (accessed 18 April 2023).

⁸⁸ Letter by steering group ‘provinciale regietafel Migratie & Integratie’ of March 2023, in possession of authors.

⁸⁹ <https://www.coa.nl/nl/nieuws/afschaffen-24-weken-eis-belangrijke-stap-voor-actieve-deelname-asielzoekers> (accessed 20 April 2023).

⁹⁰ VVD parliamentarian Bente Becker, report of a debate of the permanent commission on social affairs and employment of 13 April 2023, 4.

[https://urldefense.com/v3/__https://www.npostart.nl/goedemorgen-nederland/13-042023/POW_05518093_!!HJOPV4FYYWzcc1jazlUI!5qOTJo1StyjaOnlr_6nhPXDt2mBcHCXh-OIJluMPCn8u8Ot3K9xBPYPUTod6bkj5zUCSDFBsY8fk6deJJCX2zISwVlazA\\$](https://urldefense.com/v3/__https://www.npostart.nl/goedemorgen-nederland/13-042023/POW_05518093_!!HJOPV4FYYWzcc1jazlUI!5qOTJo1StyjaOnlr_6nhPXDt2mBcHCXh-OIJluMPCn8u8Ot3K9xBPYPUTod6bkj5zUCSDFBsY8fk6deJJCX2zISwVlazA$) (accessed 20 April 2023).

⁹¹ Parliamentary Documents 2022-23, 32 824, nr. 381, *Plan van aanpak Statushouders aan het werk*, 9 March 2023, letter to Parliament on Additional measures to combat labour market shortages, 3 February 2023, 17, Parliamentary Documents 2022-23, 36045, nr. 149, 8.

requirement, nor regarding the ‘adaptation’ of the duty to acquire a work permit.⁹² The political situation that has arisen hence means that any substantive political choices about all asylum seekers being granted effective access to the employment market have been placed on hold. Unless the highest Dutch court confirms the decisions of the first instance courts that the 24-week requirement is void for infringing Directive 2013/33, regular asylum seekers will continue to face barriers to access the employment market and be treated as a less-deserving category of persons seeking international protection.

5. Conclusions.

In this contribution, we have mapped the regulation of labour market access in the Netherlands for displaced and asylum-seeking people. Firstly, we demonstrated the vast differences in policy and practice related to labour market access for people who fled the war in Ukraine on the one hand, and ‘regular’ asylum seekers on the other. Ukrainians were quickly granted an unlimited right to work. Interestingly, third-country nationals residing legally in Ukraine were at first granted temporary protection, but this stance was then reversed, creating chaos and uncertainty for migrants and their employers. Analytically, third-country nationals have been shifted from ‘deserving’ Ukrainians to the ‘less-deserving’ general category of asylum seekers. The latter group must wait six months before accessing the labour market; they also need employment permits and cannot work more than 24 weeks per annum. EU law obligations flowing from Directive 2013/33 have thus far not compelled the Dutch government to implement policy changes to enable greater labour market access for asylum seekers.

Secondly, by engaging scholarly literature that theorizes about agenda setting leading to policy change, we demonstrated that the natural pilot project, through the unlimited access to the labour market granted to displaced people from Ukraine, in combination with the labour market crisis, has triggered new agenda-setting efforts. Will these efforts lead to a policy change regarding the right to access the labour market for ‘regular’ asylum seekers whose application for protection is pending?

Although the labour market shortage constituted a crisis that pushed the ‘problem stream’ in the direction of the policy window, in itself it did not immediately trigger a policy change for all asylum seekers’ right to work. It needed the support of the natural pilot, created by the immediate and unlimited access of TP beneficiaries to the labour market, to provide the required impetus to steer the policy and politics streams closer to the problem stream. This eventually resulted in the opening up of a policy window, as the abolishment of the 24-week requirement was included in a package deal on migration and asylum that the coalition government was drafting. However, the policy window closed soon afterwards, as the coalition dissolved because of disagreements about the deal. Time after the national elections will tell if the natural pilot will result in more labour market participation for asylumseekers.

⁹² Parliamentary Documents 2022-23, 29544, nr. 1213, 4, 5.

5

War and labour in Ukraine.

Ilona Voitkovska*

1. Introduction. 2. Scale of outflow of workers from the labour market. 3. Support measures for workers and enterprises. 4. Social support regulation enacted in connection with the war after 24 February 2022. 5. Conclusions.

1. Introduction.

Since 2014, after losing administrative control over the Autonomous Republic of Crimea¹ and parts of the Luhansk and Donetsk regions,² the Ukrainian labour market has been constantly influenced by the war. Large waves of migration from the occupied territories of Crimea and Donetsk, and Lugansk, as well as veterans from the territory of Anti-Terroristic Operation, occurred in 2014-2015. Since then, legal regulation on social security for internally displaced persons (IDPs) and veterans has been actively developing. From the full-scale Russian invasion, 1,461,992 IDPs were reported,³ i.e. 3,5% of the total population of Ukraine (41.58 million people in 2021)⁴. The number of veterans and their family members before 2022 was estimated as 446,348, including 112,796 people with war-related disabilities.⁵

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¹ Law of Ukraine of April 15, 2014, N 1207-VII, *on Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine* (Закон про Україну Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України), art. 1.

² For 2014-2018 the parts of Luhansk and Donetsk regions considered an Anti-Terrorist Operation territory according to Law of Ukraine of September 2, 2014, N 1669-VII, *on Temporary Measures for the Anti-Terrorist Operation Period* (Закон про Україну Про тимчасові заходи на період проведення антитерористичної операції).

³ Decree of October 28, 2021, N 1364-р, *on approval of the strategy for the integration of Internally Displaced Persons and implementation of medium-term decisions on internal displacement for the period up to 2024* (Про схвалення Стратегії інтеграції внутрішньо переміщених осіб та впровадження середньострокових рішень щодо внутрішнього переміщення на період до 2024 року).

⁴ State Statistics Service of Ukraine, *Number of Present Population of Ukraine, as of January 1.*, in Timonina M. (ed.), Kyiv, 2021, 11.

⁵ Ministry of Veterans' Affairs of Ukraine, *Уряд Схвалив Зміни До Законодавства Щодо Визначення Розміру Щорічної Разової Грошової Допомоги До 5 Травня*, 28 July 2021, <https://www.kmu.gov.ua/news/uryad-shvaliv-zmini-do-zakonodavstva-shchodo-viznachennya-rozmiru-shchorichnoyi-razovoyi-groshovoyi-dopomogi-do-5-travnja> (last accessed 12 March 2023).

Before 2022 Ukrainian labour market involved 16.0 million people, including 3 million informally employed, and the unemployment rate was 9.2% (1.6 million unemployed) before 2022.⁶ At the beginning of 2022, 387,000 enterprises and 1.56 million individual entrepreneurs were actively operating in Ukraine,⁷ employing 8.94 million people, including 2.28 million people at small individual entrepreneurs.⁸ Around 7.37 million employees had been working in Ukraine before 2022, of which 959 thousand had been employed by individual entrepreneurs.⁹ In this way, around 65% of Ukraine's employed population had worked in small or medium-sized enterprises before 2022. As for the income level, the official minimum wage was ₴6,500¹⁰ (€191)¹¹, the average wage was from ₴14018 (€411)¹² to ₴15761 (€462)¹³, the average pension income was set at ₴3992 (€117)¹⁴, 2% of Ukrainians lived below the poverty line.¹⁵ On 24 February 2022, Russia began a dramatic war on Ukrainian territory, which caused significant damage to Ukraine's labour market and social security system.

2. Scale of outflow of workers from the labour market.

It is a challenge for us to analyze the scale of the outflow of workers from the labour market, because of a lack of relevant data. The following research is based on official and alternative data on internal and external migration as well as the scale of collective redundancies. But the results shall come with the following caveats. The official statistics on internal migration send us to the IDP database of Ukraine, which excludes people who did not get the IDP status, or those who had been displaced, but not in terms of the law. The

⁶ State Statistics Service of Ukraine, *Annual Report on the Labour Market in Ukraine, 2021*, 24 December 2021, 1, <https://ukrstat.gov.ua/express/expr2021/12/157.pdf> (last accessed 20 February 2023).

⁷ State Statistics Service of Ukraine, *Number of Employees of Business Entities by Type of Economic Activity with Breakdown by Number of Persons Employed in 2021*, 2021, available at: https://ukrstat.gov.ua/operativ/operativ2022/fin/pdsg/arh_knpsg_ved_zp_u.htm (last accessed 20 February 2023).

⁸ State Statistics Service of Ukraine, nt. (7).

⁹ *Ibidem*.

¹⁰ Law of Ukraine of December 2, 2021, N 1928-IX, *on the State Budget of Ukraine for 2022* (Закон про Україну Про Державний бюджет України на 2022 рік), art. 8.

¹¹ Here and after the sums in Euro are calculated as a sum in Grivnya divided on the average foreign Exchange rate established by the National Bank of Ukraine, which in 2022 was ₴34.072 for €1.

¹² State Statistics Service of Ukraine, *Average Wage of Regular Employees by Type of Economic Activity (Monthly Information)*, 2022, available at: https://ukrstat.gov.ua/operativ/operativ2005/gdn/Zarp_ek_m/Zp_ek_m_u/arh_zpm_u.html (last accessed 1 March 2023).

¹³ Komarnytska H.O., Yastremska N.M., Pavlenko N.V., *Journal of Economic Surveys*, 2022, 306 and 313.

¹⁴ Pension Fund of Ukraine, *The average amount of the pension payment and the share of pensioners by the amount of the monthly pension in the total number of pensioners as of 01.01.2022*, 12 January 2022, Picture 2, <https://www.pfu.gov.ua/2151250-serednij-rozmir-pryznachenoyi-pensijnoyi-vyplaty-ta-pytomu-vagu-pensioneriv-za-rozmiramy-pryznachenyh-misyachnyh-pensij-u-zagalnij-yih-chyselnosti-stanom-na-01-01-2022-roku/> (last accessed 1 March 2023).

¹⁵ Nebehay S., *Ninety Percent of Ukrainian Population Could Face Poverty in Protracted War – UNDP*, in *Reuters*, 16 March 2022, <https://www.reuters.com/world/europe/ninety-percent-ukrainian-population-could-face-poverty-protracted-war-undp-2022-03-16/> (last accessed 15 April 2023).

UN data on external displacement includes double registration of the same person. The data on collective dismissals collected by the State Statistics Service of Ukraine is considered for 2021 only, because of the absence of the **employer's obligation** to give any information on dismissals during the martial time.¹⁶ That is why we are not able to evaluate the scale of collective redundancies during 2022, so we can make an assumption only.

After 24 February 2022, the number of IDPs reached millions: from 6.4 million in March, to 8 million in May, 6.9 million in August 2022,¹⁷ and 5.35 million in January 2023.¹⁸ In April 2022, massive returns of IDPs to their previous places of residence were first recorded (around 2.77 mln. people)¹⁹, as citizens did not receive support from the State or community in their new place of residence.²⁰ In January 2023, the number of IDPs and people who returned to their previous place of residence levelled off and amounted to 5.35 million and 5.56 million respectively.²¹ Such a huge scale of involuntary displacement, including second displacement, **deforms the structure of regions' labour markets.**²²

Regarding external outflows of persons almost 8 million Ukrainians²³ (mostly female and minors)²⁴ and 208,000 foreign students and migrant workers²⁵ left Ukraine since February 2022. Before leaving Ukraine, nearly 1.2 million persons had been employed, around 400,000 of whom had a university degree, and 200,000 were working as high-skilled professionals.²⁶ Surveys of employers showed a labour shortage due to the mobilisation or departure of workers abroad from 34% in June and July to 13% in August 2022, constantly increasing till December 2022 to 19%.²⁷ Considering the scale and gender characteristics of external outflow it is now reported the impossibility of natural renovation of labour force of Ukraine

¹⁶ State Employment Service, <https://www.dcz.gov.ua/analitics/67> (last accessed 9 February 2023); Law of Ukraine of March 3, 2022, N 2115-IX, *on Protecting the Interests of Subjects of Reporting and Other Documents During the Period of Martial Law or a State of War*, item 1.

¹⁷ International Labour Organization (ILO), *ILO Response to the Ukraine Crisis. The Impact of the War on Income and Employment in Ukraine*, November 2022.

¹⁸ International Organization of Migration (IOM), *Ukraine Internal Displacement Report. General Population Survey. Round 12*, 23 January 2023, 2, <https://dtm.iom.int/ukraine> (last accessed 13 February 2023).

¹⁹ *Ibidem*.

²⁰ Ministry of Reintegration of Ukraine, https://www.youtube.com/watch?v=bJ_jxCaKHPQ&t=879s, 16 February 2023, (last accessed 17 February 2023).

²¹ International Organization of Migration (IOM), nt. (18), 2.

²² Azmuk N., <https://www.researchgate.net/publication/361111111>, 2022, 171 and 173–174.

²³ The UN Refugee Agency (UNHCR), *Operational Data Portal. Ukraine Refugee Situation*, 7 February 2023, <https://data.unhcr.org/en/situations/ukraine> (last accessed 13 February 2023).

²⁴ The UN Refugee Agency (UNHCR), *Ukraine Situation: Overview of UNHCR 2023 Response And Financial Requirements*, Regional Bureau for Europe, 15 February 2023, available at <https://data.unhcr.org/en/documents/details/98922> (last accessed 21 February 2023).

²⁵ International Labour Organization (ILO), *The Impact of the Ukraine Crisis on the World of Work: Initial Assessments*, ILO Brief, 11 May 2022, https://www.ilo.org/europe/publications/WCMS_844295/lang-en/index.htm (last accessed 2 March 2023).

²⁶ *Ibidem*.

²⁷ Kuzyakiv O. *et. al.*, *Підприємств*, The Institute for economic research and policy consulting, December 2022, 30, http://www.ier.com.ua/files/Projects/2023/TDF/ilovepdf_merged-6.pdf (last accessed 20 February 2023).

in future.²⁸ On the other side, due to external migration, millions of people saved their lives, the pressure on the Ukrainian budget decreased, the qualification of labour forces abroad increased, as well as the level of financial support of economics by migrants.²⁹

Regarding the number of collective redundancies, official statistics look unreliable. For instance, according to the State Statistics Service of Ukraine, 123,4000 workers were collectively dismissed in 2022 (which is 101 thousand less than in 2021)³⁰, while 4,4 mln. lost jobs are reported by the National Bank of Ukraine in 2022.³¹ According to surveys of SMEs only in March 42% of enterprises were not operating at all and only 27% of them paid a full wage to the employees, while 19% had cut wages (about 50% wage cut for employees in the production of raw materials, services, and security, as well as for workers in the manufacturing and consulting sectors).³² We assume that at least 700,000 SME workers were laid off³³ in spring 2022.

Various trends were observed in the public sector: from putting employees of public sector enterprises into downtime or arranging remote work according to the Resolution of the Cabinet of Ministers³⁴ and announcing massive layoffs. Thus, on the one hand, public enterprises were free to decide whether to put an employee on downtime or to negotiate remote work conditions with the employee to save their jobs (between 24 February and May 2022, 32,000 employees were put on downtime with 2/3 of their salary, 16,000 women worked remotely as of May 2022, 9,500 of whom went abroad to save their children)³⁵. On the other hand, in November 2022, the government announced cutting civil servants' staff from 237,000 to 60,000, primarily those who are on downtime, abroad, or on paid leave.³⁶

Despite employers' arguments of a systematic shortage of skilled labour,³⁷ as well as the huge support of the employees during the war,³⁸ businesses' expectations for layoffs over the first six months of 2022 were generally indicated at -20-25% quarterly, and at -40% and -

²⁸ Azmuk N., nt. (22), 173.

²⁹ Simakhova A., Tserkovny I., *Ukrainian Journal of Economics*, 2022, 61-63.

³⁰ State Employment Service, nt. (16), 8.

³¹ National Bank of Ukraine, *Ukrainian Journal of Economics*, 2023, 2 February 2023, 26, <https://bank.gov.ua/ua/news/all/inflyatsiyniy-zvit-sichen-2023-roku> (last accessed 9 February 2023).

³² European Business Association, *More and More SMEs Are Resuming Work but Their Financial Resilience Is Declining*, 7 June 2022, available at <https://eba.com.ua/en/vse-bilshe-msb-povertayetsya-do-roboty-na-tli-skorochennya-finansovyh-rezerviv/> (last accessed 9 February 2023).

³³ There were 8,94 million workers before 2022, and 65% of all workers were at SMEs. At least 12% of employers reported layoffs in May to the independent researchers of the European Business Association (*see* European Business Association, nt. (32)).

³⁴ **Some work organizing issues of business entities' employees on the public sector of the economy during the period of martial law 2022** (*see* Resolution of April 26, 2022, N 481).

³⁵ National Agency of Ukraine for Civil Service, *Ukrainian Journal of Economics*, 2022, 10 May 2022.

³⁶ HR Liga, *Ukrainian Journal of Economics*, 10 November 2022, <https://hrliga.com/index.php?module=news&op=view&id=24825> (last accessed 16 February 2023).

³⁷ National Bank of Ukraine, nt. (31), 24; Kuzyakiv O. *et.al.*, nt. (27), 30.

³⁸ Skopenko N., Yevsieieva-Severyna I., *Ukrainian Journal of Economics*, 2023, 18 and 21–22.

30% in the manufacturing sector.³⁹ Given the information that over the last 6 months of 2022, industrial enterprises operated at 50-90% of pre-war levels,⁴⁰ it can be assumed that the layoffs (i.e., dismissals, idle time, unpaid leave, suspension of employment contracts in connection with the war) amounted to at least hundreds of thousands in 2022.

From a legal perspective, the foregoing outflows of workers were driven by important political decisions, such as the President's Decree N 64/2022 providing martial law.⁴¹ So, almost all men had to stay in Ukraine. While approximately hundreds of people were mobilized,⁴² millions lost jobs and had not many options to find work elsewhere.

The temporary Law No. 2136-IX "On the Organisation of Labour Relations under Martial Law"⁴³ communicated a higher legal power in comparison with the Labour Code of Ukraine.⁴⁴ According to Law No. 2136-IX, the **release of employees'** process had been simplified due to: (a) the right for the parties of an employment contract to decide upon the duration of unpaid leave (Article 12) and (b) the employer's right to stop the operation of an employment contract for the period of wartime (Article 13). The latter instrument required the employer's decision only as well as it did not require rules for the suspension of an employment contract. So, in some cases that resulted in employers misuse, who interpreted⁴⁵ the given right as a legal option to provide kind of collective redundancies⁴⁶ without specifying a suspension period of employment contract, referring to the introduction of martial law.⁴⁷ In order to correct that pattern, in July 2022 Law 2352-IX⁴⁸ had specified the rules and reasons for suspending an employment contract. The employer became obliged to provide a written directive, which should include the reasons indicating the absolute impossibility for the employer to give work and for the employee to carry out his/her work (for example, when the enterprise is located in the vicinity of a military object that has been repeatedly under fire)⁴⁹. In addition, the Law clarifies the procedures for notifying employees

³⁹ National Bank of Ukraine, *V* 2022, 16 January 2023, 52, <https://bank.gov.ua/ua/news/all/dilovi-ochikuvannya-pidpriyemstv-iv-kvartal-2022-roku> (last accessed 20 March 2023).

⁴⁰ Kuzyakiv O. *et.al.*, nt. (27), 32.

⁴¹ Decree of February 24, 2022, N 64/2022, *on Imposing of Martial Law in Ukraine* (Закон про Україну Про введення воєнного стану в Україні).

⁴² Melnik T., *–*, in *Forbes*, 8 July 2022, <https://forbes.ua/news/ponad-1-mln-lyudey-u-formi-zabezpechuyut-oboronu-ukraini-reznikov-08072022-7072> (last accessed 2 March 2023).

⁴³ Law of Ukraine of March 15, 2022, N 2136-IX, *on Organization of Labor Relations Under Martial Law* (Закон про Україну Про організацію трудових відносин в умовах воєнного стану).

⁴⁴ Law of Ukraine of December 10, 1971, N 322-VIII, *The Labour Code of Ukraine* (Закон про Україну Кодекс законів про працю України).

⁴⁵ Decision of the Vinnytsia City Court of the Vinnytsia region, case N 127/11899/22, 22112022; Decision of Shishatsky District Court of the Poltava region, case N 551/448/22, 05102022; Decision of the Dnipro Court of Appeal, case N 199/1909/22, 061022.

⁴⁶ Decision of the Vinnytsia City Court of the Vinnytsia region, nt. (45); Decision of Shishatsky District Court of the Poltava region, nt. (45); Decision of the Dnipro Court of Appeal, nt. (45).

⁴⁷ Decision of the Vinnytsia City Court of the Vinnytsia region, nt. (45), 47; Decision of the Kovpakovsky District Court of Sumy, case N 592/4480/22, 30092022.

⁴⁸ Law of Ukraine of July 19, 2022, *on Amendments to Certain Legislative Acts of Ukraine Concerning Labor Relations Optimization* (Закон про Україну Про внесення змін до деяких законодавчих актів України щодо оптимізації трудових відносин).

⁴⁹ Zhytomyr Court of Appeal resolution, case N 279/1611/22, 18082022.

to return to work and for appealing against unlawful suspension of employment contracts to the State Labour Service. However, at the same time, Law 2352-IX fundamentally changed the standard rules (Article 49-2 of the Labour Code of Ukraine) regarding collective redundancies. In particular, in the event of the loss (or absence) of the employer's operating, operational, and technological infrastructure, assets, and means of manufacture as a direct consequence of military action, the notice period for the employee and trade union regarding the intended layoff had been reduced to 10 days instead of two months, with five days for consulting the trade union and informing it of the State Employment Service.

From the employee's point of view, Law 2352-IX provided for the right to resign without notice. In case of emergency, an employee had to send a letter of resignation via mail to his/her employer, with subsequent notification to the Employment Service (except for employees performing socially useful work under martial law or working on critical infrastructure). According to case law, this option does not apply to employees and employers from temporarily occupied territory, considering that employees do not have any option of sending a letter of resignation by post.⁵⁰ Since April 2022 the IDPs were granted by Law No. 2220-IX⁵¹ a right to resign via application to local employment services.

The legal instruments for massive dismissals introduced by the State during martial law should be considered chaotic and controversial. In practice, the new labour legislation led to thousands of complaints to the State Labour Inspectorate⁵² regarding the illegal suspension of employment contracts, and numerous lawsuits based on employer abuse like (A) actual remote working for employees on idle time;⁵³ (B) dismissals of employees for an unexcused absence, without regard to the dangerous situations during martial law;⁵⁴ (C) unjustified sending of workers on unpaid leave;⁵⁵ (D) suspension of the employment contract or non-payment of salaries, as a way of taking advantage of martial law;⁵⁶ (E) collective suspending of the employment contracts and sending workers on unpaid leave as a way of wage fund optimization.⁵⁷

3. Support measures for workers and enterprises.

Support measures for workers and enterprises are to be considered imbalanced. While enterprises get the opportunities to reduce their costs and to adapt for wartime, the labour

⁵⁰ Decision of Ordzhonikidze District Court of Zaporizhia, case N 335/5127/22, 21032022.

⁵¹ Law of Ukraine of April 21, 2022, N 2220-IX, *on amendments to certain laws of Ukraine concerning the functioning of employment spheres and mandatory State social insurance in case of unemployment during martial law* (Закон про Україну Про внесення змін до деяких законів України щодо функціонування сфер зайнятості та загальнообов'язкового державного соціального страхування на випадок безробіття під час дії воєнного стану).

⁵² State Labor Service of Ukraine, *Проведення заходів контролю. Кому чекати інспектора праці?*, 19 July 2022, <https://dsp.gov.ua/main-news/moratorii-na-provedennia-zakhodiv-kontroliu-skasovano-komu-chekaty-inspektora-pratsi/> (last accessed 2 March 2023).

⁵³ Decision of Ordzhonikidze District Court of Zaporizhia, case N 335/3371/22, 10082022.

⁵⁴ Decision of the Oktyabrsky District Court of Poltava, case N 554/2454/22, 28062022.

⁵⁵ Decision of Voznesensky City District Court of the Mykolaiv region, case N 473/929/22, 19082022.

⁵⁶ Decision of the Khmelnsky City District Court of the Vinnytsia region, case N 149/1089/22, 17082022.

⁵⁷ Decision of the Lutsk City District Court of the Volyn region, case N 161/8196/22, 01022023.

standards became lower and lower. First, Law № 2136-IX restricted the constitutional rights to work and strike. The last restriction cannot be explained, considering the low number of strikes in Ukraine (11 in 2021) and extremely high coverage of the employees by collective agreements (94,4% in 2021)⁵⁸. At the same time, employers got the cut-down version of the legal instrument for collective redundancies on wartime reasons, including dismissing the employees on vacation (except for maternal leave) and sick leave (Article 5)⁵⁹, without a solid obligation to consult with trade unions. The authorities have significantly expanded the employer's freedom to change working conditions, like transferring an employee to another job or another area without his/her consent (except transferring to the military operations area), in order to prevent or eliminate the consequences of circumstances threatening the life or normal living conditions of people (Article 3). The employer working in critical infrastructure got the right to increase the regular working hours to 60 hours per week. In addition, all employers got the freedom to establish a five-day or six-day working week, reduce the weekly uninterrupted rest time to 24 hours, ignore the legal requirement on overtime maximum duration, as well as prohibit work on weekends, holidays, and non-working days. Employers have the discretion to choose a document management system and, most importantly, suspend the collective agreements' provisions (articles 6-11). The fact of deep concern for us is art. 10 of Law 2352-IX, which enables the parties to define any order of the wage payment in the employment contract and the employer's right to postpone payment of wages during the hostilities until the renewal of activities of the company with no liability for this period and no social security payments for the employee except humble compensation for the loss in income during more than one month in the amount inflation rate.⁶⁰ Lastly, the rule approved by Law No. 2136-IX (Article 15) provides the Russian Federation's responsibility for violating labour rights during wartime. This rule requires clarification. In practice, the courts either reject employees' claims on the unjustified suspension of an employment contract referring to the legal rule of Law No. 2136-IX or the opposite - charge the employer the average salary for the violation of labour rights period, with lack of clear argumentation.⁶¹

The rules on changing primary working conditions have changed significantly. According to Article 3 of Law No. 2136-IX, the employer got the unilaterally altered right to change primary working conditions during martial law⁶² by sending written notification to the employee. According to practice, an employee in a dangerous area can be notified in any form (by email or phone, for instance).

⁵⁸ State Statistics Service, 2021. , 2022, 177 and 186.

⁵⁹ The dismissal shall be on the first day after the termination of sick leave or vocation.

⁶⁰ Law of Ukraine of October 19, 2000, N 2050-III, *on Compensation to Citizens for Loss of Part of Incomes Due to Violation of Terms of Their Payment* (Закон про Україну Про компенсацію громадянам втрати частини доходів у зв'язку з порушенням строків їх виплати).

⁶¹ Decision of the Bagliysky District Court of Dneprodzerzhinsk, Dnipropetrovsk region, case N 207/2977/22, 23012023.

⁶² Decision of the Dnipro Court of Appeal, Section of the Rights of Internally Displaced Persons and Persons Affected by Armed Aggression against Ukraine, 22112022. The court ruled that the employer's decision reducing the employee's work hours to one hour per week for the duration of martial law without the employee's consent was justified.

Law No. 2421-IX dated 18.07.2022⁶³ introduced an on-call employment contract regulation in Ukraine with a guaranteed minimum of 32 paid working hours per week. According to the law, an employer can call an employee any time during a 40-hour working week, a 6-day working week, including holidays. In addition, an employer may engage workers to perform overtime work regularly without the limitations or consent of the trade union. Each employer has a right to conclude at most 10% of on-demand employment contracts. The intentions of this novelty could be more transparent. Referring to the following information on the current unemployment rate in Ukraine, we assume that workers need employment flexibility. However, on-demand or zero-home work does not provide this flexibility at all. Moreover, the evidence proves actual exploitation of the employees, like extreme overwork,⁶⁴ not paying for actual work time during the absence of direct contact with the clients,⁶⁵ increasing the risk of injury at the workplace,⁶⁶ and suffering from long-term mental health problems.⁶⁷

Law N 2434-IX is seen as one of the controversial decisions of the Verkhovna Rada from the perspective of the war. This law gave total freedom to small and medium-sized employers (who employed 70% of the workers in Ukraine) and their employees to determine almost any terms and conditions in each individual employment contract, including the terms and conditions on termination of employment relationships. In case of termination of an employment contract on the employer's decision, the latter is obliged to justify the reason for termination of the employment contract. In this case, the employer shall pay the employee compensation in accordance with the law. We call this decision controversial because freedom of contract seems to be an illusion during wartime. Given the high unemployment rate and the daily risk of losing one's job due to the bombing and drone attacks on Ukraine, it is hard to believe in equal or at least fair negotiations, as well as fair terms of the contract. In 2022, the labour guarantees for mobilized employees were changed as well. Before the adoption of Law No. 2136-IX, employers had to retain employee's positions and wages. However, after 19 July 2022, only retaining the position is guaranteed. Interestingly, employers whose employees were mobilized during martial time do not have the option to be dismissed or even terminate the employment contract under mutual agreement.⁶⁸ Mobilized employees, those who have signed a contract with the Armed Forces

⁶³ Law of Ukraine of July 10, 2022, *on amendments to certain legislative acts of Ukraine concerning the regulation of labor relations with non-fixed working hours* (Закон про Україну Про внесення змін до деяких законодавчих актів України щодо врегулювання трудових відносин з нефіксованим робочим часом).

⁶⁴ Ball M. Hampton C., Kamerāde D., Richardson H., *Agency Workers and Zero Hours: The Story of Hidden Exploitation*, Sheffield Hallam University, 2017.

⁶⁵ Moore S., Hayes L.J.B., *Taking Worker Productivity to a New Level? Electronic Monitoring in Homecare-the (Re)Production of Unpaid Labour*, in *New Technology, Work and Employment*, 32, 2, 2017, 101.

⁶⁶ Astatike Haile G., *Precarious Employment and Workplace Health Outcomes in Britain*, in *Social Science & Medicine*, 320, 2023, 302.

⁶⁷ Farina E., Green C.P., McVicar D., *Is Precarious Employment Bad for Worker Health? The Case of Zero Hours Contracts in the UK*, in *IZA Discussion Paper No. 13116*, 2020.

⁶⁸ Resolution of the Civil Court of Cassation as part of the Supreme Court of Ukraine dated October 29, 2020, in case N 490/9940/18 (Supreme Court of Ukraine).

of Ukraine, and territorial defence volunteers receive monetary support from the State, except for those mobilized before the adoption of Law 2352.⁶⁹

The power of the State Labour Inspection was significantly affected by Law No. 2136-IX. Until 2022, a moratorium on planned inspections⁷⁰ limited the activities of the State Labour Inspectorate significantly. At the same time, since September 2021, the main regulation on labour inspection procedures⁷¹ has been suspended by the court.⁷² Additionally, the Law No. 2136-IX minimized the inspection's controlling power. Thus, the Labour Inspectorate is entitled to conduct so-called instructive inspections of employers on compliance with the requirements of Law No. 2136-IX, the termination of employment legitimacy, and the detection of undocumented employment relationships on the complaints of employees (in 2022, the Labour Inspectorate conducted 125,000 informational visits based on 320,000 employee complaints)⁷³. In 2023, the procedure for investigating accidents was simplified in terms of reducing the number of documents to perform, the number of investigation commission members (from 7 to 3), non-making of alcohol test from the victim of the accident, obtaining expert opinions, and documents on training, health and safety awareness and medical examination.⁷⁴ An optional form of accident report instead of the approved form, the ability to hold a remote commission meeting using all forms of communication, and the possibility to suspend the investigation - all these new options became a war reality. In addition, in 2023, the procedure for obtaining a permit to operate in high-risk environments has been simplified.⁷⁵ Considering the high number of people affected by accidents and shelling (571 injured, 221 of whom died in 2022)⁷⁶, simplifying could bestow a doubtful blessing.

The government has been making financial and administrative efforts to support entrepreneurs since the beginning of the full-scale invasion. Based on CMU Resolution No. 305 of 17 March 2022 and Order No. 246-r of 25 March 2022,⁷⁷ the relocation process via

⁶⁹ Shuklina N. *et al.*, *Судовий Захист Прав Внутрішньо Переміщених Осіб Та Осіб, Які Постраждали Від Збройної Агресії Проти України*, 2022, 67.

⁷⁰ Law of Ukraine of April 5, 2007, N 877-V, *on the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity 2007* (Закон про Україну Про основні засади державного нагляду (контролю) у сфері господарської діяльності), art. 5-6.

⁷¹ Some issues of State supervision and control over compliance with labor legislation 2021 (CMU Decree of September 14, 2021, N 823).

⁷² Sixth Administrative Court of Appeal, 640/17424/19.

⁷³ State Labor Service of Ukraine, *Держпраці Продовжує Інформувати Працівників Та Роботодавців*, 7 November 2022, <https://dsp.gov.ua/main-news/derzhpratsi-prodovzhuie-informuvaty-pratsivnykiv-ta-robotodavtsiv/> (last accessed 2 February 2023).

⁷⁴ Resolution of February 4, 2023, N 97, *on amendments to certain resolutions of the Cabinet of Ministers of Ukraine concerning the organization of specialized medical care* (Закон про Україну Про внесення змін до деяких постанов Кабінету Міністрів України щодо організації надання спеціалізованої медичної допомоги).

⁷⁵ State Labor Service of Ukraine, *Спрощено Процедура Розслідування Нешчасних Випадків На Виробництві*, <https://dsp.gov.ua/main-news/sproshcheno-protseduru-rozsliduvannia-neshchasnykh-vypadkiv-na-vyrobnytstvi/> (last accessed 2 March 2023).

⁷⁶ *Ibidem*.

⁷⁷ Order of March 25, 2022, N 246-P, *on approval of the plan of urgent measures to move, if necessary, the production capacities of business entities from the territories where military operations are conducted and/or there is a threat of military operations to a safe territory* (Закон про Україну Про затвердження плану невідкладних заходів з переміщення у разі потреби виробничих потужностей суб'єктів господарювання з територій, де ведуться бойові дії та/або є загроза бойових дій, на безпечну територію); Resolution of March 17, 2022, N305, *on the working*

State-owned postal and transport enterprises and a unique digital platform (e-tender.ua) helped to relocate 761 businesses,⁷⁸ as well as saving 35,000 jobs, and create 7,000 new ones.⁷⁹ It is important to mention here that the employment contracts with employees (except civil servants)⁸⁰, who disagree with the enterprise relocation, should have been suspended, or the employees could have been sent to downtime or unpaid leave.

According to Article 24-1 of Law No. 5067-VI,⁸¹ employers who hire IDPs are entitled to two months' minimum wage compensation, which is ₴13,000 (€382), if the employment contract is concluded for up to 6 months. In 2022 compensation for employing 13000 IDPs was paid in the total amount of ₴147 million (€4.314 million)⁸². Similarly, compensation should be paid for employers' expenditures on the training of the employed IDPs at a rate of up to 10 subsistence minimums.⁸³

In the event of job creation, additional State and international donors' support for entrepreneurs is available via the micro-grant programmes. For instance, a business that creates up to 2 jobs can apply for a micro-grant from ₴50,000 (€1,467) to ₴25,000 (€7,337)⁸⁴. More extensive agriculture projects can apply for ₴8 million (€235,000) or up to ₴400,000 (€11,740) per hectare of land up to ₴7 million (€205,000). The Government claimed that in 2022, businesses would receive grants of ₴200 million (€5.87 million) for 2131 approved applications out of 14,000 applicants.⁸⁵ Furthermore, a digital platform⁸⁶ that accumulates all current information on financial support is publicly available: loans from Ukrainian financial institutions and international donors, as well as factoring, governmental and regional granting programs, including compensation for purchases ranging from electricity generators to seeds for sowing. Furthermore, a 12-month, State-guaranteed loan system with a limit of up to ₴20 million (€587,000) was introduced for shipping companies. About 35 shippers received loans

peculiarities of Ukrposhta Joint-Stock Company under conditions of martial law (Закон про Україну Про особливості роботи акціонерного товариства “Укрпошта” в умовах воєнного стану).

⁷⁸ Ministry of Economics of Ukraine, *Програма релокації: 761 підприємство переміщено в більш безпечні регіони*, 25 October 2022, available at: <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=d152dcfe-7bde-49df-a69a-8d7f9586fc13&title=ProgramaRelokatsii> (last accessed 2 March 2023).

⁷⁹ Ministry of Economics of Ukraine, *Завдяки урядовій програмі релокації збережено понад 35 тисяч робочих місць - Тетяна Березна*, 25 November 2022, <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=a54c8281-02fa-4ced-8b14-3a7ca772a826&title=Zavdiaki> (last accessed 10 February 2023).

⁸⁰ Shuklina N. *et.al.*, nt. (69), 54–55.

⁸¹ Law of Ukraine of July 5, 2012, N 5067-VI, on *Employment of Population* (Закон про Україну Про зайнятість населення).

⁸² Ministry of Economy of Ukraine, *Держава Компенсувала Підприємцям 147 Млн Грн За Працевлаштування Понад 13 Тисяч Переселенців*, 13 October 2022, <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=2ada85fa-18e8-4cc5-a3cc-5fc9ed17b24f&title=DerzhavaKompensovalaPidprintsiam147-MlnGrnZaPratsevlashuvanniaPonad13-TisjachPereselentsiv&isSpecial=true> (last accessed 17 January 2023).

⁸³ Subsistence minimum in 2023 for instance, is equal to 26840 hryvnyas according to Law of Ukraine of November 3, 2023, N2710-IX, on the *State budget of Ukraine for 2023*.

⁸⁴ Resolution of April 21, 2022, N 738, on *Some Issues on Grant-in-aid for the Business* (Деякі питання надання грантів бізнесу).

⁸⁵ Ministry of Economy of Ukraine, *Український бізнес має залишатись в Україні і працювати на перемогу*, - Тетяна Березна, 7 November 2022, <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=e160e1c6-3e16-4fc2-a7ba-64dd16809605&title=UkrainskiiBiznes> (last accessed 10 February 2023).

⁸⁶ *Маркетплейс фінансових можливостей для бізнесу*, in *Дія Бізнес*, available at: <https://business.diia.gov.ua/marketplace/finansuvanna> (last accessed 2 March 2023).

of ₴248 million (€7.28 million).⁸⁷ For women entrepreneurs, a business training programme is offered online (up to 5000 women) or offline format (up to 160 women entrepreneurs) with the availability of grants of \$5000.⁸⁸

The most significant one-off State aid to the employed residents took place in March 2022, when individual entrepreneurs and employers (except for State enterprises who had other guarantees) from the territory of active hostilities received ₴6500 (€191) for their employees and individual contractors (including employees under gig contracts) under the State programme Epidtrymka.⁸⁹ As a result, almost ₴31 billion (€910 million) of social assistance was transferred to 5 million recipients from public funds.⁹⁰ The assistance was administered through the Diia digital platform, accessible to every citizen through a smartphone app.

Unfortunately, all the mentioned efforts did not compensate for the war's damage to the labour market. Although official data on the unemployment rate looks optimistic (in 2022, only 788,700 unemployed received benefits, which is 27% less than in 2021)⁹¹, in 2022, from 4 to 4.8 million jobs were lost, and the unemployment rate reached 26% (including those who went abroad)⁹². We have a hardly positive view of the Government's efforts in the long-term prospects. Considering the traditionally high number of undocumented employment relationships in comparison with the Governmental fight against this trend,⁹³ the low level of unemployment benefits⁹⁴, the ineffective social dialogue⁹⁵ and powerless control on compliance with national and international labour standards in Ukraine, as well as the authorities' labour market liberalisation initiatives for past few years it is hard to be optimistic about the future of labour in Ukraine.⁹⁶

⁸⁷ Department of International Cooperation, European integration, tourism and investment of the Regional State Administration, *Державна Фінансова Підтримка Для Українських Експортерів*, 22 February 2023.

⁸⁸ Візійний жіночий акселератор.

⁸⁹ See CMU Resolution of March 4, 2022, N 199. Issues of providing one-time financial assistance to insured persons in 2022 in connection with the loss of part of their salary (income), whose work (economic activity) was temporarily stopped as a result of military operations during martial law in Ukraine.

⁹⁰ Communications Department of the Secretariat of the CMU, *Statement by Prime Minister of Ukraine Denys Shmyhal at a Gov't Session*, 7 July 2022, available at <https://www.kmu.gov.ua/en/news/promova-premier-ministra-ukrainy-denysa-shmyhalia-na-zasidanni-uriadu-7-7-22> (last accessed 1 March 2023).

⁹¹ State Statistics Service of Ukraine, *Ситуація на ринку праці та діяльність Державної служби зайнятості у 2022 році*, 2, <https://www.dcz.gov.ua/analitics/67> (last accessed 20 February 2023).

⁹² National Bank of Ukraine, nt. (31), 26.

⁹³ As the number of undocumented employment is around 3,3 mln, the effect of the Labour Inspection activity for legalisation of employment relationship programme is about 25000 for two months. See State Labor service of Ukraine, *За Два Місяця Держпраці Легалізовано Майже 25 Тисяч Працівників*, 7 September 2022, <https://dsp.gov.ua/main-news/za-dva-misiatsia-derzhpratsi-lehalizovano-maizhe-25-tysyach-pratsivnykiv/> (last accessed 2 March 2023).

⁹⁴ The enemployment benefit varies from ₴1000 (€29) to ₴9750 (€286). See State Employment Centre, *Визначення Розміру Допомоги По Безробіттю*, 21 July 2022, <https://www.dcz.gov.ua/novyna/vyznachennya-rozmiru-dopomogy-po-bezrobittyu> (last accessed 20 February 2023).

⁹⁵ Poplavska O., *Соціальний Діалог В Україні: Стан, Ефективність, Перспективи Розвитку В Цифровій Економіці*, in *Науковий вісник Ужгородського національного університету*, 22, 2019, 44.

⁹⁶ Semchuk K., Rowley T., *EU Concerned by Ukraine's Controversial Labour Reforms*, in *Social Europe*, 2 March 2023, <https://www.socialeurope.eu/eu-concerned-by-ukraines-controversial-labour-reforms> (last accessed 2 March 2023).

4. Social support regulation enacted in connection with the war after 24 February 2022.

In April 2022, Law 2193-IX,⁹⁷ decision-making procedures on providing social assistance were simplified. For example, local authorities have been empowered to decide to provide various social services and to manage educational, cultural, and sports institutions, including to decide on the accommodation of IDPs, urgent (crisis) assistance and care, to reduce the period for calculating the total income for social assistance from 6 to 3 months, and to introduce a procedure for electronic data exchange on citizens' income between public authorities to speed up the decision-making process for social benefits.

IDPs today are those who require substantial support from the State. According to the law, an IDP is a person who must leave his/her place of residence as a result of or in order to avoid the negative consequences of armed conflict, temporary occupation, widespread violence, human rights violations, and natural or a man-made disaster (Article 1 of Law of Ukraine No. 1706-VII). IDP status as a person who has moved within Ukraine from dangerous areas⁹⁸ and applied online or personally to the local authority at the place of the new residence. The procedure of getting the status of IDP has been improved in 2022. After a person applies via application Diya, the authority issues an IDP electronic certificate within one working day.⁹⁹ Also, after 24 February 2022, the monthly living allowance to IDPs was established in the sum of ₴2,000 (€59) for an adult and ₴3,000 (€88) for a child or person with a disability.¹⁰⁰ The sum of the living allowance of those IDPs with no accommodation outside the occupied territory shall be used for reducing the taxable income, but no more than ₴201000 (€5900) according to article 166.3.9 of Tax Code.¹⁰¹ IDPs or vulnerable social categories (disabled people, single parents, residents of the occupied territories, pensioners) receive additional aid from international organisations through the Diia application thanks to the "EDopomoga" charity program (a list of 1.1 million are reported to receive an additional ₴2500 (€73))¹⁰². In 2022, more than 1.8 million IDPs received social assistance for living expenses, of which 1.4 million received assistance through the digital State platform.¹⁰³

As the damages for civil people's real estate were significant, the authority had to find the recourses to support them and improve the distribution rules. So, in 2022, at least 12,900

⁹⁷ Law of Ukraine of April 14, 2022, N 2193-IX, *on amendments to certain laws of Ukraine concerning the provision of social services in the event of a State of emergency or martial law in Ukraine or its individual localities*.

⁹⁸ Order of Ministry of Reintegration of temporarily occupied territories of Ukraine of December 22, 2022, N 309, *on approval of the list of territories where military operations are being conducted or temporarily occupied by the Russian Federation* (Закон про Україну Про затвердження Переліку територій, на яких ведуться (велися) бойові дії або тимчасово окупованих Російською Федерацією).

⁹⁹ CMU Resolution of October 1, 2014, N 509, *Procedure for registration and issuance of a certificate of registration of an internally displaced person*.

¹⁰⁰ CMU Resolution of March 20, 2022, N 332. Some points of subsidium payment process for housing needs of the internally displaced persons.

¹⁰¹ *Tax Code of Ukraine* (Податковий Кодекс України), December 2, 2010, N 2755-VI.

¹⁰² Ministry of Social Policy of Ukraine, *В Результаті Співпраці Міністерства з Міжнародними Організаціями, Більше 1,1 Мільйона Людей Отримали Додаткові До Державних Грошові Виплати*, 13 July 2022, <https://www.msp.gov.ua/news/22038.html> (last accessed 1 March 2023).

¹⁰³ Ministry of Social Policy of Ukraine, *Соціальний Захист-2022 у Цифрах і Фактах: Підтримка ВПО*, 4 January 2023, <https://www.msp.gov.ua/news/22495.html> (last accessed 1 March 2023).

housing units were destroyed or damaged in Ukraine, of which 1,470 were private houses and 1,500 apartment buildings.¹⁰⁴ The total number of persons with damaged or destroyed housing has reached 2.4 million.¹⁰⁵ The total number of persons receiving subsidies and housing benefits changed in 2022: from 1.44 million in October to 2.64 million in December.¹⁰⁶ According to IOM data, 38% of IDPs had insufficient income to pay their rent in January and February.¹⁰⁷

All individuals have a right to be evacuated from the war zone free of charge or to be recompensed for evacuation expenses (art. 89 of The Code of Civil Defense), so, for example, in March 2022 in this way 4 million persons were evacuated from by trains free of charge.¹⁰⁸ Those civilians who stay in the dangerous territories are entitled to financial support from the Government.¹⁰⁹ The IDPs have a right to temporary accommodation under several regulations, such as the Housing Code of Ukraine (Articles 132-1, 132-2)¹¹⁰, Law of Ukraine No. 1706, Resolution of the Cabinet of Ministers of Ukraine No. 495 of 29.04.2022¹¹¹ and the Procedure for the formation of housing funds intended for temporary accommodation of IDPs,¹¹² and Order of the State Committee of Ukraine for Housing and Communal Services of 14.05.2004 No. 98.¹¹³ In fact, IDPs did receive housing repair aid from the government, regional authorities, and worldwide contributors in 2022.¹¹⁴ The collection of information on the damaged or ruined real property is managed via the new

¹⁰⁴ Kulish H., *The Total Amount of Documented Damages Has Reached \$108.3 Billion, Minimum Recovery Needs for Destroyed Assets — \$185 Billion*, Kyiv School of Economics, 2 August 2022, <https://kse.ua/about-the-school/news/the-total-amount-of-documented-damages-has-reached-108-3-billion-minimum-recovery-needs-for-destroyed-assets-185-billion/> (last accessed 16 April 2023).

¹⁰⁵ Press service of Cherkasy regional State administration, *Платформу для забезпечення житлом постраждалих внаслідок війни запускають в Україні*, 26 January 2023, <https://ck-oda.gov.ua/novyny-cherkaskoyi-oblasti/platformu-dlya-zabezpechennya-zhitlom-postrazhdalix-vnaslidok-vijni-zapuskayut-v-ukrayini/> (last accessed 1 February 2023).

¹⁰⁶ Pension fund of Ukraine, *Дані Щодо Чисельності Одержувачів Житлових Субсидій Та Пільг Через Уповноважені Банки Та АТ “Укрпошта” у 2022 Році*, 25 January 2023, 1, <https://www.pfu.gov.ua/2155815-dani-shhodo-chyselnosti-oderzhuvachiv-zhytlovyh-subsydij-ta-pilg-cherез-upovnovazheni-banky-ta-at-ukrposhta-u-2022-rotsi/> (last accessed 1 March 2023).

¹⁰⁷ International Organization of Migration (IOM), nt. (18), 1.

¹⁰⁸ Ukrainian Presidential Office, *Humanitarian Center Set up by President Reports on Results of Work*, 16 April 2022, <https://www.president.gov.ua/en/news/stvorenij-prezidentom-gumanitarnij-shtab-vidzvituvav-pro-rez-74361> (last accessed 1 March 2023).

¹⁰⁹ CMU Resolution of December 18, 2013, N 947, on the approval of the procedure for providing and determining the amount of monetary assistance to victims of emergencies and the amount of monetary compensation to victims whose residential buildings (apartments) were destroyed as a result of a military emergency caused by the armed aggression of the Russian Federation.

¹¹⁰ Law of Ukraine of June 30, 1983, N 5464-X, *Housing Code of Ukraine*.

¹¹¹ CMU Resolution of April 29, 2022, N 495, *on specific measures to form funds for housing intended to temporary residence of Internally Displaced Persons*.

¹¹² *Ibidem*. Procedure on purchasing and construction of accommodation to transfer on the purposes of temporary residence of Internally Displaced Persons.

¹¹³ The Order of the State Committee of Ukraine on Housing and Communal Services of May 14, 2004, N 98, *on approval of forms for residential premises from housing funds for temporary residence* (Закон про Україну Про затвердження форм щодо житлових приміщень з фондів житла для тимчасового проживання).

¹¹⁴ For instance, in Sumy Oblast 10 public apartments were rented by IDPs actually free of charge, as well as there were millions, transferred to pay the compensations to those who repaired their damaged houses. See *Оренда За 1 Гривню На Рік: Вимушені Переселенці у Сумах Отримали Ключі Від Нового Житла*, in *Nedvizhimost24*, 17 October 2022, https://realestate.24tv.ua/zhitlo-dlya-pereselentsiv-sumah-derzhmolodzhitlo-vidiliv-12-kvartir_n2179345 (last accessed 23 January 2022).

State Registry of Damaged and Destroyed Property.¹¹⁵ A 'Ukraine is Home' digital platform¹¹⁶ was launched by the Government in 2022 to manage the payment of compensation for damaged or destroyed housing (about €17 billion (€499 million) had been collected)¹¹⁷.

According to the law, those persons whose housing was damaged or destroyed have the right to receive accommodation from housing reserves, purchase an apartment and a house, or to monetary assistance or compensation.¹¹⁸ Since Ukraine does not have recourses to help individually, IDPs reside in a collective center and private residences in the community. There are places of so-called collective compact accommodation (new prefabricated modules built at the expense of donor countries;¹¹⁹ existing dormitories, health camps, rest homes, sanatoriums, boarding houses, and hotels), situated in the suburbs of big cities. From 280,000¹²⁰ to 1 million people¹²¹ reside in collective centres. To support owners of compact accommodation who have accommodated IDPs for no charge (approximately 89,000 accommodated IDPs in August 2022)¹²², the State compensates the cost of public utility services. There are programs for IDPs and military persons for the purchasing of housing or paying financial aid.¹²³

The regulation on the compensation for destroyed housing or repairing was adopted on 23rd of February.¹²⁴ According to the resolution of the Cabinet of Ministers of Ukraine No.

¹¹⁵ CMU Resolution of March 26, 2022, N 380, *on collecting, processing and recording information about damaged and destroyed real estate as a result of military operations, terrorist acts, sabotage caused by military aggression of the Russian Federation*.

¹¹⁶ *Мінінфраструктури з партнерами запускають платформу для забезпечення житлом постраждалих внаслідок війни*, 25 January 2023, <https://www.kmu.gov.ua/news/mininfrastruktury-z-partneramy-zapuskaiut-platformu-dlia-zabezpechennia-zhytloom-postrazhdalykh-vnaslidok-viiny> (last accessed 2 February 2023).

¹¹⁷ See Ministry of Reintegration of Ukraine, nt. (20).

¹¹⁸ *Code of Civil Protection of Ukraine (Кодекс цивільного захисту України)* (dated October 2, 2012, N 5403-VI 2012), art. 86.

¹¹⁹ Ministry of Community and Territory Development of Ukraine, *У Василькові відкрито модульне містечко в рамках співробітництва Міністерства та Уряду Польщі*, 31 October 2022; Ministry of Community and Territory Development of Ukraine, *У місті-герої Ірпін'я відкрили тимчасове модульне містечко*, 14 August 2022; Ministry of Community and Territory Development of Ukraine, *У місті-герої Буча відкрили тимчасове модульне містечко*, 24 June 2022.

¹²⁰ REACH Initiative, *Area-Based Assessment: Dnipropetrovska Oblast - Ukraine, August 2022*, in *ReliefWeb*, 26 September 2022, available at <https://reliefweb.int/report/ukraine/area-based-assessment-dnipropetrovska-oblast-ukraine-august-2022> (last accessed 16 April 2023). As nearly seven million people displaced within the country as of August 2022, and approximately 4% of the displaced population resides in a collective center.

¹²¹ See Ministry of Reintegration of Ukraine, nt. (20), 39:05.

¹²² Ministry for Communities and Territories Development of Ukraine, *Уряд Спрямував Понад 27 Млн Грн На Компенсацію Комуніальних Витрат За Серпень Громадам, Які Прихистили Внутрішніх Переселенців*, 23 December 2022.

¹²³ For instance, 471 credit at preferential rate in 2021 to the youth were given and 60 public housing were bought, according to the State Fund for Support of Youth Housing Construction, *Публічний Звіт Про Роботу Держмолодьжитла у 2022 Році*, 6, 2022, 11, <https://www.molod-kredit.gov.ua/pro-fond/zvitnist/2022-rik-2?f=1> (last accessed 1 March 2023).

¹²⁴ *The Law of Ukraine on compensation for damage and destruction of certain categories of real estate objects as a result of military operations, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine, and the State Register of property damaged and destroyed as a result of military operations, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine (2023 № 2923-IX)* (Про компенсацію за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених збройною агресією Російської Федерації проти України, та Державний реєстр майна, пошкодженого та знищеного внаслідок бойових дій, терористичних актів, диверсій, спричинених збройною агресією Російської Федерації проти України).

947 of December 18, 2013,¹²⁵ one-time monetary aid for housing is provided by local self-government bodies to owners of damaged housing who refused to evacuate and remained within their locality on the territory under the control of Ukraine. The maximum amount of compensation is **₴300,000 (€8,804)**, and one-time monetary assistance shall be no more than the sum of 15 subsistence minimum (approximately **₴40,260 (€1,182)** in 2023). In practice, there are rules on compensation for the loss of housing only in the Luhansk and Donetsk regions (resolution of the Cabinet of Ministers of Ukraine No. 947). We suppose the compensation payment process will take a complete form after the Draft Law on Compensation Mechanisms for Citizens is adopted.¹²⁶ In 2022-2023, part of the destroyed housing of the Kyiv region has already been rebuilt or is in a state of restoration at the expense of the State, territorial community, or charitable assistance.¹²⁷

The IDP students have a right to resume their education on the territory of other regions of Ukraine at the expense of the State budget or other sources of funding (Article 7(9) of Law of Ukraine No. 1706). Until 2022, the IDPs from the temporarily occupied territories, who were studying at the State expense, had the right to finish their vocational or higher education free of charge in State or municipal education institutions.¹²⁸ Since November 2022, the government has extended this right to all students.¹²⁹ In 2022, 15,242 children from particularly dangerous and occupied territories were enrolled in Ukrainian educational institutions.¹³⁰ The multidisciplinary online entry examination test has been provided.¹³¹

Military social insurance during martial law applies to members of the Armed Forces of Ukraine, other lawful military formations, special law enforcement agencies, other services, as well as to disabled, mobilised, and regular servicemen and members of territorial defence

¹²⁵ *On approval of the procedure for providing and determining the amount of monetary assistance to victims of emergencies and the amount of monetary compensation to victims whose residential buildings (apartments) were destroyed as a result of a military emergency caused by the armed aggression of the Russian Federation (see Law of Ukraine of June 30, 1983, N 5464-X, nt. (110)) (Закон про Україну Про затвердження Порядку надання та визначення розміру грошової допомоги постраждалим від надзвичайних ситуацій та розміру грошової компенсації постраждалим, житлові будинки (квартири) яких зруйновано внаслідок надзвичайної ситуації воєнного характеру, спричиненої збройною агресією Російської Федерації).*

¹²⁶ *On compensation for damage and destruction of certain categories of real estate objects, resulted of military operations, terrorist acts, sabotage caused by the Russian Federation military aggression (Law of Ukraine of June 30, 1983, N 5464-X, nt. (110) Draft Law) (Закон про Україну Про компенсацію за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації).*

¹²⁷ *Відбудова Київщини за кошти платформи UNITED24 почнеться з Ірпеня — Шмигаль*, in *Suspilne Novyny*, 12 January 2023, <https://suspiilne.media/357620-vidbudova-kiivsini-za-kosti-platformi-united24-pocnetsa-z-irpena-smigal/> (last accessed 30 January 2023).

¹²⁸ CMU Resolution of November 23, 2016, N 975, *on Providing State-Targeted Support to Certain Categories of Citizens for Obtaining Professional (Vocational and Technical), Professional Pre-Higher and Higher Education.*

¹²⁹ CMU Resolution of October 28, 2022, N 1224, *on approval of the procedure for transferring certain categories of applicants for professional pre-primary and higher education who are enrolled in institutions of professional pre-primary and higher education up to and including 2021 to places financed by individuals and/or legal entities.*

¹³⁰ Ministry of Education and Science of Ukraine, *Вступ-2022: Понад 15 Тис. Вступників Зараховано До Закладів Освіти За Квотую-2*, 30 August 2022, <https://mon.gov.ua/ua/news/vstup-2022-ponad-15-tis-vstupnikiv-zarahovano-do-zakladiv-osviti-za-kvotou-2> (last accessed 27 February 2023).

¹³¹ Order of the Ministry of Education and Science of Ukraine No 392 of April 27, 2022, *on approval of the procedure for admission to study for higher education in 2022*, Part VI.

forces (hereinafter referred to as the military)¹³². Military social security consists of financial support and benefits during service, pensions, and lump-sum payments in the event of disability, invalidity or death. In addition to the salary that military personnel generally receive,¹³³ during the period of martial law in 2022, they received a monthly cash payment for so-called active days of service¹³⁴ of up to ₴30,000 (€880) for military personnel who served during martial law but did not perform combat missions, and up to ₴100,000 (€2935) per month for those who performed combat duties at the front, on the border, in the occupied territories or on the territory between the Armed Forces of Ukraine and the Russian Army, including those who were wounded, captured, killed or died as a result of being wounded (the amount is calculated based on the number of days of service or the number of days spent in treatment, captivity, etc.).

From the beginning of 2023, military personnel serving in the rear will be entitled to an additional monthly allowance of ₴30,000 if they perform combat missions, provide support to the defence forces, or are enrolled in the Reserve of the Supreme Commander of the Armed Forces of Ukraine.¹³⁵ From 2023, an additional monthly payment of up to ₴50,000 (€1,467) will be paid to militaries who perform combat duties directly on the front line.¹³⁶ The rest of the military will receive only cash benefits, the minimum amount of which will be ₴20,000 (€586) in 2023. From 2023, servicemen who have rendered special services to Ukraine will receive an additional monthly cash payment depending on the type of decoration (order) they have (from one to three minimum wages).¹³⁷ In the event of the death of a serviceman during martial law, his family will receive a one-off financial grant of ₴15 million (€440,000).¹³⁸ The minimum pension for combatants in case of disability is 6.5 Subsistence Minimums for Disabled Persons (SMP) for disabled persons of the first group,¹³⁹ 5.25 SMP for disabled persons of the second group, 3.6 SMP for disabled persons of the third group and 2.1 SMP for combatants. In addition, war veterans and family members of deceased or killed war veterans receive pension increases in amounts that also depend on the disability category (group).¹⁴⁰ Thus, in December 2023, the minimum pension for a combatant with

¹³² Law of Ukraine of December 20, 1991, N 2111-XII, *on social and legal protection of military personnel and their family members* (Закон про Україну Про соціальний і правовий захист військовослужбовців та членів їх сімей).

¹³³ Order of June 7, 2018, N 260, *on approval of the procedure for payment of monetary support to military personnel of the Armed Forces of Ukraine and some other persons* (Закон про Україну Про затвердження Порядку виплати грошового забезпечення військовослужбовцям Збройних Сил України та деяким іншим особам).

¹³⁴ CMU Resolution of February 28, 2022, N 168, *on the issues of certain payments to military personnel, ordinary and commanding officers, police officers and their families during martial situation* (Закон про Україну Питання деяких виплат військовослужбовцям, особам рядового і начальницького складу, поліцейським та їх сім'ям під час дії воєнного стану).

¹³⁵ *Ibidem*.

¹³⁶ *Ibidem*, paragraph 2, item 1.

¹³⁷ Law of Ukraine of July 27, 2022, N 2454-IX, *on the monthly cash payments to certain categories of citizens* (Закон про Україну Про щомісячну грошову виплату деяким категоріям громадян).

¹³⁸ CMU Resolution of February 28, 2022, N 168, nt. (134), item 2.

¹³⁹ Subsistence Minimums for Disabled Persons is equal to ₴2093 in 2023. On the State budget of Ukraine for 2023 *see* nt. (83).

¹⁴⁰ Pension Fund of Ukraine, *31 Грудня Пенсійний Фонд України Перерахує Пенсії Громадян*, 21 November 2022, <https://www.pfu.gov.ua/2154764-z-1-grudnya-pensijnij-fond-ukrayiny-pererahuye-pensiyi-gromadyan/> (last accessed 1 March 2023).

the first disability group will be €14651 (€430).¹⁴¹ There are 10.7 million pensioners in 2022 in total.¹⁴² According to experts, this number had increased to 860,000 -1 million persons in 2022¹⁴³ and it would increase after the war ends to 4 million veterans and their family members.¹⁴⁴

5. Conclusions.

War is a crime. Today, in 2023, because of war almost 18 million Ukrainians need humanitarian aid and protection,¹⁴⁵ and they survive due to extraordinary financial aid from humanitarian organizations as well as Ukrainian social safety net mechanisms. The Ukrainian authorities also faced millions of internal war migrants, who needed food, homes, money, and work. According to my research, Ukraine made great efforts and it achieved significant success in digital inclusion, making publicly available almost all the social security services and educational services, as well as financial support for employers. It is possible to apply for any kind of social allowance or financial support all the Ukrainians can via smartphone and Internet. The monthly payments to the IDPs, which they get on the digital cards, are a helping hand for millions of people. In addition, digital instruments have helped to raise awareness of the opportunities to help Ukrainians and to collect extraordinary funds for housing repairs and humanitarian aid from all over the world.

But Ukraine's social security system has had to choose its priorities. It has chosen strong financial support for the army, and this is obviously the right choice from the point of view of State interests. But in this situation, Ukrainian civilians are extremely dependent on international financial assistance. To reduce this dependency, we believe that the government's priority should be to restore jobs and rethink the labour market policy in favour of a balance between business and workers.

Unfortunately, the Ukrainian government hasn't come up with an effective strategy for regulating the labour market during wartime. Granting greater freedom of contract with a lack of State control, less protection for workers and restrictions on the social dialogue has not stabilized or stopped the economic crisis.

The increasing inflation rate and unemployment, Russian war attacks, and bombings of Ukrainian cities and agricultural areas routinely exhaust the economics and human resources. The great challenges which stand in front of Ukraine are visible today. We suppose that uncertainty, militarization, and overpressure in the economy will increase.

¹⁴¹ *Ibidem*.

¹⁴² Pension Fund of Ukraine, *Інформація щодо чисельності отримувачів пенсій через банки та виплатні об'єкти поштового зв'язку за грудень 2022 року*, 11 January 2023, <https://www.pfu.gov.ua/2155756-informatsiya-shhodo-chyselnosti-otrymuvachiv-pensij-cherez-banky-ta-vyplatni-ob-yekty-poshtovogo-zv-yazku-za-gruden-2022-roku/> (last accessed 12 March 2023).

¹⁴³ Skrypnyk D., *Мобілізація в Україні: скільки буде ветеранів після війни. Роз'яснення дали у Мінветеранів*, in *Mirror of the week*, 5 November 2022, <https://zn.ua/ukr/UKRAINE/mobilizatsija-v-ukrajini-skilki-bude-veteraniv-pislja-vijni.html> (last accessed 12 March 2023).

¹⁴⁴ *Ibidem*.

¹⁴⁵ OCHA, *Ukraine Humanitarian Response - Key Achievements In 2022*, 10 February 2023, available at <https://reports.unocha.org/en/country/ukraine/> (last accessed 16 April 2023).

From this perspective, the consistent lowering of labour standards, combined with the lack of social dialogue, poses a threat to Ukraine's society and economy for decades to come. The other question is whether the war is a reason, a context or a pretext for lowering labour standards, given the historical opposition between neoliberal politicians and trade union activists in Ukraine. We ask whether the war is a way of justifying the continuous reforms of employment and industrial relations in Ukraine since it gained independence. We ask whether Ukrainian decision-makers see the link between the high quality of life in the European Union and its high labour standards.

We hope the dedication to the European Union labour standards, as well as consultations with ILO, will encourage Ukraine to change its priorities and build up a sustainable and secure labour market in future.

PART II

National perspective regarding social entitlements and access to the labour market for displaced people from Ukraine

6

Mass Influx of People from Ukraine: Social Entitlements and Access to the Labour Market: Austria.

Verena Vinzenz*

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

Austria has a long tradition of immigration. As early as the 1960s, the so-called “guest workers” from Eastern Europe migrated heavily to Austria. The opening of the Iron Curtain and the Yugoslav wars in the 1990s led to an influx of asylum seekers and war refugees. In more recent years, labour migration from the Member States of the European Union, such as Romania, Croatia, but also Germany has further shaped the country’s population.

As a response to these migration patterns, several legal provisions were introduced to regulate the influx of migrants into the country. On the level of the European Union, the Council Directive 2001/55/EC,¹ which was based on the experiences from the Yugoslav wars,² aims to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries, as stated in its Article 1. In Austria, the Directive 2001/55 was transposed through an amendment of the *Asylgesetz* 2005 (Asylum Act),³ which was re-introduced in its current form in 2005. The Asylum Act also represents

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, in Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

² Feik R., *Die Ukraine-Vertriebenen-Verordnung*, in *Fremden- und Asylrechtliche Blätter*, 1, 2022, 7.

³ BGBl. I 2005/100, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>, (accessed 15 May 2023).

the implementation of other multilateral obligations under international and human rights law. In addition, the *Asylgesetz-Durchführungsverordnung* (Asylum Act Implementing Ordinance)⁴ contains requirements for relevant documents and evidence necessary for the issue of residence titles.

The war in Ukraine necessitated further specifying of these existing regulations. The Austrian government reacted quickly to the implementation of the Council Implementing Decision (EU) 2022/382⁵ by introducing the so-called *Vertriebenen-Verordnung* (Regulation on displaced persons from Ukraine)⁶. The Regulation on displaced persons from Ukraine has come into force on 11 March 2022, containing the central provisions regarding the right of residence and social security. Regarding access to employment, an administrative decree of the *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), introduced on 11 March 2022 and addressed to the *Arbeitsmarktservice* (Public Employment Service Austria), contained the main provisions regarding access to the labour market.

Within the first month of war, 3,5 million persons fled to the European Union.⁷ Of those, 203.000 arrived in Austria. However, most of these displaced persons moved on to other Member States, where a larger Ukraine diaspora exists than in Austria.⁸ As of 20 March 2023, 94.984 war migrants from Ukraine have registered for temporary protection.⁹

2. Personal scope of applicable support measures.

In Article 2, the Decision 2022/382 defines who may apply for temporary protection in the Member States. According to Para 1 and 2, Member States are obliged to offer temporary protection to the following individuals: Ukrainian nationals residing in Ukraine, stateless persons, and nationals from third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine as well as family members of the persons referred. In addition, Member States may also apply temporary protection to other groups of persons.

Austria has chosen to directly transfer Article 2 Para 1 of the Decision 2022/382 into the Regulation on displaced persons from Ukraine. Therefore, Section 1 of the Regulation provides that the following groups of persons have a temporary right of residence in the federal territory of Austria:

⁴ BGBl. II 448/2005, <https://ris.bka.gv.at/eli/bgbl/ii/2005/448/P8/NOR40196724>, (accessed 24 April 2023).

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁶ BGBl. II 27/2023, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011842>, (accessed 24 April 2023), later on as: Regulation.

⁷ See European Commission, *Ukraine: EU support to help Member States meet the needs of refugees*, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1946, (accessed 10 Apr.2023).

⁸ Feik R., nt. (2), 1.

⁹ Operational Data Portal of the UN, <https://data.unhcr.org/en/situations/ukraine>, (accessed 24 April 2023).

1. Firstly, and most importantly, Ukrainian nationals who were residing in Ukraine and were displaced from 24 February 2022 onward, are covered by temporary protection. This also includes family members of these Ukrainian nationals. According to Section 2 of the Regulation, a family member is defined as the spouse or registered partner of the Ukrainian national; minor unmarried children of these Ukrainian nationals, their spouses or registered partners; as well as other close relatives who lived in a common household with the Ukrainian national before the displacement and who were wholly or largely dependent from the beneficiary. Finally, by Section 2 last sentence, the family member has to have resided in Ukraine before 24 February 2022.

The Austrian asylum authority seems to interpret the word “expelled” differently than the Decision 2022/382, namely in the sense of “abandoned”. For this reason, Austria requires recognition as a displaced person leaving Ukraine only after the cut-off date of 24 February 2022. Those who fled Ukraine before the beginning of the invasion by the Russian army are not considered displaced persons in the eyes of the Federal Office for Immigration and Asylum.¹⁰

2. Secondly, third-country nationals and stateless persons who were beneficiaries of international or equivalent national protection in Ukraine granted before 24 February 2022, also receive temporary protection if they have been displaced from Ukraine due to the armed conflict as of 24 February 2022. Family members of these persons will also receive temporary protection in the same way as already described above.
3. Finally, according to Section 3 of the Regulation, Austria also grants temporary protection to Ukrainian nationals who were legally residing in Austria on 24 February 2022, but who do not fulfill any longer the criteria for an extension of the residence permit. Provided that they are unable to return to safe and durable conditions in Ukraine, their temporary protection will be extended.

However, Austria did not implement Article 2 Para 3 of the Decision 2022/382 (respectively Article 7 of the Directive 2001/55), which opened up the possibility for Member States to additionally provide temporary protection to other groups of persons. Due to this, stateless persons and third-country nationals legally residing in Ukraine before 24 February 2022 for other reasons than those mentioned above, for instance, based on a valid permanent residence permit, and who are unable to return in safe and durable conditions to their country or region of origin are not able to apply for temporary protection in Austria.¹¹

Finally, it may be noted that Austria reserved the right to exclude persons on the grounds of Article 28 of the Directive 2001/55. According to this Article 28, a person may be excluded from temporary protection if there are serious reasons for considering that they have committed certain types of crimes specified in the provision itself, such as crimes against

¹⁰ Frühwirth R., *Temporärer und internationaler Schutz – Ein Überblick am Beispiel von Schutzsuchenden aus der Ukraine*, in *Blog ASYL*, 2 May 2022, <https://www.blogasyl.at/2022/05/temporaerer-und-internationaler-schutz-ein-ueberblick-am-beispiel-von-schutzsuchenden-aus-der-ukraine>, (accessed 24 April 2023).

¹¹ European Labour Authority, *Overview of national measures regarding employment and social security of displaced persons coming from Ukraine. Country Fiche – Austria*, 2023, 6.

humanity or there are reasonable grounds for regarding them as a danger to the security of the Member State.

People who fall under the personal scope laid out above are automatically granted temporary protection by law¹² upon their arrival in Austria. Under Section 62 Para 4 of the Asylum Act, all displaced persons are issued an “identity card for displaced persons” by the Federal Office for Immigration and Asylum, which is also a residence title and, in particular, allows access to the labour market.¹³ To obtain the identity card for displaced persons, registration with the police, either at certain police departments¹⁴ or at a special reception and registration center,¹⁵ is required. An application for international protection (asylum application) is not necessary to be granted temporary protection. According to Section 4 of the Regulation, temporary protection was originally awarded to all the persons laid out above until 3 March 2023 but, due to the ongoing war, has now been automatically extended until 4 March 2024.

Finally, it should be mentioned that displaced persons who have been granted temporary protection are also free to apply for international protection. Their chances of being granted international protection are naturally good since the concept of temporary protection is based on the assumption that people who are to be regarded as “displaced persons” will generally be entitled to international protection (see Article 2(c) of the Directive 2001/55).

However, Austria decided not to process applications for international protection as long as the persons concerned have temporary protection.¹⁶ It is doubtful whether this approach is in line with the primary legal obligation to guarantee the right to asylum and thus, in any case, access to a procedure in which recognition as a refugee can take place, as standardized in Article 18 Charta of Fundamental Rights.¹⁷

¹² Ghulam N., *Aufenthalt und Beschäftigung von ukrainischen Vertriebenen in Österreich: Voraussetzung für den Erhalt einer Beschäftigungsbewilligung ist das Vorliegen eines Ausweises für Vertriebene*, in *Arbeits- und Sozialrechtliche Kartei (ASoK)*, 5, 2022, 159.

¹³ Federal Office for Immigration and Asylum, *Information leaflet Extension of residence rights for displaced persons from Ukraine*, https://www.bfa.gv.at/401/files/Ukraine/Infoblatt_Verlaengerung_EN_bf_012023.pdf, (accessed 24 April 2023).

¹⁴ There are currently 36 police departments in Austria in which war migrants may register, at least one per province. The registration can be carried out in a freely chosen police department or reception center, regardless of the person’s place of residence. Usually, displaced persons are expected to register immediately after arriving in Austria, for this reason, many possible police departments can be found near the eastern borders of Austria with neighboring states. For a list of all police departments, please view https://www.bmi.gv.at/Ukraine/Erfassung_und_Aufenthalt.aspx, (accessed 15 May 2023).

¹⁵ Federal Office for Immigration and Asylum, *FAQ für Vertriebene aus der Ukraine*, <https://www.bfa.gv.at/news.aspx?id=455643766D7646497145673D>, (accessed 24 April 2023).

¹⁶ Filzwieser C., Kasper L., *Erste Auswirkungen des Krieges in der Ukraine auf das österreichische Asyl- und Fremdenwesen*, in *Jahrbuch Asylrecht und Fremdenrecht*, 2022, 29.

¹⁷ Frühwirth R., nt. (10).

3. Social policy measures for Ukrainians: financial support housing, access to healthcare and education.

As mentioned above, temporary protection in Austria is made visible by the fact that an “identity card for displaced persons” is issued. Temporary protection in turn ensures access to the labour market (see Section 4), education, and medical care.¹⁸ This is achieved formally by the inclusion of displaced persons into the so-called *Grundversorgung* (primary care). The legal basis of primary care is the *Grundversorgungsvereinbarung*, or Article 15a B-VG-Agreement on primary care.¹⁹ This is an agreement between the federal government of Austria and the Länder (provinces) according to Article 15a of the Federal Constitution. It includes measures for temporary primary care for foreigners in need of assistance and protection. According to Article 2 of the Agreement, the term “foreigners” refers to asylum seekers, persons granted asylum, displaced persons, and other persons who cannot be deported for legal or factual reasons. Primary care consists of several measures that aim to provide minimum standards of living if displaced persons cannot meet the necessities of life for themselves or their family members.

According to Section 6 of B-VG-Agreement on primary care, primary care consists – among other measures – of suitable accommodation with respect for human dignity and family unity as well as the provision of adequate catering. Accommodation within the framework of primary care can be provided in organized quarters of the provincial primary care offices or as private accommodation. If displaced persons from Ukraine choose to stay in organized quarters, all costs of accommodation, especially rent and meals, will be covered by primary care. Additionally, they will be granted a monthly allowance of € 40. If they opt to stay in private accommodations instead, displaced persons who have been granted temporary protection are entitled to receive rent subsidies. To receive these benefits, they have to prove that they have a rental contract. Currently, the following maximum cost rates apply, whereby here, in contrast to organized accommodation, displaced persons receive the support benefits for rent and meals themselves:

- up to EUR 165.00/person/month for rent costs per single person (old: EUR 150.00)
- up to EUR 330,00/family/month for rental costs per family (2 persons or more) (old: EUR 300,00)
- up to EUR 260,00/person/month for catering adults (old: EUR 215,00)
- up to EUR 145,00/person/month for meals for children (old: EUR 100,00).²⁰

¹⁸ Neuser V., Vargha P., *Die MassenzustromRL 2001/55/EG – fremdenrechtliche Besonderheiten und Arbeitsmarktzugang für Vertriebene*, in *ecolex*, 269, 2022, 391.

¹⁹ Vereinbarung zwischen dem Bund und den Ländern gem Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Grundversorgungsvereinbarung – Article 15a B- VG) BGBl. I 2004/80, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003460>, (accessed 24 April 2024), latter on as B-VG.

²⁰ See Federal agency for care and support services, *Information for protection seekers from Ukraine*, <https://www.bbu.gv.at/helfen#schutzsuchende>, (accessed 24 April 2023).

As of June 6, 2022, almost 55,300 displaced persons are receiving primary care, with around 80% of them being housed privately.²¹

Article 6 Para 5 to 8 of the B-VG-Agreement on primary care provide measures regarding healthcare. According to Para 5, primary care includes – if necessary – the conduction of medical examinations at the initial reception for displaced persons according to the requirements of the health authority supervision. Para 8 provides measures for persons in need of care. However, the central provision regarding healthcare is Para 5, according to which healthcare is ensured by the state paying the health insurance contributions of all people receiving temporary protection. In addition, Article 6 Para 6 grants displaced persons the provision of any necessary benefits which are not covered by health insurance on a case-by-case basis.

Article 6 of the B-VG-Agreement on primary care is a provision of principle; therefore, the exact implementing measures must be determined by the legislature. Under Section 9 of the *Allgemeines Sozialversicherungsgesetz* (General Social Security Act),²² persons who are not gainfully employed and are not subject to compulsory insurance in the event of illness, but who require insurance coverage, may be included in the health insurance scheme under this federal law by ordinance of the Federal Ministry of Labour and Social Affairs. For this reason, health insurance coverage was extended by ordinance²³ to Ukrainian nationals and other persons temporarily admitted to Austria as of February 24, 2022, due to the war in Ukraine, but only if they are not already included in health insurance coverage under another provision of this ordinance. This means that displaced persons from Ukraine can be integrated into the health insurance scheme in two different ways: the beforementioned decree applies to those currently unemployed, while all displaced persons who have taken up employment in Austria enjoy social security in the normal way, which means by ways of their social security contributions as employed or self-employed persons.

Ukrainian displaced persons who have been extended health insurance coverage by ordinance are thus entitled to benefits in kind under health insurance law and may, for example, receive medical assistance (treatment of sickness or assistance in case of physical infirmity), remedies, and remedial aids, treatment, institutional care, dental treatment or dentures, etc. at the expense of the Austrian Health Insurance Fund. However, they are not entitled to cash benefits such as sickness benefits, rehabilitation benefits, pasture integration benefits, or maternity benefits.²⁴

Regarding education, the B-VG-Agreement on primary care only contains one very specific provision, namely the assumption of travel costs necessary for school attendance and provision of school supplies for pupils, as laid out in Article 6 Para 10. However, further provisions regarding education within the B-VG-Agreement on primary care were not deemed necessary, as Austria has a more specific regulation applying to education, the so-

²¹ Filzwieser C., Kasper L., nt. (16), 35.

²² BGBl. I 1955/189, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147>, (accessed 15 May 2023).

²³ BGBl. II 2022/104, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008229>, (accessed 24 April 2023).

²⁴ Feik R., nt. (2), 6.

called *Schulpflichtgesetz* (Compulsory Schooling Act).²⁵ Under Section 1 of Compulsory Schooling Act, all children who are permanently resident in Austria are subject to compulsory schooling. In Austria, compulsory education is laid down in the Federal Constitution, it begins on September 1 following the child's sixth birthday and lasts for nine school years. A year of life is completed at the end of the day preceding the birthday. The provisions of Austrian compulsory education also apply to pupils from Ukraine in the respective age group. Pupils who are no longer obliged to attend school have the opportunity to take advantage of the educational and training opportunities available to fulfill their compulsory education.

The temporary protection for displaced persons is the basis for the possibility to study in Austria if the other requirements, most importantly the proof of general university entrance qualification, are met. Therefore, Ukrainian university students will have to demonstrate proof of general university entrance qualification, which is usually provided by the presentation of a school leaving certificate. Additionally, students are required to demonstrate proof of German language skills at the B2 (independent use of language) to C1 (school leaving) level. Those who do not (yet) have this proof can take appropriate language courses. The Austrian Integration Fund offers them free of charge for Ukrainian displaced persons from level A1 (beginners) to C1. From language level A2 (elementary language application), they can also be completed as part of a university pre-study course. During the completion of these German courses, admission as an extraordinary student at the respective university or college of choice is possible. In the summer semester of 2023, Ukrainian university students are also exempt from paying tuition fees in all Austrian universities,²⁶ as specified in the Studienbeitragsverordnung (Tuition Fee Ordinance).²⁷ However, Ukrainian students still have to pay the student contribution in the amount of € 21.20 per semester, which in turn includes insurance coverage for accidents.²⁸ Austria's Agency for Education and Internationalisation, the OeAD, has additionally issued a grant, the Ernst Mach-Scholarship, specifically designed to support Ukrainian students to continue their university studies in Austria. The Scholarship amounts to € 715 per month and is granted for up to nine months, with possible extensions up until 31 July 2023.²⁹

²⁵ BGBl. 1985/76, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009576>, (accessed 15 May 2023).

²⁶ https://www.oesterreich.gv.at/themen/gesundheit_und_notfaelle/Informationen-f%C3%BCr-ukrainische-Staatsangeh%C3%B6rige.html, – Bildung, (accessed 19 April 2023).

²⁷ BGBl. II 2019/218, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010724>, (accessed 15 May 2023).

²⁸ Federal Agency for Education, Science and Research, *Important questions and answers for students and researchers*, <https://www.bmbwf.gv.at/Themen/HS-Uni/Aktuelles/ukraine/FAQ.html> - F1, (accessed 24 April 2023).

²⁹ Agency for Education and Internationalisation, *Further Information & FAW – Ernst Mach-Ukraine*, <https://oead.at/de/nach-oesterreich/stipendien/ernst-mach-stipendien/faq-ernst-mach-ukraine>, - c52717, (accessed 19 April 2023).

4. Social policy measures for Ukrainians: supporting professional activity.

The final aspect of temporary protection in Austria concerns access to the employment market. By Article 12 of the Directive 2001/55, the Member States shall authorize persons enjoying temporary protection to engage in employed or self-employed activities as well as in vocational training and practical workplace experience. The legislation in force in the Member States concerning pay, access to social security schemes, and other conditions of employment shall apply.

In Austria, Article 12 of the Directive 2001/55 was initially implemented by a decree of the Federal Ministry for Labour and Economy,³⁰ which was addressed to the board of the Public Employment Service Austria. It stated that holders of an identity card for displaced persons were permitted to work in Austria, provided that they have been issued a work permit by the Public Employment Service Austria according to Section 4 Para 3 No 14 of the *Ausländerbeschäftigungsgesetz*³¹ (Employment of Foreign Nationals Act).³² The decree defined and specified criteria for legally compliant labour market access for employable displaced persons in Austria.³³ Most importantly, the decree contained the notion that displaced persons from Ukraine fell within the scope of the EFNA. The EFNA applies to the employment of all persons who do not hold Austrian citizenship. According to its Section 4 Para 1 No 1, which defines the general requirements for the employment of foreign nationals, a work permit shall only be issued if

1. the situation and development of the labor market permits the employment of foreign nationals [this is referred to as the so-called *Arbeitsmarktprüfung* (labour market check), i.e. a concrete assessment by the Public Employment Service Austria if a comparable Austrian employee is available],
2. if important public and macroeconomic interests do not oppose such employment, and
3. if the foreign national has a right of residence as laid out in the provisions of the EFNA. The decree of the Federal Ministry for Labour and Economy specified that for displaced persons from Ukraine, the identity card for displaced persons qualifies as such a residency title.

Finally, foreign nationals may not apply freely for a work permit in whichever sector they desire. Rather, a work permit may only be issued upon application of the (potential) employer.

For skilled workers/professionals in shortage occupations, the provisions of the *Bundeshöchstzahlenüberziehungsverordnung* (Federal Regulation on the Maximum Number of

³⁰ Administrative Decree 2022-0.178.109 (not published).

³¹ BGBl.I 1975/218, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365>, (accessed 15 May 2023), later on as: EFNA.

³² Ghulam N., *Aufenthalt und Beschäftigung von ukrainischen Vertriebenen in Österreich: Voraussetzung für den Erhalt einer Beschäftigungsbewilligung ist das Vorliegen eines Ausweises für Vertriebene*, in *Arbeits- und Sozialrechtliche Kartei*, 2022, 159.

³³ Neuser V., Vargha P., nt. (18), 393.

employed and unemployed Foreigners)³⁴ initially applied to the employment of displaced persons from Ukraine, according to its Section 1 Para 2. This meant that displaced persons from Ukraine who sought work in one of these shortage occupations could attain work permits, even if that led to an excess of the federal maximum number. In 2023, a total number of 98 occupations were listed, including confectioners, butchers, or physicians.³⁵ According to Section 18 of the Employment of Foreign Nationals Act, the posting of foreigners as well as temporary employment of displaced persons from Ukraine is prohibited.³⁶

However, on 21 April 2023, the EFNA was amended to provide free market access to displaced persons from Ukraine.³⁷ Therefore, according to Section 1 Para 2k of the EFNA, displaced persons from Ukraine who have an identity card for displaced persons are now exempt from the scope of the EFNA altogether. This means that employers are no longer required to gain authorization from the Public Employment Service Austria if they want to employ persons with an identity card for displaced persons,³⁸ and in turn, displaced persons from Ukraine can take up any employment without the prior requirement of attaining a work permit.

In the explanatory remarks,³⁹ it was pointed out that the amendment seeks to remove all barriers to employment for displaced persons from Ukraine. This is primarily intended to further accelerate the labour market integration, especially for those displaced persons who aspire to remain permanently in the Austrian labour market. Well-trained skilled workers are a key competitive factor for companies. With the expiry of the work permit, Ukrainians gain perspectives and opportunities in the labour market.⁴⁰ However, due to the general exception from the scope of application of the EFNA, certain protective mechanisms provided by this Act will no longer be applied. For instance, there will no longer be a, otherwise mandatory, preliminary examination of wage and working conditions.⁴¹ Also, precise monitoring of the employment access of displaced persons via the Public Employment Service Austria approval data can therefore no longer be pursued.

³⁴ BGBl.II 1995/278, <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008961>, (accessed 15 May 2023).

³⁵ See Federal Ministry for Labor and Economy, *List of Nationwide shortage occupations*, <https://www.migration.gv.at/de/formen-der-zuwanderung/dauerhafte-zuwanderung/bundesweite-mangelberufe/>, (accessed 24 April 2023).

³⁶ Public Employment Service Austria, <https://www.ams.at/regionen/wien/news/2022/03/ukraine-aufenthaltsrecht-und-arbeitsmarktzugang>, (accessed 24 April 2023).

³⁷ BGBl.I 2023/43, https://ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_43/BGBLA_2023_I_43.html, (accessed 15 May 2023).

³⁸ Public Employment Service Austria, *Geflüchtete Personen aus der Ukraine einstellen*, <https://www.ams.at/unternehmen/service-zur-personalsuche/gefluechtete-personen-aus-der-ukraine-einstellen>, (accessed 24 April 2023).

³⁹ Proposal 3158/A XXVII. GP 5, https://www.parlament.gv.at/dokument/XXVII/A/3158/imfname_1515861.pdf, (accessed 24 April 2023).

⁴⁰ Parliamentary Correspondence PK0411, https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0411#XXVII_A_03158, (accessed 24 April 2023).

⁴¹ Parliamentary Correspondence PK0332, https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0332#XXVII_A_03158, (accessed 24 April 2023).

The proposal which led to the adoption of the described amendment was submitted by the coalition parties, the *Österreichische Volkspartei* (ÖVP, Austrian People's Party), and the Greens. Naturally, the measures were criticized by the opposition parties, first and foremost the *Sozialdemokratische Partei Österreichs* (SPÖ, Social Democratic Party Austria). While Councilor *Sascha Obrecht* appreciated the intention of the law – the removal of obstacles for Ukrainians – he pointed out, that the amendments would not lead to a removal of obstacles but protective mechanisms such as the preliminary examination of wage and working conditions.⁴² *Günter Pröll* of the *Freiheitliche Partei Österreich* (FPÖ, Austrian Freedom Party) also criticized the omission of the preliminary examination of wage and working conditions for Ukrainians. He fears that this will lead to more wage and social dumping. This would open the door to abuse.⁴³

As the amendment to the EFNA has only been in effect for a short period of time, the impact of these changes is unclear. However, one consequence regards the possibility to obtain employment as temporary workers: unrestricted access to the labour market will make possible for the first time for Ukrainian nationals to be employed as temporary workers via personnel service providers and companies for the supply of temporary workers. Representatives of these industries have been fighting for months for this possibility because they consider it an effective measure to counteract the shortage of labour in this particular field of work.⁴⁴

Finally, it should be noted that Ukrainian nationals in possession of a valid identity card for displaced persons are supported in their integration into the labour market with needs-based offers such as multilingual information materials, German courses, as well as skills assessments. According to the Public Employment Service Austria, they are also actively placed in vacant positions.⁴⁵

The recognition of foreign education certificates is laid out in the *Anerkennungs- und Bewertungsgesetz* (Recognition and Evaluation Act). According to Section 4, a recognition portal serves as a source of information and orientation with specific information on the relevant authorities. As per Section 5, contact points⁴⁶ throughout Austria offer assistance concerning the recognition and assessment of qualifications obtained abroad. Finally, Section 8 provides that displaced persons from Ukraine, who are unable, for reasons beyond their control due to their flight situation, to submit the documents required for the recognition and assessment of their foreign educational qualifications or professional qualifications as well as for the procedure for professional authorization, their qualifications shall be suitably

⁴² Parliamentary Correspondence PK0411, https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0411#X XVII_A_03158, (accessed 24 April 2023).

⁴³ Parliamentary Correspondence PK0411, https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0411#X XVII_A_03158 (accessed 24 April 2023).

⁴⁴ <https://www.wienerzeitung.at/nachrichten/politik/oesterreich/2177851-Freier-Jobzugang-fuer-Ukraine-Vertriebe.html>, (accessed 24 April 2023).

⁴⁵ Proposal 3158/A XXVII. GP 5, https://www.parlament.gv.at/dokument/XXVII/A/3158/imfname_1515861.pdf, (accessed 24 April 2023).

⁴⁶ For more information about the local contact points, please refer to Public Employment Service Austria, *Living and Working in Austria: Information for Displaced Persons from Ukraine*, 2022, 39.

determined by the competent authorities and completed in the form of the relevant qualification for the respective procedure. Suitable procedures may include practical or theoretical examinations, sample tests, work samples, and expert opinions. The selection of the procedure, taking into account any requirements of the respective material law, is at the discretion of the competent authority.

At the end of December 2022, a total of 13.536 Ukrainians were employed in Austria. 8.126 of those persons are registered as displaced persons from Ukraine.⁴⁷ A total of about 19,500 work permits have been issued to displaced Ukrainians since the beginning of the war. Most work permits by sector were issued in tourism, agriculture and forestry, and trade. At the end of December 2022, there were about 2,700 more Ukrainian employees in tourism, with a total of 3,248. There were 922 more in goods manufacturing with a total of 1,422, 851 more in trade with 1,863, and 630 more in healthcare with a total of 1,094 than a year ago. Almost one-fifth of the additional employees from Ukraine are under 25 years of age. Two-thirds are of prime working age, between 25 and 50, and 15 percent are older than 50. By gender, the increase of Ukrainian women in the labor market was, as expected, significantly higher than that of Ukrainians. 74 percent of the additional employed persons are women, and about 26 percent are men.⁴⁸

5. Final considerations.

As Austria faces an increasing number of displaced persons from Ukraine seeking refuge and safety, it is essential to prioritize their successful integration into Austrian society. While Austria has implemented all the requirements of the European Union regarding the mass influx of displaced persons from Ukraine, at times it has limited itself to implementing only the minimum standards defined in the Decision 2022/382. This specifically applies to the personal scope as laid out in Article 2 of the Decision 2022/382: while Austria diligently transposed the minimum standards, it also limited the personal scope of the Regulation on displaced persons from Ukraine to the enumeration contained therein. This, in turn, signifies that people who have also fled Ukraine due to the war, but who are not included in the enumeration, will not receive temporary protection in Austria. However, on a positive note, it must be said that Austria was quick in extending temporary protection for displaced persons from Ukraine up until 4 March 2024.

Regarding the different aspects of temporary protection, I believe that Austria has succeeded in providing unbureaucratic access to financial benefits and administrative support. For this reason, the biggest integration challenge that remains is access to the employment market. The recent amendments to the EFNA should ensure that displaced persons from Ukraine will face fewer obstacles when it comes to finding employment in

⁴⁷ <https://www.wienerzeitung.at/nachrichten/politik/oesterreich/2177851-Freier-Jobzugang-fuer-Ukraine-Vertriebe.html>, (accessed 24 April 2023).

⁴⁸ <https://www.vienna.at/erleichterungen-fur-ukraine-vertriebene-am-arbeitsmarkt/7883389>, (accessed 24 April 2023).

Austria. By providing adequate support and resources, including language training, education, employment opportunities, and access to healthcare, Austria can enable these displaced persons to rebuild their lives.

7

Mass influx of people from Ukraine: social entitlements and access to the labour market: Belgium.

Lynn De Smedt* - Frederic De Wispelaere**

1. General framework. 2. Personal scope of applicable support measures. 2.1. Personal scope. 2.2. Loss of the temporary protection status. 2.3. Application procedure for temporary protection. 3. Social policy measures for Ukrainians: access to housing, healthcare, and education. 3.1. Access to housing. 3.2. Access to healthcare. 3.3. Access to education. 4. Social policy measures for Ukrainians: supporting professional activity. 4.1. Number of employed persons. 4.2. Recognition of diplomas. 4.3. Risk of labour exploitation. 4.4. Posting of persons under temporary protection. 5. Final considerations.

1. General framework.

In this chapter, the focus is on displaced persons from Ukraine coming to Belgium. Between 10 March 2022 and 30 March 2023, the Belgian Immigration Office issued 67,706 Certificates of temporary protection to displaced persons from Ukraine.¹ This is less than the expected number of between 100,000 and 200,000 Ukrainian war migrants coming to Belgium,² although this estimation was more of a ‘worst-case scenario’ for which the Belgian

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¹ Statbel, *Displaced persons from Ukraine*, 2023, available at:

https://statbel.fgov.be/en/visuals/displaced_persons_Ukraine (accessed 24 April 2023). Other data provided by UNHCR show that 69,996 war migrants from Ukraine were recorded in Belgium, and 69,246 registered for temporary protection or similar national protection schemes until 28 March 2023. See Operational Data Portal, *Ukraine Refugee Situation*, available at <https://data.unhcr.org/en/situations/ukraine> (accessed 24 April 2023). One can assume that this number is an accurate reflection of the number of Ukrainian war migrants in Belgium, as the non-take-up of this Certificate of temporary protection is assumed to be low seeing that it is their ‘ticket’ to many rights, as explained in the article below. However, it is always possible that some war migrants have not registered for this Certificate, for instance if they have found shelter on their own initiative (Working Group Social Impact Corona Crisis, 2023).

² Temmerman M., Baert D., *Staatssecretaris Mahdi verwacht tot 200.000 vluchtelingen uit Oekraïne en wil in alle provincies noodcentra*, in *VRT NWS*, 9 March 2022, available at <https://www.vrt.be/vrtnws/nl/2022/03/09/mahdi-wil-collectieve-opvang-in-noodcentra-en-een-extra-registra/> (accessed 24 April 2023).

government wanted to be prepared.³ The issuance of these certificates reached a peak in March and April 2022, after which the number has been on the decrease (see *Figure 1*).⁴

The majority of those receiving a Certificate of temporary protection have the Ukrainian nationality (97.7%).⁵ Furthermore, 60.6% of persons who received a Certificate of temporary protection were female, and more than two thirds were adults (67.2%).⁶ The most common age group is between 30 and 44 years old (27%), followed by 18 to 29 years old (18%), and 45 to 64 years old (17%). One third of the total persons under temporary protection, or more than 22,000 persons, were minors and 1,245 were unaccompanied minors. The latter group consists primarily of children between 12 and 17 years old (81.8%) and children between 6 and 11 years old (14.3%).

Finally, there were almost 1,600 refusals to issue a Certificate of temporary protection, of which 69% concerned Ukrainians and 31% other nationalities.⁷

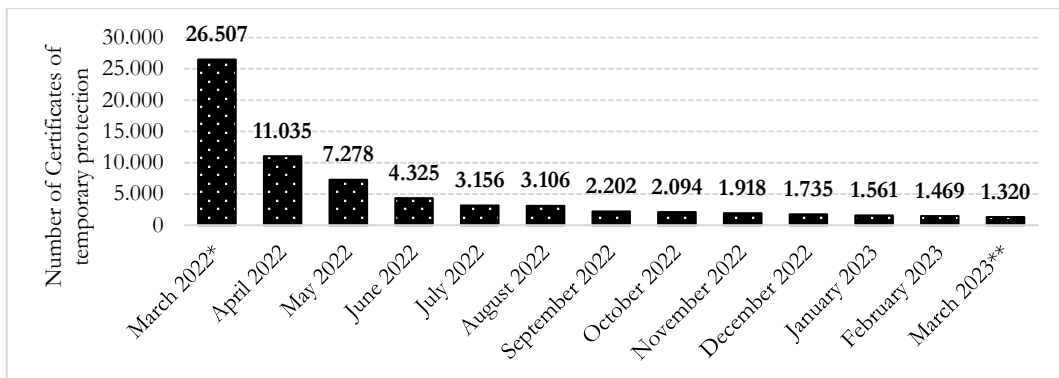


Figure 1. Number of Certificates of temporary protection granted by the Belgian Immigration Office to displaced persons from Ukraine, 10 March 2022 – 30 March 2023.

* March 2022: from 10 March 2022 onwards. ** March 2023: until 30 March 2023.

Source: *Stabel Belgium in figures*.⁸

³ Bervoet D., Dujardin D., *België maakt zich op voor meer dan 100.000 Oekraïense vluchtelingen*, in *De Tijd*, 9 March 2022, available at <https://www.tijd.be/politiek-economie/belgie/federaal/belgie-maakt-zich-op-voor-meer-dan-100-000-oekraïense-vluchtelingen/10372364.html> (accessed 24 April 2023).

⁴ For Belgium, it is often possible to provide a regional breakdown, as it is a federal state, composed of communities and regions. Communities correspond to the population groups and focus on language and culture. There are three communities: the Flemish Community, the French Community, and the German-speaking Community. Regions are inspired by economic interests. There are three regions: the Flemish Region, the Brussels Capital Region, and the Walloon Region. (Belgian Federal Government, *Belgium, a federal state*, 2023, available at https://www.belgium.be/en/about_belgium/government/federale_staat - accessed 24 April 2023). Most persons under temporary protection are registered in Flanders (59.4%), followed by Wallonia (20.4%), and Brussels (20.3%). See https://dofi.ibz.be/sites/default/files/2023-02/Infographic%20UKR_NL.pdf (accessed 24 April 2023).

⁵ Working Group Social Impact Corona Crisis, *Monitoring van de werkgelegenheid en de sociale bescherming in België*, 2023, available at https://socialsecurity.belgium.be/sites/default/files/content/docs/nl/sociaal-beleid-vormgeven/monitoring_herwerkt_20230227_clean.pdf (accessed 24 April 2023). Important note: It should be taken into account that an important part of this document is based on unvalidated and/or unpublished data.

⁶ Statbel, nt. (1).

⁷ Immigration Office, *Opvang van mensen uit Oekraïne in België: de balans na één jaar conflict*, 2023, retrieved from <https://dofi.ibz.be/en/node/544> (accessed 24 April 2023) (French version: Immigration Office, *Accueil en Belgique des personnes en provenance d'Ukraine: bilan après un an de conflit*, available at <https://dofi.ibz.be/fr/news/accueil-en-belgique-des-personnes-en-provenance-dukraïne-bilan-apres-un-de-conflit>) (accessed 24 April 2023).

⁸ See https://statbel.fgov.be/en/visuals/displaced_persons_Ukraine (accessed 24 April 2023).

Council Directive 2001/55/EC of 20 July 2001⁹ (and consequently also Council Implementing Decision (EU) 2022/382 of 4 March 2022)¹⁰ has been transposed into Belgian law in the Law regarding the entry, residence, settlement, and removal of foreigners (i.e., ‘Residence Law’) by articles 57/29 to 57/36,¹¹ and came into force on 1 May 2003. Furthermore, Royal Decree of 8 October 1981¹² as modified by Royal Decree of 27 October 2007,¹³ which entered into force on 1 June 2007 specifies the steps that a foreigner who has been granted temporary protection pursuant to Article 57/29 of the Residence Law and who has lodged a first application for asylum has to follow¹⁴. In addition, there is national legislation which covers specific policy areas, as discussed in the relevant sections of this chapter.

The Decision 2022/382 specifies that the duration of the temporary protection must initially be one year, after which it can be automatically renewed in six-monthly intervals for a maximum of one year. If the reasons for temporary protection persist, the Council may decide to extend temporary protection by up to one year, thus causing the duration of temporary protection to be between 1 and 3 year(s). The same provisions are provided in Belgian law.

⁹ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

¹⁰ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

¹¹ *Law on access to the territory, residence, settlement and removal of foreign nationals* (Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen) [Dutch version available at:

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1980121530&table_name=wet (accessed 24 April 2023); French version available at:

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi (accessed 24 April 2023)]

¹² *Royal Decree on access to the territory, residence, settlement and removal of foreign nationals* (Koninklijk besluit betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen) [Dutch version available at:

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1981100831&table_name=wet (accessed 24 April 2023);

French version available at:

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981100831&table_name=loi (accessed 24 April 2023)].

¹³ *Royal Decree fixing the date of entry into force of the law of 21 April 2007 amending the law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals, and of the Act of 4 May 2007 amending articles 39/20, 39/79 and 39/81 of the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals* (Koninklijk besluit tot vaststelling van de datum van inwerkingtreding van de wet van 21 april 2007 tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, en van de wet van 4 mei 2007 tot wijziging van de artikelen 39/20, 39/79 en 39/81 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen).

¹⁴ European Labour Authority, *Overview of national measures regarding employment and social security of displaced persons coming from Ukraine Country Fiche – Belgium August 2022*, 2022, available at:

<https://www.ela.europa.eu/sites/default/files/2022-07/BE-country-fiche-ela-national-measures-ukraine.pdf> (accessed 24 April 2023).

In this contribution, the focus is first put on the personal scope of the applicable support measures (sec. 2). Next, the social policy measures for Ukrainian war migrants are discussed, concerning access to housing, healthcare, and education (sec. 3) and supporting professional activity (sec. 4). Seeing that most of these topics are regional competences and not federal competences, information is provided on a regional level whenever applicable and possible. Some final considerations conclude this contribution (sec. 5).

2. Personal scope of applicable support measures.

2.1. Personal scope.

Before diving into the implementation of the social mechanisms for those under temporary protection, it is first important to know who can make use of this status. The decision concerning temporary protection applies to three distinct groups of people.¹⁵ First, it concerns Ukrainian nationals and their family members whose main residence was in Ukraine before 24 February 2022. Second, it concerns stateless persons and nationals of third countries other than Ukraine who have been granted international protection or equivalent national protection in Ukraine and their family members whose main residence was in Ukraine before 24 February 2022. Finally, it concerns third-country nationals legally residing in Ukraine before 24 February 2022 based on a valid permanent residence permit and who are unable to return to their country or region of origin under safe and sustainable conditions.

Seeing that family members are often included under temporary protection it is important to understand what is meant under **the notion of ‘family members’**.¹⁶ First, it concerns the spouse or unmarried partner who is in a steady relationship in accordance with the Belgian legislation on foreign nationals.¹⁷ Second, it includes unmarried minor children, including those of the spouse, whether legitimate, illegitimate, or adopted. Third, other close relatives who were living in the family unit at the time of the mass influx of displaced persons and who were then wholly or mainly dependent on the family for support are also included under the notion of ‘family members’. This personal scope defined in Belgian law is identical to the provisions in Article 2 of Decision 2022/382.

Although the Decision 2022/382 specifies that it only concerns those persons residing in Ukraine before 24 February 2022, the European Commission strongly encouraged Member States not to apply this date too strictly.¹⁸ It appears that Belgium also applies the Decision

¹⁵ Federal Public Service Justice, *You have received temporary protection and you want to work?*, 2023, available at <https://info-ukraine.be/sites/default/files/Brochure%20werk%20EN%20WEB.pdf> (accessed 24 April 2023).

¹⁶ Immigration Office, *Temporary Protection*, 2023, available at: <https://dofi.ibz.be/en/themes/ukraine/temporary-protection> (accessed 24 April 2023). In so far as the family was already present and residing in Ukraine before 24 February 2022 as stated in Article 2 of the Decision 2022/382.

¹⁷ Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen en het koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen.

¹⁸ Communication from the Commission on Operational guidelines for the implementation of Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126

for those who were already on a short stay in Belgium before 24 February 2022.¹⁹ However, it is uncertain whether persons whose long stay in Belgium ends without the possibility of an extension and people who have already resided illegally in Belgium are also given temporary protection.²⁰ In practice, many seasonal workers whose long stay came to an end, received temporary protection.²¹ Other sources indicate that there is a temporary solution for Ukrainian seasonal workers whose work permit and short stay can be extended, but it remains limited to five months.²² Ukrainian students whose student visa is about to expire can apply to the municipality where they are staying for an extension of the permitted period of stay, or they can also apply for temporary protection.²³ Finally, one can wonder how many of the group of posted Ukrainian workers to Belgium applied for temporary protection (see also sec. 4.4).

The European Commission encouraged Member States to also provide temporary protection to family members of the third group of people mentioned above (third-country nationals legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit and who are unable to return to their country or region of origin under safe and sustainable conditions).²⁴ However, as far as it is known, Belgium does not follow this advice.²⁵

2.2. Loss of the temporary protection status.

The question arises how temporary protection comes to an end. As specified in Article 6 of Directive 2001/55, this is the case when the maximum duration is reached, or at any time following a Decision 2022/382. In this case, the title of temporary protection is withdrawn, and the alien and family have at least one month to leave the Belgian territory (as specified in Article 57/36 of the Residence Law). However, Belgian law also stipulates, as stated in Article 23 of the Directive 2001/55, that 1) if the health condition of persons does not allow a return, the stay can be prolonged; and 2) if those under temporary protection have children

I/01. For more information, take a look at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274> (accessed 24 April 2023).

¹⁹ Vreemdelingenrecht & internationaal familierecht, *Immigration law & international family law*, 2023; Vreemdelingenrecht & internationaal familierecht, *Oekraïne: verblijfsmogelijkheden en rechtspositie in België*, 4 August 2022, available at <https://www.agii.be/nieuws/oekraïne-verblijfsmogelijkheden-en-rechtspositie-in-belgië#InBelgie> (accessed 24 April 2023).

²⁰ Vreemdelingenrecht & internationaal familierecht, *ibid.*

²¹ Vreemdelingenrecht & internationaal familierecht, *ibid.*

²² Vlaanderen, *Toegang tot arbeid voor Oekraïense onderdanen*, 2023, available at <https://www.vlaanderen.be/toegang-tot-arbeid-voor-oekraïense-onderdanen> (accessed 24 April 2023).

²³ KU Leuven, *Oekraïne Veelgestelde vragen*, 2023, available at https://www.kuleuven.be/ukraïne/veelgestelde-vragen#St_juridisch (accessed 24 April 2023); Vreemdelingenrecht & internationaal familierecht, *Immigration law & international family law*, 2023.

²⁴ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01.

²⁵ Vreemdelingenrecht & internationaal familierecht, nt. (23), 2023.

following education in Belgium, they are allowed to stay until the current school term has ended.

In addition, it is possible that individual persons lose/do not receive the status of temporary protection. Article 57/32 of the Belgian Residence law specifies four distinct situations in which this is possible.²⁶ First, when a person has committed a crime against peace, a war crime, or a crime against humanity in the sense of the international agreements binding Belgium. Second, when a person has committed a serious non-political crime before coming to Belgium. Third, when a person has been guilty of acts contrary to the purposes and principles of the United Nations. Fourth, when the person poses a threat to the security of the country or for the public order, as he or she was convicted for a serious crime.

2.3. Application procedure for temporary protection.

Persons who wish to benefit from temporary protection must present themselves in person at the registration centre with documents proving that they belong to one of the groups of people mentioned above.²⁷ This means that different documents must be presented, depending on the group one belongs to.²⁸ For Ukrainian nationals residing in Ukraine, a proof of citizenship which includes a photo must be presented. For stateless persons and nationals of third countries other than Ukraine, a photo ID (e.g., a biometric passport, national identity card, passport) must be provided, as well as proof of their status in Ukraine (e.g., a refugee passport, biometric passport, residence card, identity card, driver's license). Finally, for family members a photo ID card (e.g., biometric passport, national identity card, driver's license) must be provided, as well as proof of the family relationship (e.g., a marriage certificate, birth certificate; it must be the original certificate). In principle, these documents must be accompanied by an apostille. In addition, for a marriage it must be demonstrated that the marriage is still holding up. For "other close relatives", proof of cohabitation and proof of being dependent need to be supplied. In the absence of or in case of doubt about the authenticity of documents, it is recommended to contact the diplomatic representation of the country of origin (Ukraine or other).²⁹ Furthermore, for persons who cannot provide relevant documents and where Member States are unable to quickly determine eligibility for temporary protection by other means, the European Commission recommends referring to the asylum procedure.

The registration of persons requesting temporary protection occurs in the registration centre in Brussels.³⁰ It is also possible to reserve a time slot in the registration centre to apply

²⁶ *Law on access to the territory, residence, settlement and removal of foreign nationals* (Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen).

²⁷ Federal Public Service Justice, nt. (15).

²⁸ Vreemdelingenrecht & internationaal familierecht, nt. (23).

²⁹ Vreemdelingenrecht & internationaal familierecht, *ibid.*

³⁰ Immigration Office, *Registration Centre*, 2023, available at: <https://dofi.ibz.be/en/themes/ukraine/registration-centre> (accessed 24 April 2023). Pending registration at the registration centre, one must register as soon as possible with the local authority of the place of residence, and he or she will receive an Annex 3 entitled Declaration of Arrival. With this annex one is not permitted to work and does not receive any social assistance (Federal Public Service Justice, nt. (15)).

for temporary protection, although a Belgian IP-address is needed to make this reservation. Upon arrival in the registration centre, the Immigration Office registers the identity data and biometric data (fingerprints).³¹ If unaccompanied minors arrive, this is reported to the Guardianship Service (Dienst Voogdij/Service des Tutelles).

After the collection of the data and the provision of the documents proving they are eligible to receive temporary protection, a Certificate of temporary protection is immediately issued by the Immigration Office.³² If more investigation is necessary or additional documents must be submitted, the Immigration Office will issue a Proof of registration. It is then possible that the person is referred to the Ukrainian embassy to obtain the necessary documents, or the person is invited for an interview by an Immigration Officer at a later time. Afterwards, a positive decision can follow, providing the person with a Certificate of temporary protection, or a negative decision can follow if not all conditions are met.³³

Once in possession of a Certificate of temporary protection, the person should present him/herself to the municipality where he or she is staying.³⁴ The municipal administration then gives the person a residence permit issued to third-country nationals admitted or authorised to stay for more than three months on a limited basis (“A. Limited stay” card).³⁵ While waiting for the residence check and/or the issue of this A card, persons receive an Annex 15, which is valid for 45 days. After a positive residence check, the municipality registers the person in the foreigners’ register (dated based on the Certificate of temporary protection).³⁶

The A card is valid until 4 March 2023 (one year from the date the temporary protection is implemented, i.e., 4 March 2022) and can be extended twice by 6 months. Although the status of temporary protection has been automatically prolonged by two six months periods until March 2024,³⁷ this is not the case for the A card. From 4 January 2023 onwards, persons can present themselves to the municipality to receive the extension.³⁸ Currently, around 41,000 A cards have already been prolonged, while 22,000 have not (yet) been prolonged.³⁹ Reasons for not prolonging the A card are not systematically registered, so it could be that the holders have returned to Ukraine, moved to another Member State, or are still in the process of prolonging the A card.

³¹ It is mentioned that fingerprints might be taken from the person enjoying temporary protection in Article 57/31 of the Residence Law (Vreemdelingenwet). However, this is not something that is specifically mentioned in Directive 2001/55/EC of 20 July 2001.

³² Vreemdelingenrecht & internationaal familierecht, nt. (23).

³³ The decision to refuse or exclude someone from temporary protection status may be the subject of a non-suspensive appeal to the Council for Immigration Disputes within 30 days of its notification. Consequently, it is important to always request a written decision in case of refusal (Vreemdelingenrecht & internationaal familierecht, nt. (23)).

³⁴ Immigration Office, nt. (16).

³⁵ Federal Public Service Justice, nt. (15).

³⁶ Vreemdelingenrecht & internationaal familierecht, nt. (23).

³⁷ European Council, *Council of the European Union, Justice and Home Affairs Council, 13-14 October 2022, 2022*, available at https://www.consilium.europa.eu/en/meetings/jha/2022/10/13-14/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Justice+and+Home+Affairs+Council (accessed 24 April 2023).

³⁸ Vreemdelingenrecht & internationaal familierecht, nt. (23).

³⁹ VRT, *Meeste Oekraïense vluchtelingen blijven ook dit jaar nog in ons land*, in *VRT NWS*, 17 March 2023, available at <https://www.vrt.be/vrtnws/nl/2023/03/17/meeste-oekraïense-vluchtelingen-blijven-ook-dit-jaar-nog-in-ons/> (accessed 24 April 2023).

3. Social policy measures for Ukrainians: access to housing, healthcare, and education.

Once the application procedure for temporary protection has been completed and a person is in possession of an A card or an Annex 15 pending issuance of the A card, the person concerned has access to several social policy measures.⁴⁰ First, displaced persons from Ukraine have the right to social services, including the equivalent living wage (equivalent leefloon/l'aide sociale équivalente),⁴¹ if they are in need of it. Second, they should join the health compulsory insurance fund (verplichte ziekteverzekering/l'assurance maladie obligatoire), and while pending entitlement to insurance, the person is entitled to urgent medical assistance. Third, when the A card (or Annex 15) is received, persons are allowed to work: a beneficiary of temporary protection status has unlimited access to the labour market. **The same access to the labour market is provided for certain members of the person's family** who are not themselves beneficiaries of this status but whose stay is linked to the person concerned.

Regarding social security and social welfare, there is no specific legislation applicable to those enjoying temporary protection.⁴² For instance, they enjoy social security rights thanks to a general principle of equal treatment and non-discrimination. Important actors in taking care of Ukrainian displaced persons in Belgium are the PCSWs (Public Centre for Social Welfare – OCMW/CPAS). They are not only responsible for providing persons with an equivalent living wage (see below), but also for many other aspects, such as looking for (crisis) housing, psycho-social counselling, referring them to other care providers, solving administrative bottlenecks, organising the help provided by the many volunteers, activating those who can work, etc.⁴³ Additionally, it is noted that PCSWs are already overloaded due to the COVID-crisis and the energy crisis. As a result of the Ukrainian war-migration crisis, a law⁴⁴ was passed to promote the integration of persons enjoying temporary protection (published on 15 June 2022 and entered into force retroactively on 4 March 2022). This law stipulates that between 4 March 2022 and 3 March 2024, PCSWs will receive an additional subsidy for each person receiving financial social services for the first time as a beneficiary of the temporary protection. In practice, it means that PCSWs receive 35% of the amount of financial social assistance subsidised for the first four months of the granting of financial social assistance, and 25% of the subsidised amount of financial social assistance from the

⁴⁰ Federal Public Service Justice, nt. (15).

⁴¹ The amount of the living wage depends on the situation the beneficiary finds himself/herself in: <https://dofi.ibz.be/en/themes/citizens-european-union/favorites-citizens-eu/sufficient-means-existence> (accessed 24 April 2023).

⁴² ELA, nt. (14).

⁴³ Debast N., *Oekraïne OCMW's vragen duidelijk kader en ondersteuning voor begeleiding* in *VVSG*, 17 March 2022, available at <https://www.vvsg.be/nieuws/oekraïne-ocmws-vragen-duidelijk-kader-en-ondersteuning-voor-begeleiding> (accessed 24 April 2023).

⁴⁴ Law to promote integration of beneficiaries of temporary protection status (Wet van 18 mei 2022 tot bevordering van de integratie van de begunstigden van het tijdelijk beschermingsstatuut).

fifth month of the granting of financial social assistance.⁴⁵ Consequently, PCSWs have extra resources to cover their additional administrative costs and other unexpected needs.⁴⁶

For displaced persons themselves, there is no distinct financial support for specific areas in social policy. However, persons enjoying temporary protection have the right to social services, including for instance an equivalent living wage if they are in need.⁴⁷ This equivalent living wage is calculated based on the means of subsistence available to the displaced person, which considers the means of the cohabiting spouse or partner, but not of the person(s) providing shelter for instance.⁴⁸ This equivalent living wage is provided by the PCSW of the municipality where the person is staying and allows a person to support him/herself in Belgium.⁴⁹ Data from March 2022 until March 2023 show that in total 50,054⁵⁰ displaced persons from Ukraine received a positive decision for an equivalent living wage in Belgium.⁵¹ Consequently, it can be calculated that almost 74% of persons under temporary protection status have received an equivalent living wage in Belgium. However, the amount of equivalent living wages actually paid out is not yet known.⁵²

The fact that displaced persons have received this equivalent living wage if needed, has already caused some commotion, as some feel that due to the right to the equivalent living wage, guidance to the labour market is failing and the Belgian policy is insufficiently ‘activating’ the displaced persons, which is discussed more in section 4.⁵³

⁴⁵ ELA, nt. (14).

⁴⁶ *Omzendbrief van 2 juni 2022 inzake de wet van 18 mei 2022 tot bevordering van de integratie van de begunstigen van het tijdelijk beschermingsstatuut*, POD Maatschappelijke Integratie, *Omzendbrief van 2 juni 2022 inzake de wet van 18 mei 2022 tot bevordering van de integratie van de begunstigen van het tijdelijk beschermingsstatuut*, 2022, available at <https://www.mi-is.be/nl/wetgeving/omzendbrief-van-2-juni-2022-inzake-de-wet-van-18-mei-2022-tot-bevordering-van-de> (accessed 24 April 2023).

⁴⁷ See for more information on social care for beneficiaries of temporary protection status: <https://info-ukraine.be/en/documentation/communication-material/social-care-beneficiaries-temporary-protected-status> (accessed 24 April 2023). Vreemdelingenrecht & internationaal familiericht, nt. (23).

⁴⁸ *Ibid.*

⁴⁹ .BE, *Information for refugees fleeing Ukraine*, 2022, available at: https://info-ukraine.be/sites/default/files/documents/files/Brochure_Informatie%20voor%20Oekra%C3%AFense%20vluchtelingen_EN_052022.pdf (accessed 24 April 2023).

⁵⁰ In total, there were 29,998 unique right holders to the equivalent living wage, who on average had a family of 1.7 persons. Therefore, the total number of persons who were granted the equivalent living wage amounts to 50,054 including children.

⁵¹ POD Maatschappelijke Integratie, *Personen uit Oekraïne onder tijdelijke bescherming*, 2023, available at <https://www.mi-is.be/nl/studies-publicaties-statistieken/personen-uit-oekraïne-onder-tijdelijke-bescherming> (accessed 24 April 2023). Most of them reside in Flanders (56.1%), followed by Wallonia (24.8%), and Brussels (19.0%).

⁵² The decision to grant the equivalent living wage does not automatically lead to the actual payment, although for Ukrainian displaced persons this will mostly be the case. Only when the PCSWs ask the PPS Social Integration (POD Maatschappelijke Integratie/SPP Intégration Sociale) for a repayment of all the (equivalent) living wages, it will be known how long the equivalent living wage was paid to Ukrainian displaced persons and its amount.

⁵³ KNACK, *N-VA pleit voor verplichte inschrijving Oekraïense vluchtelingen bij VDAB*, in *Knack*, 16 December 2022, available at: <https://www.knack.be/nieuws/belgie/n-va-pleit-voor-verplichte-inschrijving-oekraïense-vluchtelingen-bij-vdab/> (accessed 24 April 2023).

In the following sections, several topics⁵⁴ are discussed in more depth, more specifically access to housing (sec. 3.1), access to healthcare (sec. 3.2), and access to education (sec. 3.3).

3.1. Access to housing.

Article 13 of Directive 2001/55 stipulates that persons enjoying temporary protection should have access to suitable accommodation or, if necessary, receive the means to obtain housing.

A first possible step for displaced persons from Ukraine is emergency shelter, organised by the federal government, for a maximum of one or two nights in Brussels.⁵⁵ This is only for those who are not yet registered for temporary protection or those who were registered late in the day and could not yet be referred to crisis housing.

Second, on a national level crisis housing is organised where persons under temporary protection can stay a couple of days or weeks.⁵⁶ A Housing Tool was developed by the National Crisis Center on a national level, which is used and coordinated on a local and regional level. However, the Housing Tool on a national level is not in use anymore,⁵⁷ and the available places (at private homes with or without a host family, available rooms in boarding schools or residential care centres, etc.) are registered in the regional tools such as the Flemish housing tool,⁵⁸ TemHoWal (Temporary Housing in Wallonia) in Wallonia,⁵⁹ or Bemygust in Brussels.⁶⁰ The solidarity shown to take in Ukrainian war migrants was remarkable, for instance by using the hashtag #FreeSpot.⁶¹ In Flanders, more than 10,000 persons indicated they are willing to house Ukrainian war migrants.⁶² To prevent abuse and

⁵⁴ Ukrainians under temporary protection have more rights, but the focus is on these three topics. For instance, if they are registered at a health insurance fund, they are entitled to an increased allowance which lets them travel on Belgian trains at a reduced rate. Furthermore, persons who receive an (equivalent) living wage can travel on Flemish and Brussels busses at a reduced tariff and for Walloon busses there was the “Tempo-Pass” specifically for those under temporary protection. [VVSG, *Mobiliteit*, 2023, available at <https://www.vvsg.be/kennisitem/vvsg/mobiliteit-1> (accessed 24 April 2023). See .BE, *De Tempo-Pass, een vervoerbewijs voor gevluchte personen*, 2022, available at <https://info-ukraine.be/nl/newsroom/de-tempo-pass-een-vervoerbewijs-voor-gevluchte-personen> (accessed 24 April 2023). Safe Brussels, *Looking for a transport method*, 2023, available at <https://www.helpukraine.brussels/en/lookingfor/looking-transport-method> (accessed 24 April 2023)].

⁵⁵ Nationaal Crisiscentrum, *Ontvangst van personen op de vlucht uit Oekraïne Overzicht federale initiatieven Introductie Vlaamse huisvestingstools*, available at: https://assets.vlaanderen.be/image/upload/v1647806527/20220317_webinar_lokaalbestuur_met_FED_z6_mon1.pdf (accessed 24 April 2023).

⁵⁶ Vreemdelingenrecht & internationaal familierecht, nt. (23).

⁵⁷ VVSG, *Crisis & duurzame huisvesting Vluchtelingen uit Oekraïne*, 2023, available at: <https://www.vvsg.be/kennisitem/vvsg/crisishuisvesting> (accessed 24 April 2023).

⁵⁸ See: Vlaanderen Helpt Oekraïne, *Huisvesting*, available at <https://www.vlaanderen.be/vlaanderen-helpt-oekraïne/huisvesting#meld-huisvestingsplaatsen-in-de-vlaamse-digitale-huisvestingstool> (accessed 24 April 2023).

⁵⁹ See: Wallonie, *Ukraine*, available at <https://www.wallonie.be/fr/ukraine/hebergements-conventionnes#> (accessed 24 April 2023).

⁶⁰ See: Safe.Brussels, *Safe Hosting*, available at <https://www.helpukraine.brussels/en/lookingfor/safe-hosting> (accessed 24 April 2023).

⁶¹ #FREESpot, retrieved from <https://info-ukraine.be/en/what-can-i-do/i-want-help/freespot> (accessed 24 April 2023).

⁶² Vlaanderen, *Informatie voor gastgezinnen van mensen op de vlucht uit Oekraïne*, 2023, available at:

exploitation, the place of residence offered by host families can be checked for safety, health, quality and/or equipment standards, and municipalities can request an extract from the criminal record of those offering housing.⁶³

Third, displaced persons move on to the regular housing market or collective housing initiatives. Guiding them towards sustainable housing is organised by the three Belgian regions. For instance, a Flemish housing tool is developed, aimed at realising sustainable housing.⁶⁴ Displaced persons from Ukraine can move on to sustainable housing at accommodation places from private individuals (where they might pay rent), specific residential complexes like service flats or hotels, or emergency villages specifically created for displaced persons from Ukraine.⁶⁵

3.2. Access to healthcare.

Once persons have their Certificate of temporary protection in Belgium, they must register with a health insurance fund, after which they can consult a general practitioner, dentist, or another healthcare provider for all non-urgent medical care.⁶⁶ While waiting for the activation of the health insurance, persons enjoying temporary protection already have the right to emergency care, for which the PCSW will arrange the bill payment.⁶⁷ Furthermore, for non-emergency care the National Institute for Health and Disability Insurance (RIZIV/INAMI) asks healthcare providers to postpone their billing for the benefits provided until the Ukrainian displaced patient is registered with a Belgian health insurance fund.⁶⁸

If persons are registered with a health insurance fund, they are entitled to reimbursement for healthcare expenses. Membership of the public health insurance fund applies retroactively from the first day of the quarter in which the Certificate of temporary protection or Proof of registration was issued.⁶⁹ For example, if the Proof of registration or Certificate of temporary protection was issued up to 31 March 2022, affiliation to the Belgian public health insurance fund is ensured from 1 January 2022. Furthermore, persons under temporary protection can register at the public health insurance fund as ‘entitled resident’,

<https://www.vlaanderen.be/vlaanderen-helpt-oekraine/informatie-voor-gastgezinnen-van-mensen-op-de-vlucht-uit-oekraine> (accessed 24 April 2023).

⁶³ Vlaanderen, *ibid.*

⁶⁴ Vreemdelingenrecht & internationaal familierecht, nt. (23).

⁶⁵ Vlaanderen, *Huisvesting*, 2023, available at:

<https://www.vlaanderen.be/vlaanderen-helpt-oekraine/huisvesting> (accessed 24 April 2023).

⁶⁶ .BE, *Medical care Ukrainian refugees*, available at <https://info-ukraine.be/en/assistance-belgium/medical-care-ukrainian-refugees> (accessed 24 April 2023).

⁶⁷ .BE, *Information for refugees fleeing Ukraine*, available at:

[https://info-ukraine.be/sites/default/files/documents/files/Brochure Informatie%20voor%20Oekra%C3%AFense%20vluchtelingen_EN_052022.pdf](https://info-ukraine.be/sites/default/files/documents/files/Brochure%20Informatie%20voor%20Oekra%C3%AFense%20vluchtelingen_EN_052022.pdf) (accessed 24 April 2023).

⁶⁸ RIZIV, *Oekraïense vluchtelingen hebben toegang tot de ziekteverzekering*, 2022:

<https://www.inami.fgov.be/nl/nieuws/Paginas/belgische-verzekering-geneeskundige-verzorging-oekraïense-vluchtelingen.aspx> (accessed 24 April 2023).

⁶⁹ Vreemdelingenrecht & internationaal familierecht, nt. (23).

which implies that the person is entitled to an increased allowance, and thus pays less co-payment/out-of-pocket.⁷⁰

Concerning persons with special needs, different groups are identified in Article 13 of Directive 2001/55. Unaccompanied minors are reported at the Guardianship service, and they are assigned a guardian.⁷¹ However, due to the lack of guardians, this can take up to 5 months. Therefore, vulnerable unaccompanied minors receive priority treatment, which is for instance the case for minors with serious medical or psychological problems, pregnant minors, and minors with indications of abuse or trafficking.

For displaced persons who have undergone serious forms of psychological, physical, or sexual violence, several assistance agencies are available.⁷² The Belgian website⁷³ mentions agencies for those in need of a supportive conversation or psychological counselling (e.g., We Mind Helpline, Centre for General Welfare (CAW), general practitioner), for those who had to deal with violence and exploitation (e.g., Federal Public Service Employment Labour and Social Dialogue, Team Justice, Helpline Violence, care centres for sexual violence), and many more links to organisations who help persons to deal with other issues (e.g., how to deal with stress; how to help children to deal with stress and loss).

Finally, Ukrainian displaced persons with disabilities can claim a disability allowance once they have the Certificate of temporary protection.⁷⁴ This allowance can be claimed through the PCSW, the municipality, or the health insurance fund. Between January 2022 and February 2023 around 404 applications have been made by Ukrainian nationals for an integration allowance or income replacement allowance, of which 274 were granted.⁷⁵

3.3. Access to education.

Access to education is specified in Article 14 of Directive 2001/55, both for persons under 18 years, who should have access to the education system under the same conditions as nationals of the host Member State, and for adults, who may be provided access to the general education system. In Belgium, each child has the right to education starting from 2.5 years old and must follow compulsory education from 5 until 18 years old.⁷⁶ This compulsory education applies from the 60th day after registration in the national register in a Belgian municipality. Seeing that education is a regional competence, specific information can be provided per region. In this section, education for persons under 18 years old is discussed first, followed by information on the general education system for adults (higher education or adult education), and it is concluded by information on child benefits.

⁷⁰ Vreemdelingenrecht & internationaal familierecht, *ibid*.

⁷¹ Vreemdelingenrecht & internationaal familierecht, *ibid*. As is also specified in Article 16 of Directive 2001/55.

⁷² .BE, *Ik ben gevlucht uit Oekraïne*, available at <https://info-ukraine.be/nl/ondersteuning-belgie/psychosociale-ondersteuning-en-bescherming/ik-ben-gevlucht-uit-oekraïne> (accessed 24 April 2023).

⁷³ See: <https://info-ukraine.be/nl/ondersteuning-belgie/psychosociale-ondersteuning-en-bescherming/ik-ben-gevlucht-uit-oekraïne> (accessed 24 April 2023).

⁷⁴ .BE, *Ik heb een handicap*, available at <https://info-ukraine.be/nl/ondersteuning-belgie/ik-heb-een-handicap> (accessed 24 April 2023).

⁷⁵ Working Group Social Impact Corona Crisis, nt. (5).

⁷⁶ Vreemdelingenrecht & internationaal familierecht, nt. (23).

From March 2022 until the end of February 2023, 7,766 children were enrolled in education in Flanders, 2,686 in Wallonia, and 2,138 in Brussels.⁷⁷ Out of this total of more than 12,500 children, 67% was enrolled in preschool and primary education (2.5-6 years old and 6-12 years old), and 33% was enrolled in secondary education (12-18 years old).

In all three of the Belgian regions,⁷⁸ efforts are made to help Ukrainian displaced children with their integration. In the Flemish speaking region, there are three different tracks regarding education for Ukrainian displaced children:⁷⁹ 1) attending school in regular classrooms (primary and special education), where Ukrainian pupils pursue learning objectives together with other pupils; 2) reception in separate classes referred to as reception education for non-Dutch speaking children (OKAN)⁸⁰ (primary and secondary education), where the focus is on Dutch language acquisition and OKAN learning objectives (although this is for newcomer children in general, not only Ukrainian war migrants); 3) reception outside schools in separate classes, e.g. in collective reception initiatives such as emergency villages, in which they aim for Ukrainian learning goals under the guidance of Ukrainian teachers, supported by an online platform of the Ukrainian Ministry of Education.⁸¹ This online platform hosts lessons in 18 main disciplines consisting of videos, notes, and tests, all complying with the current state educational programs, and its quality is checked by the Ukrainian Institute for Education Development.⁸² It is aimed towards students in grades 5 until 11 which corresponds to students in the final two years of primary education (10-12 years) and the first five years of secondary education (12-17 years) in Belgium.⁸³ Children from Ukraine who receive education through this route are considered to be home schooled.⁸⁴

In the French speaking region, Ukrainian parents are also free to choose which school to enrol their child in. Some schools have a special system called DASPA⁸⁵ for the reception, schooling, and integration of newcomer children (not only for Ukrainian displaced persons).⁸⁶ Children can stay in this DASPA class from one week to 18 months, during which the child benefits from specific supervision allowing him/her to adapt and integrate into the Belgian socio-cultural and educational system. Afterwards, the child can be directed to the

⁷⁷ See: https://dofi.ibz.be/sites/default/files/2023-02/Infographic%20UKR_NL.pdf (accessed 24 April 2023).

⁷⁸ In the case of education, the three communities are responsible. Therefore, it concerns the Flemish, French and German speaking communities. In Brussels Capital region, persons have the choice between Flemish speaking education and French speaking education.

⁷⁹ Vlaanderen, *Onderwijs*, 2023, available at <https://www.vlaanderen.be/vlaanderen-helpt-oukraine/onderwijs> (accessed 24 April 2023).

⁸⁰ Onthaalonderwijs voor anderstalige kinderen (Reception education for non-Dutch speaking children).

⁸¹ See: <https://lms.e-school.net.ua/> (accessed 24 April 2023).

⁸² Decide, *All-Ukrainian Online School Platform. What is it and who is it for?*, 2023, available at <https://decide.in.ua/en/all-ukrainian-online-school-platform-what-is-it-and-who-is-it-for/> (accessed 24 April 2023).

⁸³ Vlaanderen, *Onderwijs in Oekraïne*, 2023, available at: <https://www.onderwijs.vlaanderen.be/sites/default/files/2022-03/Onderwijs%20in%20Oekra%C3%AFneDEF.pdf> (accessed 24 April 2023).

⁸⁴ Vreemdelingenrecht & internationaal familierecht, nt. (23).

⁸⁵ *Dispositif d'accueil pour les élèves primo-arrivants* (Reception system for newcomer students).

⁸⁶ Fédération Wallonie-Bruxelles, *Informations à l'attention des réfugiés ukrainiens*, 2023, available at http://www.enseignement.be/index.php?page=24986&navi=3044&rank_page=24986 (accessed 24 April 2023).

course best suited. Schools that do not have a DASPA system organise an FLA (French language learning) support system. This device is an additional framework to help a child in learning the French language.

Finally, the third competent region for education is the German speaking region. Newly arrived students (not only Ukrainian war migrants) have the possibility to enrol in ‘**first reception classes**’ in which the child first learns the language and is being prepared for general lessons.⁸⁷ Most children attend the first reception classes for one school year. There they are also prepared for general lessons. However, not every school organises these classes.

In addition to education for persons under 18 years, Article 14 of the Directive 2001/55 specifies that Member States may allow adults under temporary protection to access the general education system. On the one hand, Ukrainian displaced persons can enrol in higher education. If their diploma is equivalent to the requested Belgian diplomas, they can access the higher education.⁸⁸ In Flanders, the number of Ukrainian persons enrolled in higher education amounted to 390 until the end of February 2023.⁸⁹ In the French speaking region, around 100 students were enrolled in higher education (universities, colleges, and art colleges) until February 2023.⁹⁰ Ukrainian students under temporary protection can also receive study grants, starting from academic year 2022-2023.⁹¹

On the other hand, there is adult education available. Especially in Flanders there is a strong focus on education for Dutch as a second language (NT2)⁹². Temporarily displaced persons can choose to follow a specially developed ‘welcome module NT2’⁹³ or to enrol in regular NT2 education; they have the right to follow an integration course but are not obliged to do so. By the end of February 2023, 1,775 displaced persons under temporary protection followed the ‘welcome module’ and 11,890 registered for the regular offer of adult

⁸⁷ Info Integration, *Wohnun Schule Mobilität*, 2023, available at:

<https://www.info-ostbelgien-ukraine.be/wohnung-schule-and-mobilitat> (accessed 24 April 2023).

⁸⁸ Vlaanderen, *Inschrijven met een buitenlands diploma*, 2023, available at:

<https://www.onderwijs.vlaanderen.be/en/node/66> (accessed 24 April 2023).

⁸⁹ Immigration Office, nt. (7).

⁹⁰ Redatiom, *Plus de 12.000 enfants ukrainiens inscrits dans l'enseignement obligatoire en Belgique depuis un an*, in 7 sur 7, 23 February 2023, available at <https://www.7sur7.be/belgique/plus-de-12-000-enfants-ukrainiens-inscrits-dans-l-enseignement-obligatoire-en-belgique-depuis-un-an-a1f4e49d/?referrer=https%3A%2F%2Fwww.google.com%2F> (accessed 24 April 2023).

⁹¹ Vlaanderen, *Extra maatregelen hoger onderwijs*, 2023, available at <https://onderwijs.vlaanderen.be/nl/oekraïnecrisis/oekraïnecrisis-hoger-onderwijs/extra-maatregelen-hoger-onderwijs> (accessed 24 April 2023).

⁹² Immigration Office, nt. (7).

⁹³ This welcome module NT2 is organised by two different instances (Vlaanderen, *Oekraïnecrisis: volwassenenonderwijs*, 2023, available at <https://onderwijs.vlaanderen.be/nl/oekraïnecrisis-volwassenenonderwijs> (accessed 24 April 2023)). First, adult education centres (CVO VOLT) have specifically designed a course. This is a 40-hour welcome module for Ukrainians which introduces them to the Dutch language. They learn to have short, social conversations. At the end of the module, they can provide basic information about themselves and their environment. [CVO VOLT, *NT2/Dutch - Welkom voor vluchtelingen uit Oekraïne*, 2023, available at <https://www.cvovolt.be/nt2/extra-modules/nt2-dutch-welkom-voor-vluchtelingen-uit-oekraïne/> (accessed 24 April 2023)]. Second, basic education centres (for persons who have difficulties with reading or writing in Latin script or difficulties with learning) offer their ‘Breakthrough 1’ module of 60 hours. In this module, persons learn to introduce themselves and learn to understand a short slow talk [Agentschap Integratie & Inburgering, *Hoe leer je Nederlands als tweede taal?*, available at https://www.integratie-inburgering.be/sites/default/files/2021-04/20200218_brochure_Nederlands.pdf (accessed 24 April 2023)].

education.⁹⁴ Concerning adult education, persons under temporary education are entitled to full exemption from the registration fee in Flanders.⁹⁵

In Wallonia, displaced persons from Ukraine benefiting from temporary protection and their family members are also not subject to the obligation to follow the integration process, although there is a free course available.⁹⁶ Several websites are provided where Ukrainian displaced persons can learn French, either online or in physical classes.⁹⁷

Finally, integration courses as well as language courses are offered in the German speaking community. An **'Integration Pathway' can be followed with includes language courses, an integration course, and social and professional information.**⁹⁸ In addition, different ways to learn the language are available in East Belgium, and one can chose to learn German or French.

Displaced persons from Ukraine with the status of temporary protection have the right to social policy measures, and thus also to child benefits. In Belgium, this is organised on a regional level.⁹⁹ In principle, every child domiciled in Belgium is entitled to child benefits up until the age of 18 (or 25 if the child follows studies or a vocational training). In Wallonia, the age limit is set at 21 years for children born after 1 January 2001 unless they earn an income. For the displaced children under temporary protection, a child benefit can be paid under the condition that the person has a Certificate of temporary protection and is registered in a Belgian municipality.¹⁰⁰ To receive this child benefit, the parents need a bank account, which can be arranged under the **'basis banking service' offered by Belgian banks.**¹⁰¹

Child benefit schemes of the federated entities provide for 1) a monthly basic allowance; 2) social means-tested supplements; 3) monthly age supplements (restricted to some federated entities);¹⁰² 4) birth or adoption grants; 5) supplementary allowances for children with disabilities; and 6) annual age supplements. Numbers on the use of child benefits for Ukrainian displaced persons are not known, but out of the total group of 67,706 persons

⁹⁴ Immigration Office, nt. (7).

⁹⁵ Vlaanderen, nt. (93).

⁹⁶ Wallonie, *Je suis un réfugié ukrainien*, 2023, available at <https://www.wallonie.be/fr/ukraine/je-suis-un-refugie-ukrainien> (accessed 24 April 2023).

⁹⁷ Cellule de coordination de la Région wallonne pour l'accueil des réfugiés ukrainiens, *Vous êtes réfugié en provenance d'Ukraine? Guide pratique sur votre accueil en Wallonie*, 2023, available at :

<https://www.wallonie.be/sites/default/files/inline-files/Guide%20pratique%20r%C3%A9fugi%C3%A9s%20WEB.pdf> (accessed 24 April 2023).

⁹⁸ Info Integration, *Bildung Freizeit*, 2023, available at <https://www.info-ostbelgien-ukraine.be/bildung-and-freizeit> (accessed 24 April 2023).

⁹⁹ European Commission, *Belgium – Family benefits*, 2023, available at <https://ec.europa.eu/social/main.jsp?catId=1102&intPageId=4414&langId=en> (accessed 24 April 2023).

¹⁰⁰ For information on family benefit in Brussels, see:

<https://www.helpukraine.brussels/en/lookingfor/looking-financial-support-take-care-my-family> (accessed 24 April 2023) and <https://www.parentia.be/nl-BXL/gezinsadministratie/oekraiense-vluchtelingen-en-ontheemden-wat-met-de-kinderbijslag> (accessed 24 April 2023). See for information on family benefit in Flanders: <https://www.groeipakket.be/Oekra%C3%AFne> (accessed 24 April 2023).

¹⁰¹ .BE, *I wish to open a bank account*, 2023, available at <https://info-ukraine.be/en/assistance-belgium/i-wish-open-bank-account> (accessed 24 April 2023).

¹⁰² Age supplements do not exist in the German-speaking Community. The same is true in the Flemish Community for children born on or after 1 January 2019. Other supplements are provided in particular circumstances for children born before 1 January 2019 in the Flemish Community, as well as in the French-speaking Walloon Region.

with a Certificate of temporary protection, 22,199 or 33% is younger than 18 years old and is therefore eligible to receive a child benefit.

4. Social policy measures for Ukrainians: supporting professional activity.

As specified in Article 12 of the Directive, persons enjoying temporary protection should be able to engage in employed or self-employed activities. In Belgium, two acts in particular¹⁰³ ensure the equal treatment on the labour market as regards working conditions for foreign nationals in a particular residence situation.¹⁰⁴ They specify the foreigners who are authorised to work, and this concept includes the persons authorised to stay as beneficiaries of temporary protection under Article 57/29 of the Residence Law.

In Belgium, persons under temporary protection have unlimited access to the Belgian labour market if they are in possession of the A card (or Annex 15 when awaiting the A card).¹⁰⁵ Since 20 August 2022 persons with the status of temporary protection are also exempt from the obligation to hold a ‘professional card’ if they want to work as a self-employed person.¹⁰⁶ However, they should still meet all other formal requirements to work as a self-employed, for instance to register as a self-employed at one of the accredited business counters.¹⁰⁷

In the following sections, the number of employed persons under temporary protection is looked at (sec. 4.1), the recognition of diplomas (sec. 4.2), the risk of exploitation of displaced persons (sec. 4.3), and the posting of workers under temporary protection (sec. 4.4).

4.1. Number of employed persons.

At a Belgian level, it is known that 42,138 or 62.2% of the displaced persons from Ukraine who received a Certificate of temporary protection are at a working age (18-64 years old).¹⁰⁸ Unfortunately, national data on how many of those under temporary protection are currently employed, are unavailable. In December 2022 it was estimated that around one in five of

¹⁰³ *Law on the employment of foreign nationals in a specific situation of residence. Royal Decree of 2 September 2018 implementing the Act of 9 May 2018 on the employment of foreign nationals in a specific situation of residence* (Wet van 9 mei 2018 betreffende de tewerkstelling van buitenlandse onderdanen die zich in een specifieke verblijfssituatie bevinden. Koninklijk besluit van 2 september 2018 houdende de uitvoering van de wet van 9 mei 2018 betreffende de tewerkstelling van buitenlandse onderdanen die zich in een specifieke verblijfssituatie bevinden).

¹⁰⁴ ELA, nt. (14).

¹⁰⁵ .BE, *What are my rights?*, 2023, available at <https://info-ukraine.be/en/assistance-belgium/what-are-my-rights> (accessed 24 April 2023).

¹⁰⁶ *Vreemdelingenrecht & internationaal familierecht*, nt. (23). Art. 1, 15° *Royal decree exempting certain categories of foreigners from the obligation to hold a professional card to exercise an independent professional activity* (KB tot vrijstelling van bepaalde categorieën van vreemdelingen van de verplichting houder te zijn van een beroepskaart voor de uitoefening van een zelfstandige beroepsactiviteit).

¹⁰⁷ *See*: <https://economie.fgov.be/en/themes/enterprises/starting-business/steps-starting-business/steps-take-enterprise-counter/accredited-business-counters> (accessed 24 April 2023).

¹⁰⁸ Statbel, nt. (1).

displaced Ukrainians at working age had gained some work experience in Belgium.¹⁰⁹ In addition, since 24 February 2022 1,067 Ukrainian nationals registered as self-employed in Belgium and were still active on 20 February 2023.¹¹⁰

This share of about 20% who is working in Belgium seems particularly low when comparing it to neighbouring country the Netherlands where between 72% and 83% is working.¹¹¹ On the one hand this can be explained by the high number of short-term contracts in the Netherlands of sometimes 10 or 12 hours a week, while the number of those working full-time is lower in the Netherlands than in Belgium. On the other hand, it is noted that language requirements (imposed by law and/or by employers) is the main obstacle to find work in Belgium.¹¹²

An estimation of the relative importance of Ukrainians on the labour market is made based on data from 345,000 employees by more than 40,000 private sector employers in Belgium by HR-service company Acerta. By June 2022, compared to June 2021, 38% more Ukrainian people were working in Belgium, although the total share of Ukrainians in the Belgian workforce only increased from 0.10% to 0.14%.¹¹³ The growth of female Ukrainian employees (+44.2%) was higher than for male Ukrainian employees (+25.8%). Most of the Ukrainian employees are active in the services sector (30.7%), manufacturing (22.2%), and trade (17.4%).

To get a better idea of the numbers, one can look at the regional level, as some more data are available there, namely from the public employment services (VDAB in Flanders, Forem in Wallonia, and Actiris in Brussels). However, unlike unemployed persons who also receive an (equivalent) living wage, persons under temporary protection are not obliged to register at these public employment services.¹¹⁴ Therefore, the actual number of displaced Ukrainians working in Belgium cannot be reported. The Flemish government decided in

¹⁰⁹ Working Group Social Impact Corona Crisis, nt. (5).

¹¹⁰ Working Group Social Impact Corona Crisis, *ibid*.

¹¹¹ Eeckhout K., *Factcheck: ja, zowat 80 procent van de Oekraïense vluchtelingen in Nederland werkt*, *Knack*, 8 December 2022, available at <https://www.knack.be/factcheck/factcheck-ja-zowat-80-procent-van-de-oekraïense-vluchtelingen-in-nederland-werkt/> (accessed 24 April 2023). However, seeing that the actual number of those working in Belgium is not known, one should be careful with this comparison. In the Netherlands, there is a reporting obligation for employers when they have recruited a Ukrainian war migrant or when a Ukrainian war migrant leaves the company (Eeckhout K., *ibid*).

¹¹² Macken F., *Slechts kwart Oekraïense vluchtelingen deed werkervaring op: "Ik wil weer lesgeven, maar moet eerst vlot Nederlands spreken"*, in *VRT NWS*, 11 February 2023, available at <https://www.vrt.be/vrtnws/nl/2023/02/10/oekraïners-aan-het-werk/> (accessed 24 April 2023).

¹¹³ Acerta, *38% meer Oekraïners aan de slag op Belgische arbeidsmarkt in vergelijking met 2021 (maar hun aandeel blijft erg beperkt)*, 18 July 2022, available at <https://www.acerta.be/nl/insights/in-de-pers/38-meer-oekraïners-aan-de-slag-op-belgische-arbeidsmarkt-in-vergelijking-met-2021-maar-hun-aandeel-blijft-erg-beperkt> (accessed 24 April 2023).

¹¹⁴ Terrière L., *Oekraïense vluchtelingen moeten zich verplicht inschrijven bij VDAB, beslist Vlaamse regering*, in *De Morgen*, 16 December 2022, available at <https://www.demorgen.be/snelnieuws/oekraïense-vluchtelingen-moeten-zich-verplicht-inschrijven-bij-vdab-beslist-vlaamse-regering~b3e2313f/> (accessed 24 April 2023).

December 2022 to make this enrolment obligatory at VDAB.¹¹⁵ This measure is said to be introduced in spring 2023.¹¹⁶

In Flanders, 7,520 displaced Ukrainians enrolled at VDAB between March 2022 and February 2023.¹¹⁷ When comparing it to the total number of Ukrainian displaced persons registered in Flanders (31,748 until 5 February 2023),¹¹⁸ it appears that less than one in four is registered.¹¹⁹ Around 37% of these 7,520 persons have already worked since being enrolled, and 23% are currently still working. The fact that only about one third has already worked in Flanders is mainly due to language barriers: 97% of those enrolled at VDAB have no or limited knowledge of Dutch, and the same applies to English for 70% of those enrolled.¹²⁰

In Wallonia, the number of Ukrainian nationals¹²¹ looking for a job between March 2022 until the end of January 2023 was 2,220, of which more than 70% is female.¹²² This corresponds to 20% of displaced persons registered in Wallonia (10,877 until 5 February 2023).¹²³ Of the more than 2,000 persons 348 or 16% have performed at least one day of paid work in Wallonia.

By the end of December 2022, 2,420 Ukrainian jobseekers¹²⁴ enrolled at Actiris in Brussels from the beginning of the war,¹²⁵ which represents 22% of displaced persons registered in Brussels (10,824 until 5 February 2023).¹²⁶ From this group, 317 or 13% found a job (of which 84.4% women and 15.6% men) and 475 or 20% followed a training course (of which a language course is most popular, namely 97.1% of all trainings). Jobseekers of Ukrainian nationality are mostly active in cleaning, interim, and catering.

Overall, a low share of Ukrainian displaced persons is active on the Belgian labour market. The language barrier is certainly one of the largest challenges in this regard.¹²⁷ Even though the educational level of Ukrainian displaced persons is higher than that of other groups of

¹¹⁵ Bleus D., *Inschrijving van Oekraïners bij VDAB wordt verplicht*, in *De Tijd*, 16 December 2022, available at <https://www.tijd.be/politiek-economie/belgie/vlaanderen/inschrijving-van-oekraïners-bij-vdab-wordt-verplicht/10435172.html> (accessed 24 April 2023).

¹¹⁶ Willocx C., Stassijns J., *Alle Oekraïners moeten zich dit voorjaar verplicht inschrijven bij VDAB: "Met een leefloon simuleer je ze niet"*, in *Gazet van Antwerpen*, 15 February 2023, available at https://www.gva.be/cnt/dmf20230214_97536102 (accessed 24 April 2023).

¹¹⁷ Immigration Office, nt. (7).

¹¹⁸ Immigration Office, *ibid.*

¹¹⁹ However, it should be noted that we compare the group of displaced Ukrainians registered at VDAB with the total group of persons under temporary protection registered in Flanders, as a breakdown by age group is not available on a regional level. Therefore, the share is underestimated, seeing that the denominator is too large, as it also includes those not of working age.

¹²⁰ Macken F., nt. (112).

¹²¹ This does not necessarily only concern Ukrainian persons under temporary protection.

¹²² Immigration Office, nt. (7).

¹²³ Immigration Office, *ibid.* However, it should be noted that we compare the group of Ukrainian nationals registered at Forem with the total group of persons under temporary protection registered in Wallonia, as a breakdown by age group is not available on a regional level. Therefore, the share is underestimated, seeing that the denominator is too large, as it also includes those not of working age.

¹²⁴ This does not necessarily only concern Ukrainian persons under temporary protection.

¹²⁵ Immigration Office, nt. (7).

¹²⁶ Immigration Office, *ibid.* However, it should be noted that we compare the group of Ukrainian nationals registered at Actiris with the total group of persons under temporary protection registered in Brussels, as a breakdown by age group is not available on a regional level. Therefore, the share is underestimated, seeing that the denominator is too large, as it also includes those not of working age.

¹²⁷ Working Group Social Impact Corona Crisis, nt. (5).

forced migrants, those who are working are mostly active in less qualified or temporary jobs. Therefore, there is a high risk of over qualification and skills mismatch.

4.2. Recognition of diplomas.

There is a national website¹²⁸ where persons can get information on how to get their qualifications or skills recognised in Belgium, which should also be used by Ukrainian displaced persons. Through this website, it is possible to get in touch with the correct organisations to submit the application. For some procedures, the cost is dropped when a person can provide proof of their refugee, temporary protection, or asylum seeker status.¹²⁹ For displaced persons from Ukraine in particular, the recognition of a diploma is both free in Flanders¹³⁰ and Wallonia-Brussels.¹³¹

Unfortunately, getting a diploma recognised can take a long time.¹³² Together with the language barrier, the need to get a job fast, and the uncertainty of their future situation, this causes Ukrainian displaced persons to often chose temporary jobs and jobs below their skills level. For instance, while half of the Ukrainians enrolled at VDAB in Flanders are highly educated, especially jobs in the cleaning, agriculture, and construction sector are taken up by them.¹³³

Although the European Commission asked for “fast, flexible, and efficient recognition procedures for academic recognition by responsible institutions” in one of its recommendations,¹³⁴ Belgium has not made any legislative changes (yet) in this direction.¹³⁵

4.3. Risk of labour exploitation.

Seeing that forced migrants in general are often unaware of the exact regulations on the labour market of the receiving country, the risk of labour exploitation is higher for this group of persons when they start employment (also because of the large wage differences between Ukraine and Belgium). Already at the end of March 2022, the first cases of sexual and

¹²⁸ See: <https://www.mydiploma.be/recognitions/> (accessed 24 April 2023).

¹²⁹ See for instance: <https://www.mydiploma.be/recognitions/?procedure=equivalence-niveau> (accessed 24 April 2023) and click “Refugee/Asylum seeker”.

¹³⁰ Vlaanderen, *Informatie over de erkenning van diploma's uit Oekraïne*, 2023, available at <https://www.naricvlaanderen.be/nl/informatie-over-de-erkenning-van-diplomas-uit-oekraïne> (accessed 24 April 2023).

¹³¹ Fédération Wallonie-Bruxelles, *Réfugiés et bénéficiaires de la protection subsidiaire ou temporaire*, 2023, available at <https://equisup.cfwb.be/refugies-et-beneficiaires-de-la-protection-subsidiaire-ou-temporaire/> (accessed 24 April 2023).

¹³² Macken F., nt. (112).

¹³³ Romans S., *Oekraïense vluchtelingen raken moeilijk aan een job*, in *De Tijd*, 13 February 2023, <https://www.tijd.be/politiek-economie/belgie/vlaanderen/oekraïense-vluchtelingen-raken-moeilijk-aan-een-job/10447058.html> (accessed 24 April 2023).

¹³⁴ Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia's invasion of Ukraine, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022H0554> (accessed 24 April 2023).

¹³⁵ ELA, nt. (14).

economic exploitation were reported by several organisations in Belgium and abroad.¹³⁶ The Belgian Social Intelligence and Investigation Service (SIOD/SIRS) reports that Ukrainian displaced persons might indeed have an increased risk at (labour) exploitation or human trafficking.¹³⁷ Therefore, an information pamphlet¹³⁸ was composed to make displaced persons aware of what is considered as ‘exploitation’. Furthermore, concerning labour exploitation, an information brochure containing a checklist allows displaced persons to verify whether their rights as worker or self-employed are respected.¹³⁹ Additionally, for (unaccompanied) minors fleeing from Ukraine a specific brochure on human trafficking was developed.¹⁴⁰

The Social Information and Investigation Service mentions in its Annual report on social dumping of 2022 following action: ‘**Heightened attention to the working conditions of refugees, including refugees from Ukraine**’.¹⁴¹ In this context, additional labour inspections were carried out, with a focus on prevention and the applicable labour and social security conditions during the employment of third-country nationals, including Ukrainians. In total, 324 companies were inspected,¹⁴² and infringements were found in 88 companies (27% of the total inspected).

4.4. Posting of persons under temporary protection.

In Belgian legislation, it is not specifically mentioned whether persons under temporary protection can be posted from/to Belgium. There are no indications that a different policy is applied compared to other third-country nationals posted to Belgium.¹⁴³

As seen in section 4.1, considering that the total number of displaced persons active on the Belgian labour market is not known, the number of displaced persons being posted from or to Belgium is also unavailable. However, general data on the number of received posted Ukrainians in Belgium can already provide a first indication. *Figure 2* shows the growth of posted Ukrainians arriving in Belgium, going from 1,095 in 2016 to 24,400 in 2021. Nevertheless, from 2021 to 2022 a small decrease can be noted of 4.8% (mainly due to a

¹³⁶ RSZ, *RSZ en andere inspectiediensten extra attent voor uitbuiting van Oekraïense vluchtelingen*, 28 March 2022, available at:

<https://www.rsz.be/nieuws/2022/03/28/rsz-en-andere-inspectiediensten-extra-attent-voor-uitbuiting-van-oekraïense-vluchtelingen> (accessed 24 April 2023).

¹³⁷ SIOD, *Oekraïne: verhoogde kans op uitbuiting en mensenhandel*, 23 March 2022, available at <https://www.siod.belgie.be/nl/news/oekraïne-verhoogde-kans-op-uitbuiting-en-mensenhandel> (accessed 24 April 2023).

¹³⁸ See: https://www.siod.belgie.be/sites/default/files/2022-02/CAMPAGNE_OEKRAINE_EN.pdf (accessed 24 April 2023).

¹³⁹ <https://www.sirs.belgique.be/sites/default/files/Downloads/Brochures/Brochure%20werk%20EN%20WEB.pdf> (accessed 24 April 2023).

¹⁴⁰ https://www.sirs.belgique.be/sites/default/files/Downloads/Flyer%20UA/flyer%20ukraïne_ENG.pdf (accessed 24 April 2023).

¹⁴¹ SIOD, *Jaarrapport Sociale Dumping 2022*, available at <https://www.siod.belgie.be/nl/publicaties/jaarrapport-sociale-dumping-2022> (accessed 24 April 2023).

¹⁴² This includes 250 employers, 1,117 employees, and 191 self-employed persons.

¹⁴³ <https://employment.belgium.be/en/themes/international/posting/concept-and-formalities/formalities/posting-access-territory-and-stay> (accessed 24 April 2023).

decrease of the number of posted workers from 23.429 to 21.952 as the number of posted self-employed increased from 971 to 1.284). However, Ukrainians remain the third most important nationality of posted workers to Belgium in 2022, after the Dutch and Poles. They represent about 10% of the posted workers to Belgium. Posted Ukrainians are sent to Belgium mainly from Poland and Lithuania.¹⁴⁴ Furthermore, it is known that the main sectors of activity for these posted Ukrainians are construction and road freight transport.¹⁴⁵

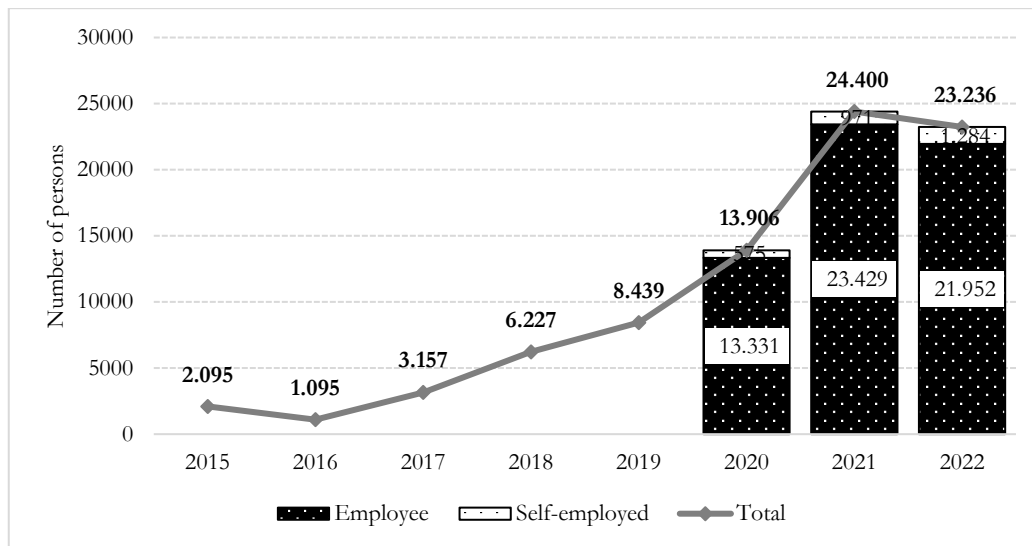


Figure 2. Number of Ukrainians posted to Belgium, 2015-2022.
Source: LIMOSA database.

5. Final considerations.

Belgium adopted several national social policy measures aimed at Ukrainian displaced persons. For instance, they are entitled to a living wage if they do not have enough financial means, they are guided towards sustainable housing, access to healthcare is provided with lower costs, education is organised in such a way to integrate newcomers, and they have access to the Belgian labour market. Nevertheless, while in theory most measures seem to work, in practice it can be quite different. There is for instance (anecdotal) evidence about difficulties in finding housing for Ukrainian displaced persons, insufficient places in OKAN classes to learn Dutch,¹⁴⁶ and discrimination at the labour market. In this regard, Ukrainian

¹⁴⁴ De Wispelaere F., De Smed, L., Pacolet, J., *Posting of workers - Collection of data from the prior notification tools - Reference year 2021*, 2023 forthcoming.

¹⁴⁵ De Wispelaere F., De Smedt L., Muñoz M., Gillis D., Pacolet J., *Posted workers from and to Belgium. Facts and Figures*, 2022, available at: https://kuleuven.limo.libis.be/discovery/search?query=any,contains,LIRIAS3709417&tab=LIRIAS&search_scope=lirias_profile&vid=32KUL_KUL:Lirias&offset=0 (accessed 24 April 2023).

¹⁴⁶ Redation, *Geen plaats voor honderden anderstalige jongeren op school: 'Zij missen zo kansen om Nederlands te leren'*, in *De Morgen*, Belga, 3 April 2023, <https://www.demorgen.be/snelnieuws/geen-plaats-voor-honderden-anderstalige-jongeren-op-school-zij-missen-zo-kansen-om-nederlands-te-leren~b5e86bf8/> (accessed 24 April 2023).

displaced persons encounter the same obstructions as other forced migrants. However, they do seem to have better protection. In that regard, there is the observation that Ukrainian displaced persons, because of the Directive 2001/55, are treated differently (i.e., ‘better’) than other forced migrants. This puts Ukrainians displaced persons at a considerable advantage compared to other protection seekers. To illustrate, in Belgium the federal minister of **Asylum and Migration has been ‘begging’ for more shelter for asylum seekers, while the Flemish government decided to install additional emergency shelter for Ukrainian war migrants.**¹⁴⁷

One area where the adopted measures in Belgium are not yet effective is the support of professional activity. The share of Ukrainian persons active on the Belgian labour market is rather low, and those who are working often do so below their educational level. This can be due to different factors such as language barriers, the demographic of persons fleeing Ukraine (mostly women and children), and the uncertain situation which might prevent people from searching for a sustainable job. It appears that in Flanders, the public employment service is particularly focussing on sustainable work, for instance by organising language courses.¹⁴⁸ However, the question arises whether Ukrainian displaced persons are aiming for contracts with a long duration and for learning Dutch, seeing that their situation is precarious, **and they don’t know whether they will stay in Belgium for a long duration.**¹⁴⁹ Moreover, other initiatives might be useful as well. An example is the All-in-one 4HER model, which supports the fast-track integration of highly educated newcomers (refugees and non-natives) into the Flemish labour market.¹⁵⁰ Additionally, mobilising more volunteer coaches and mentors would help integrate displaced persons in the labour market.¹⁵¹

Throughout this chapter, it has become clear that Belgium is a complex country where different areas of social policy are arranged either on a national level or on different regional levels. This Belgian complexity can cause a problem for the integration of Ukrainian displaced persons.¹⁵² For example, the complexity of the Belgian system and the responsibilities of each governmental department, a lack of a clear understanding of the enrolment process of schools, and the rather long waiting time to receive the necessary documents such as a recognition of a diploma. Therefore, it is important that different coordination mechanisms established in response to the influx of persons displaced by the war in Ukraine are looked at, to identify synergies and avoid duplication. This is provided in

¹⁴⁷ Andries S., *Tervijl De Moor smeekt om opvanglocaties, zoekt Vlaamse regering extra opvang voor Oekraïners*, in *De Standaard*, 5 April 2023, available at https://www.standaard.be/cnt/dmf20230404_96434907 (accessed 24 April 2023).

¹⁴⁸ Romans S., nt. (135).

¹⁴⁹ Some may also want to move to another Member State (e.g., to Germany).

¹⁵⁰ See: <https://www.all-in-one4her.eu/> (accessed 24 April 2023).

¹⁵¹ Yilmaz F., Coban S., *Rapid Response for Facilitating Ukrainian Refugees’ Orientation and Labour Market Integration in Flanders, Policy Brief*, in *Horizon Insights*, 5, 1, 14-21, available at https://behorizon.org/wp-content/uploads/2022/06/Horizon-Insights_2022_V5-11.pdf#page=18 (accessed 24 April 2023).

¹⁵² Marusyak B., *Integration of Ukrainian refugees in Belgium: Challenges and the way ahead*, 21 June 2022, available at <https://www.promoteukraine.org/integration-of-ukrainian-refugees-in-belgium-challenges-and-the-way-ahead/> (accessed 24 April 2023).

an IOM (International Organization for Migration) ‘Good practice report’¹⁵³ on ‘BE with U’, a cooperation between different Belgian public services.¹⁵⁴

Finally, this contribution has demonstrated the need for more monitoring of persons under temporary protection. Data which are available show a favourable picture for this group, but in general, not much data are available on their socio-economic situation and labour market integration.¹⁵⁵ Only when such data are available, we will know whether there is a risk of non-take-up of certain rights.

¹⁵³ BE with U, *Good Practices Report An analysis of good practices for coordination mechanisms for the welcoming and integration of newcomers in Belgium and Europe*, 2023, available at: <https://belgium.iom.int/sites/g/files/tmzbd11286/files/Be%20with%20U/Good%20Practice%20Report.pdf> (accessed 24 April 2023).

¹⁵⁴ It concerns the Federal Public Service Social Security (FPS SS), the Public Planning Service Social Integration (PPS SI), the Service Public de Wallonie Intérieur et Action Sociale (SPW IAS), the International Organization for Migration (IOM) and the Directorate-General for Structural Reform and Support of the European Commission (DG REFORM). See: <https://belgium.iom.int/be-u> (accessed 24 April 2023).

¹⁵⁵ Working Group Social Impact Corona Crisis, nt. (5).

8

Mass influx of people from Ukraine: social benefits and access to the labour market: Bulgaria.

Albena Velikova-Stoyanova*

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 4. Social policy measures for Ukrainians: support for professional activity. 5. Final considerations.

1. General framework.

On 10 March 2022, the Council of Ministers activated temporary protection for displaced persons from Ukraine in Bulgaria by Decision No 144 in accordance with the Council Implementing Decision (EU) 2022/382 establishing the existence of the mass entry of displaced persons from Ukraine within the meaning of Article 5 of the Temporary Protection Directive¹ and for the introduction of temporary protection. At the same time, the Action Plan for temporary protection in the Republic of Bulgaria² was updated and a Humanitarian Aid Programme was adopted.³ The main aim was to create a timely and optimal organisation for taking action to regulate and provide shelter and food for persons seeking and receiving temporary protection in Bulgaria. The decision adopted on 4 May 2022 by the National

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55. Bulgaria transposed the Directive 2001/55 in 2007 with the Asylum and Refugees Act (ARA) (Закон за убежището и бежанците (Prom. SG. 54/31 May 2002) was amended in April 2022, promulgated in State Gazette No. 32 of 26 April 2022, in force from 26 April 2022.

² The National Action Plan for Temporary Protection in the Republic of Bulgaria (Национален план за действие при временна закрила в Република България), adopted by Decision No 506/2011 of the Council of Ministers. The amendments were introduced into Annex No 5 of the Plan - Activities carried out at the points of initial admission.

³ A new 'Program for Humanitarian Assistance to Displaced Persons from Ukraine Granted Temporary Protection in Bulgaria' (Програма за хуманитарно подпомагане на разселени лица от Украйна с предоставена временна закрила в Република България) was adopted by Decision No 317 of 22 May 2022 of the Council of Ministers (amended and supplemented by decisions No. 535, 665, 856, 909, 963 and 1038 of 2022 and decisions No 141 and 212 of 2023. The validity period has been extended until 30 April 2023.)

Assembly (Parliament) was instrumental in this regard. It gives the Council of Ministers a mandate to discuss and implement a package of measures related to the consequences of the war with a view to providing assistance of displaced persons fleeing from Ukraine and putting in place legislative and organisational measures to enhance reception capacity and integration opportunities until conditions are in place for their permanent return to Ukraine.

The urgent solution to the problem of housing and feeding a huge number of persons fleeing the war in Ukraine⁴ and the insufficient capacity of the initial reception facilities created many difficulties in the practical implementation of the Plan. This, in turn, necessitated the additional adoption of a series of Council of **Ministers' decisions**⁵ to extend the period and conditions for financing accommodation (mainly at private hotels in resort areas). It was necessary to plan and organise relocation to other places of accommodation (owned by the central and local government) which, in turn, came under strong public criticism that was well founded. Due to the specificity of the legal status granted to the persons referred to in Article 2 of Implementing Decision (EU) 2022/382 of the Council of 4 March 2022⁶ and, insofar as such status is granted for the first time in the context of Council Directive 2001/55 with a view to fulfilling the obligations envisaged in Articles 12 to 14, the necessary amendments were made to domestic rules (national legislation)⁷ regarding health insurance, access to the labour market, social benefits and registration of aliens within the short period of only two months. A positive assessment can be given to the active measures on the labour market implemented by the competent government

⁴ According to official data, by the end of April 2023, a total of 1 194 117 people entered Bulgaria, of which 155 561 registered for temporary protection.

⁵ Decree No 69 of 5 May 2022 providing health insurance for the persons to whom temporary protection has been granted (**Постановление № 69 от 5 май 2022 г. за здравно осигуряване на лицата с временна закрила по чл. 1а, ал. 3 от Закона за убежището и бежанците и на лицата по чл. 39, ал. 6, т. 2 и чл. 40а, ал. 3а от Закона за здравното осигуряване**), Decision No 318 of 20 May 2022 to accommodate displaced persons from Ukraine in rest centres and in centres for prevention and rehabilitation, in force as from 1 June 2022 (**Решение № 318 от 20.05.2022 г. за настаняване в почивни бази за отдих и в бази за профилактика и рехабилитация на лица, получили временна закрила**) etc. Law Amending and Supplementing the Health Insurance Act (**Закон за здравното осигуряване**) was adopted in order to reflect the need on regulating the health status of beneficiaries of temporary protection in Bulgaria, promulgated in State Gazette No 32 of 26 April 2022, in force from 26 April 2022.

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁷ The Asylum and Refugees Act (ARA), as amended, in force from 26 April 2022 introduces the requirement stipulated in Article 12 of the Directive 2001/55 according to which foreign nationals enjoying temporary protection have the right to work and to vocational training. It follows that displaced persons from Ukraine enjoying temporary protection have the rights to work in Bulgaria without obtaining a work permit, register as jobseekers at the job centre responsible for the area in which they have their permanent or current address registration, and benefit from employment services and vocational training. The Health Insurance Act amended in order to reflect the need on regulating the health status of beneficiaries of temporary protection in Bulgaria, in force as from 26.4.2022. The Labour Migration and Labour Mobility Act was amended to ensure access to the labour market for displaced without a prior authorisation procedure (Article 9(5)), in force from 3 June 2022. The Employment Promotion Act (**Закон за здравното осигуряване**) was amended to ensure the possibility for persons to whom temporary protection has been granted to register with the Employment Agency and receive assistance in order to find a job.

body — the Employment Agency — to incentivise employers to hire persons to whom temporary protection has been granted.

2. Personal scope of applicable support measures.

As is well known, temporary protection is a form of collective protection. It is not granted individually but solely on the basis of a government decision. According to Article 2(2) of the Asylum and Refugee Act (ARA), the Council of Ministers grants temporary protection on the basis of a decision of the Council of the European Union for the period provided for in the decision concerned. Said decision has the character of a general administrative decision in that it is a one-off legal act which creates rights or obligations or directly affects the rights, freedoms or legal interests of an unspecified number of persons. The temporary protection period can be extended if the war in a given country does not end and the situation fails to stabilize (Article 80(1)(5) of the ARA).

In this sense, the decision to grant temporary protection takes as its sole basis and criterion the country of origin of the persons fleeing it en masse as a result of war (or disaster). The categories of persons entitled to temporary protection in Bulgaria are defined in accordance with Article 2 of Decision 2022/382⁸ in temporal terms, which goes beyond the provisions of the Decision. National law, unlike Decision 2022/382, does not impose any restrictions in terms of the date of arrival in Bulgaria (on or after 24 February 2022 or, contrary to EU legislation, before this date). If a person does not fall into one of these categories, they will be subject to the general residence rules applicable to foreign nationals under the Law on Foreigners in the Republic of Bulgaria. A person may also apply for international protection in Bulgaria. Foreign nationals, other than Ukrainian citizens and stateless persons, who resided in Ukraine before the outbreak of the war may be protected on the basis of their temporary residence permit or permanent residence permit issued there, if they have difficulties travelling from Bulgaria to their countries of origin. Upon entry into Bulgaria, Ukrainian citizens may apply for tourist status, as a visa-free regime and the possibility of a 90-day stay have been in place since 2017 by virtue of an agreement between the EU and

⁸ Ukrainian nationals who resided in Ukraine before 24 February 2022; stateless persons or nationals of third countries other than Ukraine who have been granted international protection or equivalent protection in Ukraine; Family members (Article 1(3) of the Supplementary Provisions of the Asylum and Refugees Act **'family members' are: spouses, the wife/husband or persons with whom they are in a proven stable and long-term relationship and their underage children when single; children of age who are single and unable fend for themselves for serious health reasons; the parents of each spouse who are unable to support themselves because of an advanced age or serious illness and have to live in the same household; the parents or guardian of the minor who is not married and to whom an international protection has been provided.); and Stateless persons or third-country nationals who can prove that they have resided legally in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and who cannot return permanently to their country or region of origin under safe conditions. The few cases where police authorities refused registration as TP holders to family members were attributed to a lack of knowledge on the procedures to follow and resolved either by the issuance of guidelines provided from the National Task Force or by requesting individuals to register at the territorial units of the State Agency for Refugees (national asylum authority).**

Ukraine.⁹ Those who intend to stay longer in Bulgaria can choose between obtaining temporary protection (recommended by the authorities upon entry) or requesting international protection. Most of those who have entered Bulgaria do not apply for international protection because, while they are under such protection, they remain without personal documents, which limits their right of movement within the EU. Furthermore, a procedure to obtain international protection would prevent the person concerned from returning to Ukraine.

In due course, the government opted to open numerous police registration points to ensure an efficient registration process (e.g. border crossing points, Migration Directorate offices and police stations). Temporary protection is granted to persons who meet the eligibility criteria upon verbal application to the Border Police, the State Agency for Refugees (SAR) or other bodies of the Ministry of Interior (Migration, Police). Registration is done in person at the nearest Regional Directorate of the Ministry of the Interior or in one of the Registration and Reception Centres. Upon request for confirming the status of temporary protection, the person has to provide information about identity and family ties, as well as photographs. Where an individual satisfies the requirements for confirmation of temporary protection, a registration card is issued, which attests to the right of the person to whom temporary protection has been granted to reside in Bulgaria. Minors, including minors arriving from Ukraine, may be allowed entry into Bulgaria upon presentation of an identity document — foreign passport, domestic passport, identity card or birth certificate and any other available document confirming the identity of the child, regardless of whether or not it is accompanied by an adult (parent, guardian or custodian). Unaccompanied minors are allowed to enter and stay in Bulgaria, taking into account their best interest and right to be covered by temporary protection in the country. Where a child is accompanied by an adult relative or a person close to the family to whom the child has been entrusted by a parent or guardian, this circumstance should be certified by presenting a power of attorney. In the absence of a power of attorney, the person accompanying the child must submit a model declaration to the border police officers in order to assume formal childcare responsibility. A register of children who have applied for asylum has been established. If the child and the accompanying person indicate that they wish to be registered, the child is registered separately and is issued with an independent registration card of an unaccompanied minor/foreign minor under temporary protection. Children under temporary protection represent almost 36 % of the total number of displaced persons (as at 31.12.2022).

After registration, the person is issued with a document called ‘Registration card of a foreigner who has been granted temporary protection’, which contains a photograph, personal data and the foreign **national’s** personal ID number. The national rules on the expiry of temporary protection are the same at those applicable at EU level. The temporary

⁹ Based on the EU agreement with Ukraine on visa-free travel and more specifically on the Regulation 2018/1806/EU, Ukrainian citizens who are holders of biometric passports can enter Bulgaria and stay there for up to 90 days within 180 days. In addition, the Law on Foreigners in the Republic of Bulgaria (*Закон за чужденците в Република България*), in Article 27(2), provides that the length of stay of persons who have entered Bulgaria under visa waiver regime arrangements may be extended once by the administrative bodies competent for control of foreign nationals on humanitarian grounds in connection with exceptional circumstances or where there is public interest.

protection document is valid until 4 March 2024. The beneficiaries of temporary protection enjoy unlimited freedom of movement within Bulgaria. No additional permits or identity documents are required to enjoy the rights and entitlements within the scope of temporary protection. An address registration is necessary for access to social assistance, services and support, which are provided depending on the region and municipality in which the person to whom temporary protection has been granted resides.

Temporary protection in Bulgaria expires if the person leaves the country. If they return to Bulgaria, protection is automatically restored without any further administrative steps. With the Decision of the Council of Ministers of 1.2.2023, the duration of temporary protection was extended — persons granted this status can currently remain in Bulgaria until 4 March 2024.

Temporary protection is withdrawn from a foreign national who is found to pose a threat to national security or society in Bulgaria. Temporary protection is also withdrawn from a foreign national if there are serious grounds to believe that they have committed a war crime, a crime against peace and humanity or an act contrary to goals and principles of the United Nations (Article 17(4) ARA).

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

Foreign nationals enjoying temporary protection are entitled to social assistance (Article 39(1)(4) of the ARA) and are included as a target group in the Law on Social Assistance (Article 2(1)). All options concerning the employment and social security of displaced persons coming from Ukraine are set out in the regulations of the Council of Ministers, the State Agency for Refugees, the General Labour Inspection Service, the Employment Agency (EA) and the Social Assistance Agency (SAA). Most of these have been published in Ukrainian and English. Operational working groups have been set up in regional cities and most municipalities to coordinate and synchronise actions. These include representatives of all competent institutions and non-governmental organisations. Municipal and regional administrations are taking initiatives and participating in the creation of working mechanisms to support the social inclusion and integration of displaced persons from Ukraine. Most Ukrainians stay in hotels on the Black Sea coast because of the large number of beds available, but also because they know the Bulgarian seaside resorts as tourists. It is also important that there are Russian-speaking and Ukrainian-speaking communities in the area of Varna and Burgas, which support the newcomers. However, this is leading to overcrowding in coastal towns and resorts, which do not have the capacity to offer the necessary health, social and educational services for the thousands of mothers with children.

The Council of Ministers has decided to reallocate funds to activities addressing the migration challenges arising from the war in Ukraine. The following were defined as eligible beneficiaries: the Ministry of Tourism, the Administration of the Council of Ministers, the Ministry of Health, the State Agency for Refugees, other ministries, the Bulgarian Red Cross, provincial and municipal administrations. The first stage of the Humanitarian Aid

Programme was launched on 24 February 2022.¹⁰ Subsidies from the state budget were paid through the Unified Tourist Information System to the owners of hotels and other tourist facilities registered in the National Tourist Register, with a total value of BGN 40 (EUR 20.45) excl. VAT per person for accommodation and meals (breakfast, lunch and dinner), including tourist tax. The transport of Ukrainian nationals fleeing the war from the Bulgarian border crossing point to the place of accommodation was also provided by the hotel owner or by the central/local government or the accommodation facility. The subsidy is used to accommodate at least 2 persons in a double room, but not more than 3 persons, with the exception of large families. From 1 June 2022, the next stage of the programme was launched, with the accommodation and food of the Ukrainian war migrants provided in State-owned vacation facilities and sites designated by the Bulgarian government.¹¹ After 1 June 2022, accommodation and meals have also been provided at hotels and tourist sites that accepted the new financial conditions. At this stage of implementation of the Humanitarian Assistance Programme, the accommodation facility provides minimum personal hygiene items, cleaning materials so to enable the sheltered displaced persons to clean their own rooms, detergents and access to a self-service washer and dryer. There is a requirement for the provision of three meals a day, including breakfast, lunch and dinner, and meeting the minimum generally accepted standards for infant and child nutrition. In places where shelter only is provided, hot meals are provided through other humanitarian aid programs. In the event of departure, even for a day, the hotel or tourist site is required by law to remove the resident from the address register immediately. Persons who have found a job are entitled to humanitarian aid for accommodation for up to 1 month from the day they actually start work (not from the day the employment contract is signed). After the end of this first month and the receipt of the first salary, the workers are required to pay for their accommodation at the facility, hotel or tourist place where they are staying. The family members of working persons (spouses, children), as well as relatives with whom they live in shared accommodation and do not work, continue to benefit from humanitarian aid, and their accommodation is paid from the state budget. A significant part of the funding has been provided by the EU.¹²

For people who have found a job and started work, the Bulgarian government has introduced additional incentives for integration. From 6 June 2022, workers with temporary

¹⁰ Decision of the Council of Ministers No 145 of 10 March 2022, approving the Program for the use of humanitarian aid for persons seeking temporary protection in the Republic of Bulgaria as a result of the military actions in the Republic of Ukraine (Решение № 145 на Министерския съвет от 10.03.2022 г. за одобряване на Програма за ползване на хуманитарна помощ за лица, търсещи временна закрила в Република България вследствие на военните действия в Република Украйна), available in Bulgarian at: <https://www.tourism.government.bg/sites/tourism.government.bg/files/uploads/rms144.pdf> (accessed 4 August 2023).

¹¹ Decision of the Council of Ministers No 318 from 20 May 2022, available in Bulgarian at: <https://bit.ly/3H2ra5w> and at <https://www.tourism.government.bg/bg/kategorii/informaciya-zanastanyavane-vuv-vruzka-s-voynata-v-ukrayna/reshenie-no-318-ot-20052022-g> (accessed 12 May 2023).

¹² According to the data of the Ministry of Finance, as of November 2022, Bulgaria has allocated about BGN 520 million for the displaced persons from Ukraine, half of which was paid by the Ministry of Tourism to cover accommodation costs, and the Minister of Tourism confirmed to the media that this amount will increase and that almost 90 % of the money came from European funds.

protection are entitled to an additional 3 months of financial assistance in the amount of BGN 365 (€ 182) per month for rent and overheads (electricity, heating, water, internet). Registration and submission of an application for receiving such assistance by working persons is carried out in person at the job centre in the area where the person reside.¹³

Foreign nationals who enjoy temporary protection are entitled to social assistance (Article 39(1)(4) of the Asylum and Refugees Act) and are included as a target group in the Law on Social Assistance. Access to the system is granted under the same conditions and at the same level as for Bulgarian citizens. It should be noted that the different types of social assistance provided by the national welfare system are scarce. The national authority responsible for the provision of social assistance is the Social Assistance Agency. The provision of social benefits and assistance is geographically dispersed and subject to the condition that the applicant resides in the municipality where the application for assistance is submitted. In the case of beneficiaries of temporary protection, this requirement is considered to be met if the person has registered their address with the police. The social benefits to which displaced persons are entitled (by Decision of the Council of Ministers of March 2022) are as follows: one-off social assistance in the amount of up to BGN 375 (€ 192) to cover urgent needs, including the cost of food, clothing, footwear, personal hygiene products and housing taxes.¹⁴ Displaced persons who are not accommodated at State-owned facilities or hotels have the right to apply for a heating subsidy. The subsidy for the heating season (1 November 2022 – 31 March 2023) in the total amount of BGN 623.55 (€319) was disbursed through the local offices of the SAA. For social services, an application must be submitted to the Social Assistance Directorate in the area where the applicant resides. The Directorates provide full information on the types of appropriate social services available and the terms and conditions for their use. The SAA provided vouchers in the amount of BGN 100 to cover urgent needs for food, children's food and clothing, school supplies, hygiene materials, etc. available from the chain stores operating in Bulgaria, and additionally provided counselling and guidance through appropriate accompanying social integration support measures tailored to individual needs. Until 31.5.2023, voucher recipients also received counselling on their social rights under current legislation with a view to supporting their successful integration, access to the labour market and referral to medical expertise to determine the degree of permanent disability or temporary incapacity, as well as consultations with psychologists and lawyers.

¹³ These incentives were funded under the EU project 'Solidarity', financed through the Operational Programme 'Development of Human Resources' 2014-2020. More information on National Employment Agency portal at: <https://servicesprocess.az.government.bg/service/6f563905-2546-4a26-9dcd-c68edd004177/description> (accessed 12 May 2023).

¹⁴ Displaced persons must provide a Registration Card evidencing temporary protection, their personal document from the country of origin and an address card of a foreign national (issued by the Migration Directorate at the Regional Office of the Ministry of Interior or the hotel where they reside). An application is completed in which personal data of the applicant and his/her family members is declared. The assistance can be received in the post office serving the area where the applicant lives or transferred to a personal bank account with a bank operating in Bulgaria. If the applicants are staying at a hotel and the costs of their stay are paid by the Bulgarian State, there is no obstacle to applying for one-off social assistance.

Appropriate social services under Bulgarian legislation are provided by crisis centres, day care centres, centres for social rehabilitation and integration, centres for public support, mother and baby units and homes for the elderly.

Persons enjoying temporary protection in Bulgaria have the right to health insurance, affordable medical care and medical services under the same conditions as Bulgarian citizens, with the exception of medical care provided in accordance with the rules on the coordination of social security systems as defined in the Health Insurance Act (HIA).¹⁵ In May 2022, the government adopted a dedicated Decree¹⁶ by which it undertook to pay the health insurance contributions for the entire duration of the temporary protection of children up to the age of 18 years and elderly people over the age of 65 years. For all other TP beneficiaries the government has assumed responsibility for paying their health insurance contributions for the first three months of temporary protection. After the first three months have elapsed, individuals in this category are responsible for paying their health insurance contributions themselves.¹⁷ The State Agency for Refugees submits data to the National Revenue Agency on the beneficiaries of temporary protection whose health insurance is covered by the State budget. The data is provided according to the provisions of Regulation No H-13 of 2019 on the content, deadlines, manner and procedure for the submission and storage of data by employers, insured persons and self-insured persons.¹⁸ Displaced persons from Ukraine find it difficult to navigate the healthcare system in order to exercise their rights as patients. They are not sufficiently familiar with the procedure for choosing a general practitioner, which is of paramount importance for general access to healthcare, probably mainly due to the language barrier. According to available data, 80 % of the displaced persons residing in Bulgaria have already sought medical assistance in the country and consider the medical care they received to be good. Due to unfamiliarity with the healthcare system, many displaced persons from Ukraine seek medical assistance in emergency rooms or private centres, which they pay for out of their own pockets.¹⁹

¹⁵ Access to healthcare for persons entitled to temporary protection in Bulgaria was initially limited by law to emergency care only. The law was amended in April 2022 to entitle TP beneficiaries the same level of access to healthcare as nationals (State Gazette No 32/22 from 26 April 2022, enforced on the same date) – see at <https://dv.parliament.bg> (accesses 12 May 2023).

¹⁶ Decree No 69 from 5 May 2022, State Gazette No 35 from 10 May 2022, in force from the same date, available in Bulgarian at: <https://dv.parliament.bg> (accessed 12 May 2023).

¹⁷ If they manage to find employment, the employer will have the obligation to cover the monthly healthcare contribution.

¹⁸ The medical care for persons granted temporary protection and the persons referred to in Articles 39(6)(2) and 40a(3a) of the HIA, provided until the entry into force of the Law amending and supplementing the Health Insurance Act of 2022 are to be paid under the same conditions and procedure as those applicable to Bulgarian citizens. The medical care funding to be paid by the National Health Insurance Fund is remitted through a transfer from the state budget via the budget of the Ministry of Health by an order issued jointly by the Minister of Health and the Managing Director of the National Health Insurance Fund. Until 25 July 2022 the central government paid social insurance contributions for the persons who received temporary protection before 26 April 2022 (health insurance contributions are paid by the state for 90 days from the date of registration). In May 2022, the government adopted a decree by which it undertook the obligation to pay the health insurance contributions for the entire duration of the TP of children under the age of 18 years and elderly people over the age of 65 years.

¹⁹ The conclusions are based on the study ‘Access to healthcare for Ukrainian refugees in Bulgaria’, conducted by the National Patient Organization (NPO) in the period 15.12.2022 - 1.2.2022. The study is part of the

4. Social policy measures for Ukrainians: support for professional activity.

Displaced persons and members of their families enjoying the right to temporary protection under Article 1a(3) of the Asylum and Refugees Act have the right to work in Bulgaria without a permit in order to access the labour market. By way of an additional safeguard the Labour Migration and Labour Mobility Act was amended.²⁰ According to the enacted amendment, a permit for access to the labour market is no longer required for third-country national workers during the period in which they enjoy temporary protection.

The call centre of the Ministry of Labour and Social Policy provides free counselling on access to the labour market in Bulgaria and possibilities for social assistance for children²¹ and families. Special information centres have been set up in most municipal and regional centers and their activities are actively supported by NGOs. A booklet with information on basic labour rights (working hours, wages, holidays, the documents to be provided by the employer before starting work) was produced simultaneously in Bulgarian, Ukrainian, English and Russian by the General Labour Inspection Service in April 2022.²² The EA assists jobseekers (both unemployed and employed) in their choice of occupation and the related vocational training, which allows them to increase their chances of employment. As early as April 2022, employers began to actively offer suitable jobs, along with pre-employment training. As the profile of the displaced is mainly women with children,²³ the first job offers were made by companies in the garment, hotel and restaurant sectors. Surveys by the EA have shown that there are people who want to be teachers and work in childcare.²⁴ The more qualified — doctors, paramedics, pharmacists, nurses — quickly found ways to become more involved. Persons with temporary protection status can register as jobseekers with the Job Centres Directorate in their area of residence and gain access to the Bulgarian labour market for the purpose of employment under simplified procedures.

The Asylum and Refugees Act introduced the requirement set out in Article 12 of the Directive 2001/55 according to which persons enjoying temporary protection have the right to work and vocational training. The beneficiaries of temporary protection can work without

project, financed by Iceland, Liechtenstein and Norway under the EEA Financial Mechanism within the Active Citizens Fund, available in Bulgarian at: <https://npo.bg> (accessed 15 May 2023).

²⁰ SG No 41 of 3.6.2022 (Закон за трудовата миграция и трудовата мобилност).

²¹ A procedure is stipulated by law for submitting applications and enrolling children and students from Ukraine, which allows these children and students to be included in education system in a timely and unhindered manner. One of the barriers to inclusion in the educational system is the requirement for a certain type of vaccine that Ukrainian children must have in order to fulfill the requirements of the Bulgarian immunization calendar. As at the end of 2022, 2 250 children and students from Ukraine were enrolled in Bulgarian schools and in pre-school education groups in kindergartens. All children and students seeking or granted temporary protection have access to free education and training in state and municipal kindergartens and schools. 1 400 Ukrainian students, specialists and doctoral students are studying in Bulgaria. 1 100 of them are in public higher education institutions, and 300 in private ones. A total of 760 are accommodated in student dormitories.

²² See <https://www.gli.government.bg/sites/default/files/upload/images/2022-04/broshura-internet.jpg> (accessed 15 May 2023).

²³ According to data from the United Nations Refugee Agency available at operational data portal: <https://data.unhcr.org> (accessed 15 May 2023).

²⁴ The data were presented by the chairman of the State Agency for Refugees during the discussion ‘The way forward for Ukrainian refugees in Europe and in Bulgaria’, organised by the Bureau of the European Parliament in Bulgaria in April 2022.

a work permit in Bulgaria, register as jobseekers at the job centre in the area where they have their current or permanent address registration and benefit from employment services and training.²⁵ According to the specific rules,²⁶ they may gain access to the Bulgarian labour market in order to work under the simplified procedure. In Bulgaria, displaced persons have the right to seasonal work for up to 90 consecutive days in 12 months in the sectors of agriculture, forestry and fisheries, and the hospitality industry. This requires registration with the EA on the basis of a declaration submitted by the employer. Persons who have the necessary documents evidencing Bulgarian origin can start work immediately (even before they have obtained a residence permit) simply by registering with the Employment Agency. For this purpose, they must have an employment contract with a local employer for a period of at least six months. Displaced persons from Ukraine and their family members who have been granted asylum or international protection in Bulgaria have the right to work in Bulgaria without a permit for access to the labour market. Persons with refugee or humanitarian status may register as jobseekers with their local job centre at their permanent or current address.

Holders of foreign professional qualifications in non-regulated professions in Bulgaria have direct access to the labour market. The recognition of such professional qualifications is within the remit of competence of the employer in accordance with applicable national law. As many displaced persons from Ukraine do not have all necessary documents to prove their qualifications, a decision²⁷ was made to accept their qualifications on a declarative basis. Regulated professions are an exception to this rule.²⁸ Ukrainian citizens with a professional

²⁵ According to Bulgarian legislation, the job matching and mediation services provided either by public or private bodies are free of charge. Information about the job vacancies, announced by the local job centres, is available on the official website of the Employment Agency (EA). As a public intermediary on the labour market, the EA offers a wide range of services to help people who want to work, as well as those who want or need to prepare for work through various forms of training. The EA uses an electronic form to conduct surveys of the needs and attitudes of citizens arriving from Ukraine to work in Bulgaria. A brief guide has been published for a convenience.

²⁶ According to Article 39(1)(2) of the Law on Asylum and Refugees persons granted temporary protection have the right to work and vocational training. It is sufficient that they have been issued a registration card of a foreigner granted temporary protection; no additional permits or certificates are required for beneficiaries of temporary protection to be employed, practice a profession or to carry out an independent commercial or business activity in Bulgaria. As an additional guarantee, the Law on Labour Migration and Labour Mobility was amended in June 2022 (SG 41 of 3.6.2022). According to the amendment, a permit to access the labour market is no longer required for third-country national workers for the period they enjoy temporary protection.

²⁷ This was stated at a press conference on 11 May by the Minister of Innovation after a meeting with employers' organizations, the Agency for Small and Medium Enterprises, the Employment Agency and the Coordination Centre for refugees from Ukraine. Such a recommendation was also given by the Ministry of Labor and Social Policy in accordance with Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia's invasion of Ukraine.

²⁸ The general rules for recognition of professional qualifications have been introduced with the Law on Recognition of Professional Qualifications (SG No 13 of 8 February 2008) (**Закон за признаване на професионални квалификации**), last amended and supplemented in SG No 21 of 12 March 2021. Rules for the recognition of the right to pursue a regulated profession in Bulgaria are regulated in various legislative acts pertaining to different professions from the list of regulated professions in Bulgaria. A regulated profession is a professional activity or a group of professional activities included in the list of regulated professions in Bulgaria, which is of public importance and/or is essential for people's life and health and access to which is subject to the laws, regulations or administrative provisions regarding: possession of a specific professional qualifications, or capacity, or membership in a professional organization that works to maintain the high level in the professional field, for the implementation of which it has received special recognition by the state. In Bulgaria, regulated professions are 80 in number and are defined in the list of regulated professions, which is

qualification from Ukraine as a medical doctor or nurse are allowed to work in Bulgaria as medical assistants.²⁹

On 6 June 2022, the Employment Agency launched the implementation of the Solidarity project financed by the Human Resources Development Operational Programme 2014-2020.³⁰ Within the framework of the programme psychological support, professional orientation and motivation for starting work are also provided. In order to be employed, displaced persons must register with the local offices of the Job Centre Directorate. Employers wishing to participate the Solidarity project and hire people from the target group can apply for inclusion in the project using an electronic platform. During the period of subsidised employment (up to 6 months), employers receive funds to cover the remuneration of employees at the minimum wage, as well as incentives to cover the cost of any contributions payable by the employer in accordance with requirements of the Labour Code and the Social Security Code.³¹ Employers are also paid amounts for the remuneration of mentors (half of the official minimum wage in Bulgaria) who support newly hired workers for a period of up to 3 months. This form of subsidized employment will remain in operation until 31.7.2023.

According to data available from the Employment Agency, at the end of February 2023 a total of 5 539 displaced persons from Ukraine were working in Bulgaria under an employment contract.³² Most of them are employed the sectors of hospitality, car repairs, transport and retail. Most were able to find jobs through job centres (4 113 people). Although the number of people who received counselling on the possibilities available on the labour market is high, the number of people who have actually started work is low because most do not want to change their profession. Many Ukrainian citizens who have sought intermediary services from job centres are highly qualified — lawyers, doctors, teachers, accountants. They often state that they cannot start work in their specialty because of the language barrier (for their work they need to use mainly Bulgarian, or they cannot work with English).³³ Almost 40 000 Ukrainian citizens who have remained in Bulgaria are still unemployed mainly

adopted by Decision of the Council of Ministers. The list of regulated professions is available on the website of The National Centre for Information and Documentation at: <http://professio.nacid.bg/?id=31> (accessed 15 May 2023).

²⁹ However, in order to work in medical establishments in Bulgaria, they have to take an exam in Bulgarian language and medical terminology in Bulgarian. This is regulated in: Decree No 15/2005 on establishing proficiency in Bulgarian and in professional terminology in Bulgarian for foreigners for the purpose of practising medicine in Bulgaria (Наредба № 15 от 13 декември 2005 г. за установяване на владенето на български език и професионалната терминология на български език от чужденците за упражняване на медицинска професия в Република България). The exam is free of charge. Information about the documents needed, self-study materials, mock tests for the different specialties together with the correct answers are available on the website of the Ministry for Education and Science.

³⁰ Available at:

<https://servicesprocess.az.government.bg/service/6f563905-2546-4a26-9dcd-c68edd004177/description> (accessed 15 May 2023).

³¹ The text of the Labour code and the Code of social insurance in English is available on the Bulgarian single national website on posting of workers at: <https://postedworkers.gli.government.bg/en/15/codes> (accessed 15 May 2023).

³² This is according to a report of the Employment Agency provided to the Telegraf Daily. The information was published on 25 February 2023.

³³ *Ibidem.*

for two reasons — the language barrier or lack of work commensurate with their qualifications in the place where they have settled. In my opinion, the language barrier is not a significant obstacle either to finding a job or professional training on account of the common Slavic roots of the two languages.³⁴

However, an increasing number of Ukrainians are legalising their diplomas in order to be able to find better paid jobs.³⁵ They are already employed in various industries as conductors, specialists, technicians, auxiliary and administrative personnel.

Free Bulgarian language courses are provided for persons under temporary protection.³⁶ The Assessment Centre for Pre-school and School Education conducts examinations on the level of knowledge of Bulgarian for foreigners who practise medicine in Bulgaria.

There are no restrictions on the posting of persons under temporary protection. National law does not restrict the posting of displaced persons for the purpose of providing services in other EU Member States and working in the territory of Bulgaria. Posting must comply with the provisions of Article 121a of the Labour Code, the Labour Migration and Labour Mobility Act and the Regulation laying down the conditions and procedure for the secondment and posting of workers and employees within the framework of the provision of services.³⁷

5. Final considerations.

According to the UNHCR Senior Emergency Coordinator in Bulgaria, the people and government of Bulgaria have generously accepted and helped tens of thousands of displaced people from Ukraine in a remarkable show of solidarity with the plight of these individuals.³⁸ Being one of the first countries in the European Union to grant them temporary protection, Bulgaria supported those seeking temporary protection with shelter and basic services and has granted them a range of social rights, including the right to work. In conclusion, in light of the above, at least the following conclusions can be drawn:

Firstly, more than a year after the start of the Russian invasion of Ukraine, those fleeing the war who ended up in Bulgaria continue to rely on the enthusiasm of activists, while there is no clear government strategy on how to meaningfully integrate them into society. The

³⁴ *Ibidem*.

³⁵ By the end of February 2023, 22 Ukrainian citizens received the following certificates to practise regulated professions: medicine (9), dentistry (7), pharmacy (1), nursing (3), paramedics (1), and occupational therapy (1).

³⁶ The Ministry of Education and Science, together with the International Organization for Migration and the United Nations High Commissioner for Refugees, organized training seminars ‘Access to education for children and students seeking and receiving international or temporary protection’. For most children enrolled in school, additional study of Bulgarian as a foreign language is provided. A learning aid for Bulgarian as a foreign language has also been developed, and psychological and personal development support is available.

³⁷ The Labour Migration and Labour Mobility Act and the Regulation laying down the conditions and procedure for secondment and posting of workers and employees within the framework of the provision of services in English is available on the Bulgarian single national website on posting of workers at: <https://postedworkers.gli.government.bg/en> (accessed 15 May 2023).

³⁸ Assessment given at the opening by UNHCR and UNICEF Blue Dot support centers for Ukrainian refugees in Bulgaria. See at: <https://www.unhcr.org/bg/15311-unhcr-and-unicef-open-blue-dot-support-hubs-for-ukrainian-refugees-in-bulgaria.html> (accessed 15 May 2023).

political upheavals in Bulgaria — reflected by the oft-repeated election cycle in recent years — limit the government's ability to adopt robust social policies. Instead of jobs, the political debate in Bulgaria focuses on the accommodation of the refugees. A nationwide program to house them in hotels has often been threatened with closure, and although the government has been able to secure additional funding through EU grants, this is seen as one of the main reasons why relatively few people remain displaced in Bulgaria.

Secondly, government institutions have made considerable efforts to prepare integration profiles of all displaced persons from vulnerable groups, including information on their specific needs, as well as the educational and professional competence of their family members. The aim is to support their social adaptation and cultural orientation and provide them with social, health and psychological assistance. In many cases, this process cannot be completed because displaced persons are reluctant to seek help from government bodies and expect that the war will soon end, and they will be able to return to their country of origin.

Thirdly, with the legislative amendments enacted in 2022 and the efforts of the competent authorities, the persons enjoying temporary protection had been provided with assistance in finding a job and exercising a free profession, fair working conditions, access to the social security system and healthcare. Efforts to increase the opportunities for training and practical experience can lead to better results if combined with the willingness of displaced persons to continue their integration into society.

Mass Influx of People from Ukraine: Social Entitlements and Access to the Labour Market: Czech Republic.

Stepan Pastorek*

1. General framework. 2. Personal scope of applicable support measures. 2.1. Mechanism of confirming the status of displaced persons. 2.2. Mechanism of the loss of the status of displaced persons. 2.3. Mechanism of getting a document which is a confirmation of the status of displaced persons. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 3.1. Accommodation. 3.2. Humanitarian aid. 3.3. Contribution to a solidarity household. 4. Social policy measures for Ukrainians: supporting professional activity. 4.1. The scale of entry into the labour market. 4.2. Posting persons under temporary protection to/from the country. 4.3. Special rules for recognition of qualifications/diplomas/admission to the professions. 5. Final considerations.

1. General framework.

Act No. 221/2003 Coll., on Temporary Protection of Foreigners (hereinafter referred to as the “**Temporary Protection of Foreigners Act**”), has been in force in the Czech Republic since it was introduced into the legal system in connection with the adoption and subsequent implementation of Directive 2001/55/EC in 2004.¹ However, this legislation was not designed to deal with such a large number of people fleeing the armed conflict as was that arose after the outbreak of war in Ukraine.

In response to the large-scale migration wave triggered by the military aggression of the Russian Federation on the territory of Ukraine and activation of the Article 5 of the Directive 2001/55 by the European Union, three acts were adopted in the Czech Republic, collectively

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, in Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

referred to as “Lex Ukraine” (I., II. and III.), which aimed to regulate specific rules in the areas of residence, social security, education or health insurance.²

These laws established a rule that, unless they provide otherwise, it is the Temporary Protection of Foreigners Act of 2004 that applies to the granting of temporary protection under them. In matters not covered by the Temporary Protection of Foreigners Act, Act no. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic (hereinafter only as the “Act on the Residence of Foreigners”), applies.

The Act on the Residence of Foreigners applies to the area of temporary protection as regards the regulation of the procedure for granting temporary protection (specifically the provisions on granting a visa for a stay of more than 90 days for the purpose of tolerating a stay on the territory of the Czech Republic) and also wherever the Temporary Protection of Foreigners Act and Lex Ukraine do not contain special legislation.

Act no. 500/2004 Coll., the Administrative Code, is also applied – the proceedings and procedures of administrative authorities in the cases of applicants and holders of temporary protection are conducted according to it. Nevertheless, this act does not apply when it comes to receiving a humanitarian benefit under Lex Ukraine II which proved to be problematic – as will be elaborated in details below.

In addition to the above-mentioned legislation, mention should also be made of Government Regulation No. 200/2022 Coll., on the inadmissibility of applications by third-country nationals for a residence permit in the territory of the Czech Republic submitted at embassies of the Czech Republic. Due to the protection of foreign political interests of the Czech Republic in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, an application for a residence permit in the territory of the Czech Republic submitted to the embassy by a citizen of the Russian Federation or the Republic of Belarus is inadmissible – the proceedings will not be initiated. There are exceptions listed in this regulation though.³

² These are:

(i) Act no. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation (*Zákon o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace*), hereinafter only as the “Lex Ukraine I”, that regulates mainly the residence regime of migrants and specific issues of health insurance;

(ii) Act no. 66/2022 Coll., on measures in the field of employment and social security in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation (*Zákon o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace*), hereinafter only as the “Lex Ukraine II”, that contains issues related to social security topics – in particular refugee security – humanitarian benefit and solidarity household allowance;

(iii) Act No. 67/2022 Coll., on measures in the field of education in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation (*Zákon o opatřeních v oblasti školství v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace*), hereinafter only as the “Lex Ukraine III”, which deals in particular with issues related to education.

³ This restriction does not apply to an application for: (i) the granting of a short-stay visa (up to 90 days) if the applicant is a family member of (a) a citizen of the Czech Republic and accompanies or follows such a citizen, or (b) a citizen of the European Union and accompanies or follows such a citizen; (ii) the granting of a long-stay visa (more than 90 days) if the applicant is a family member of a person enjoying subsidiary protection in

According to the statistics provided by the Ministry of the Interior, the number of temporary protections granted as of 31 March 2023 - 504,107, with 325,742 temporary protection holders still present in the territory.⁴ The number of Ukrainians that have fled Ukraine and remain in the territory of the Czech Republic is nevertheless much higher. The difference between the number of granted temporary protection and the number of reported foreigners coming from Ukraine is caused by the fact that not all persons fulfilled the conditions for granting temporary protection or applied for it [some Ukrainians have been granted a visa to stay over 90 days for the purpose of tolerating stay in the territory (see below)].

Since the Czech Republic is one of the countries where foreigners from Ukraine lived, did business and worked to a large extent before the war began, the migration wave hit the country almost immediately after the fighting broke out. In the interim period between the start of the war on 24 February 2022 and the adoption of the Lex Ukraine laws (following the Council Implementing Decision),⁵ it was therefore necessary to adjust the residence status of a large number of incoming foreigners.

For this reason from 24 February 2022 to 21 March 2022 (effective date of Lex Ukraine acts) war migrants from Ukraine were granted a special long-term visa for the purpose of tolerance with the code D/VS/U.

From 22 March 2022, persons fleeing from Ukraine were granted temporary protection in the form of a long-term visa with codes D/DO/667, D/DO/668 and D/DO/669. According to the Lex Ukraine I., all these persons, including persons with previous visa D/VS/U issued since 22 March 2022, are considered as persons with temporary protection. Holders of D/VS/U visas were not only persons of Ukrainian nationality fleeing the war, but also Ukrainian citizens already residing in the Czech Republic on the basis of a non-extendable residence permit or visa-free stay and citizens of other third countries if they were close family members of citizens of Ukraine and fled Ukraine together with them.

Visas were given as visa labels on travel documents (passports), if foreigners had them, or on the back of the border guide (small-format paper document) issued by the Asylum

the territory of the Czech Republic pursuant to the Asylum Act (act no. 325/1999 Coll.); (iii) the issuance of a long-term residence permit for the purpose of family reunification pursuant to § 42a(1) of the Act on the Residence of Foreigners in the Czech Republic; (iv) granting of a residence permit for the purpose of study pursuant to § 64(d) of the Act on the Residence of Foreigners in the Czech Republic by a citizen of the Republic of Belarus; (v) the issue of a permanent residence permit if the applicant is a foreigner pursuant to § 66(1)(d) of the Act on the Residence of Foreigners in the Czech Republic (permanent residence permit for underaged children whose parents already have a permanent residence permit in the Czech Republic), or (vi) granting a visa or issuing a long-term or permanent residence permit if the applicant's stay in the territory is in the interest of the Czech Republic.

⁴ Ministry of Interior, *There are currently 325,000 refugees from Ukraine in the Czech Republic*, accessible via: <https://www.mvcr.cz/clanek/v-ceske-republice-je-aktualne-325-tisic-uprchliku-z-ukrajiny.aspx>, (accessed 1 April 2023).

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection, in Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

and Migration Policy Department of the Ministry of the Interior or by the police, if the foreigners did not have a travel document. If the visa sticker did not contain a photograph of the foreigner, the information “valid without photo” was indicated in the relevant section. Given the local conditions (due to the lack of visa labels), visas were in many cases also given only as red stamps in passports, in which the period of validity was entered.

Holders of these D/VS/U visas could be employed on the basis of an employment permit issued by the Labour Office of the Czech Republic upon request, without a so-called test of labour market. Thus, no free access to the labour market was given.

As of 22 March 2022 all D/VS/U visas valid on that date automatically became by law a temporary protection. They were not replaced by new visa labels or stamps. Visa holders also automatically gained free access to the Czech labour market (see below).

This can cause considerable difficulty in distinguishing between temporary protection holders and foreigners who hold “only” a toleration visa to stay in the territory issued after 21 March 2022 because some foreigners who would not have been able to obtain temporary protection under Lex Ukraine (although they could have been granted a toleration visa to stay in the territory) obtained it before the adoption of this law.

From 22 March 2022, the grant of temporary protection was indicated by a visa which carried one of the following codes:

- D/DO/667 = citizen of Ukraine
- D/DO/668 = family member of a citizen of Ukraine – holder of temporary protection
- D/DO/669 = temporary protection on grounds of urgent need.⁶

Visas are as described above given as visa labels in passports, if the foreigners have them, or on the back of the so called “border pass”, if they do not have a passport. If the visa sticker or the border pass does not contain a photograph of the foreigner, as described above, the information “valid without photo” is indicated in the relevant section. Temporary protection visas may also be stamped with a red stamp in which the period of validity is entered.

According to Article 9(2) of Lex Ukraine I, all temporary protection visas were valid until 31 March 2023. However, according to the Act No. 20/2023 Coll., amending Act no. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, as amended, and other related acts (**hereinafter referred to only as the “Lex Ukraine IV.”**) a procedure was introduced to extend the validity of temporary protection until 31 March 2024. The extended temporary protection visas will bear the codes D/DO/867, D/DO/868 and D/DO/869.

The explanatory memorandum to Lex Ukraine IV. states that it should spread the process of extending temporary protection over several stages, as it is not possible for all war migrants to have their temporary protection extended on the same day. It aims to simplify and

⁶ Persons who have previously been granted temporary protection in the Czech Republic and have subsequently renounced it or had it terminated for another reason provided for by law, temporary protection may be granted again. However, in such a case, temporary protection is repeatedly granted to them in the form of a visa sticker with different codes – D/DO/767, D/DO/768, D/DO/769.

streamline this process as much as possible, therefore it is stipulated that foreigners who were still interested in staying in the territory of the Czech Republic for the purpose of temporary protection have been obliged to register electronically until 31 March 2023. If the foreigner fails to register by the deadline or fails to appear for the marking of the visa sticker after registration by the end of September 2023, the temporary protection will expire.

The new legislation provides for even more simplified procedure for the extension of temporary protection, reflecting the possible need to transfer staff resources to the agenda of first-time beneficiaries (called by Czech legislator “applicants”) for temporary protection should there be an extraordinary influx. It therefore empowers the Government to provide by regulation that in the event of an emergency situation arising as a result of another migration wave, the process of extending temporary protection may be automated and simplified to the maximum extent possible. There would no longer be any physical marking of visa labels after successful online registration. Access to basic rights such as accommodation, education, financial support, healthcare or work will not be compromised, as the record of the extension of temporary protection will be entered into the Aliens Information System, from which other essential public administration information systems, notably the population register, also draw.

This legislation also addresses situations where a foreigner who has already been beneficiary of the temporary protection by the Czech Republic and no longer has the right to stay for the purpose of temporary protection submits a new application for temporary protection. If the temporary protection is confirmed again, he or she will have a legal status under Lex Ukraine I. The period during which the foreigner did not enjoy the confirmed temporary protection is not considered as the period of stay on the territory of the Czech Republic on the basis of temporary protection. In this case, the visa label or record of the confirmation of temporary protection shall be marked from the time of the new confirmation of temporary protection.

In addition, the Czech Republic also grants in some cases a residence permit in the form of a visa for a stay of more than 90 days for the purpose of toleration of stay in the territory to persons originating from Ukraine who are not covered by the provisions of Lex Ukraine. These are in particular Ukrainians who resided in the Czech Republic on the basis of a valid residence permit which expired or was revoked after 24 February 2022. These persons do not have free access to the labour market or access to public health insurance (see below). The visa is indicated by a visa label marked D/VS/91.

As the residence status of these persons also needs to be addressed after 31 March 2023, Lex Ukraine IV. states that a visa for a stay of over 90 days for the purpose of tolerating a stay on the territory of the Czech Republic granted to a national of Ukraine or a member of his/her family in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation troops as of 24 February 2022 shall be considered valid until 31 March 2024. A foreigner who holds such a visa may present himself/herself at the Ministry of the Interior for the marking of a visa label with an extended period of validity. The foreigner is obliged to make an appointment in advance, otherwise the label will not be issued. The validity of the visa shall be indicated in the visa sticker until 31 March 2024. If,

due to local conditions, the visa cannot be indicated in the form of a visa sticker, an entry may be made in or outside the travel document indicating that the visa has been granted.

The latest addition to “Lex Ukraine” laws is an act that changes Lex Ukraine II. This amendment was introduced from 1 April 2023 as Act No. 75/2023 Coll., amending Act No. 66/2022 Coll., on measures in the field of employment and social security in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, as amended, and other related acts.⁷ According to this law, persons with a temporary protection should not have access to national systems of non-insured social benefits, except in situations where it is necessary to ensure equal status with Czech citizens on the basis of EU rules.⁸

2. Personal scope of applicable support measures.

Lex Ukraine I. defines the groups of foreigners to whom it applies. These are primarily set out in the Decision 2022/382, which was adopted pursuant to Article 5 of Directive 2001/55. In accordance with the Decision 2022/382, the Czech Republic then provides that beneficiaries of the temporary protection will also be persons who are not nationals of Ukraine, but who were permanently resident in Ukraine before the relevant date, and at the same time that their departure to their country of origin (or part thereof) is not currently possible.

The Czech Republic does not deliberately recognise temporary protection to persons (third country nationals) who have had a temporary stay in Ukraine (typically students, etc.). The Czech Republic has decided not to make use of the possibility under Article 2(3) of the Decision 2022/382 to extend the range of persons to whom temporary protection may apply. Persons with a legal but typically temporary right of residence in the territory of Ukraine are to benefit from the primary protection of their country of origin. According to the explanatory memorandum to Lex Ukraine I. Czech Republic is ready to assist them with their return to their country of origin.

In addition, persons who cannot prove that they meet the qualification requirements for temporary protection may, if an objective insurmountable obstacle prevents them from returning to their country of origin, make use of standard procedures outside temporary protection. These instruments include, for example, an application for a visa to tolerate stay in the territory of the Czech Republic pursuant to the Act on the Residence of Foreigners or an application for international protection pursuant to the Act no. 325/1999 Coll., the Asylum Act. Applications for these institutes are not excluded or otherwise restricted as a result of the conflict in Ukraine.

§ 3 of Lex Ukraine I enshrines the personal scope of the act as follows:

⁷ Zákon, kterým se mění zákon č. 66/2022 Sb., o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, ve znění pozdějších předpisů, a další související zákony, hereinafter only as the “Lex Ukraine V”.

⁸ For more information see below in section 3.

- (1) *The Ministry of the Interior or the Police of the Czech Republic shall grant temporary protection to foreigners who are compulsorily covered by a Council Decision.*
- (2) *The Ministry of the Interior or the Police of the Czech Republic shall also grant temporary protection to a foreigner who proves that*
 - a. *as of 24 February 2022, was the holder of a valid permanent residence permit in the territory of Ukraine; and*
 - b. *his/her departure to the State of which he or she is a citizen or part of its territory, or in the case of a stateless person to the State or part of its territory of his/her last permanent residence before entering the territory of Ukraine, is not possible due to the threat of real danger pursuant to § 179(2) of the Act on the Residence of Foreigners in the Territory of the Czech Republic.*

The real danger is defined as a return in violation of Article 3 of the European Convention on Human Rights, according to which no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

A foreigner who had a valid residence permit (long-term visa, long-term/permanent residence/temporary protection) issued in another country and such residence permit was revoked/expired after 24 February 2022 is not eligible for temporary protection. At the same time, a foreigner who had a long-term residence permit in the Czech Republic and did not renew such a permit or had such a permit revoked after 24 February 2022 cannot be recognised as a person who is a beneficiary of the temporary protection.

This proved to be a recurring problem for certain group of Ukrainians as different EU countries have different rules. Whilst the Czech Republic will not grant temporary protection when a person has an application or temporary permit elsewhere in the EU, other states may have a different legislation. According to one of the workers from NGOs that helps Ukrainians,⁹ some EU countries do not deal with this at all, and Ukrainians can even come with a temporary protection from another state but still can apply for a one elsewhere. The Czech system can make it difficult for some families to travel and reunite. A particularly common is the situation when at the beginning of the war a lot of people went to Poland where they enjoyed temporary protection and then found out that they had relatives and friends in the Czech Republic, that someone would offer them accommodation in the Czech Republic etc., but the Czech legislation already keeps them out of the Czech Republic.

§ 4 of Lex Ukraine I specifies in more detail the procedure for granting temporary protection, stating that provisions of the Act on the Residence of Foreigners, which apply to a visa for a stay of more than 90 days for the purpose of toleration of a stay in the territory of the Czech Republic, are to be used supportively.

Furthermore, the provisions of the Temporary Protection of Foreigners Act which do not apply to the granting of temporary protection are explicitly listed in this section of Lex Ukraine I. Spouses and companions are excluded from the circle of eligible persons (exclusion of § 51(2)(d) of the Temporary Protection of Foreigners Act).

⁹ Based on own research.

2.1. Mechanism of confirming the status of displaced persons.

The Ministry of the Interior or the Police of the Czech Republic may designate a place where a foreigner may submit an application for confirming the status of person who is a beneficiary of the temporary protection.

Such an application must be submitted in person. The Ministry of the Interior or the Police of the Czech Republic may waive the obligation to submit the application in person for reasons worthy of special consideration.

Applications are mainly submitted at Regional Assistance Centres for Ukraine and in some cases at the offices of Department for Asylum and Migration Policy of the Ministry of Interior. It is also worth mentioning here that a disproportionately higher number of people have applied for temporary protection in Prague than in other places and regions of the Czech Republic. This has led (and still leads) to the fact that the Prague system of assistance to war migrants is considerably overburdened. For this reason, the regional refugee assistance center for war migrants from Ukraine in Prague was even closed for some time by the decision of the mayor of the city.¹⁰ It was only reopened following a resolution of the Government of the Czech Republic.¹¹

An application confirming the status of person who is a beneficiary of the temporary protection is inadmissible (the proceedings will not be started) if:

- a. it is not submitted in person,
- b. it is submitted by a foreigner who is not covered by Lex Ukraina I. (see above),
- c. it is submitted by a foreigner who has applied for temporary or international protection in another Member State of the European Union,
- d. is submitted by a foreigner who has been granted temporary or international protection in another Member State of the European Union; or
- e. is submitted by a foreigner who is a citizen of the European Union, of a State bound by an international treaty negotiated with the European Union which confers on him or her a right of free movement equivalent to that of citizens of the European Union, or of a State bound by the Agreement on the European Economic Area.

The Ministry of the Interior or the Police of the Czech Republic shall return an inadmissible application to the foreigner and inform him/her of the reason for its inadmissibility, judicial review of this procedure is excluded.

As stated above, the confirmation of temporary protection shall be indicated to the foreigner by a visa sticker in the travel document. If, in view of local conditions, the confirmation of temporary protection cannot be accomplished by means of a visa sticker, a record of the confirmation of temporary protection may be made in or outside the travel document.

¹⁰ See iRozhlas.cz, Praha uzavřela krajské asistenční centrum. Za dobu fungování odbavilo téměř 100 tisíc uprchlíků, https://www.irozhlas.cz/zpravy-domov/kacpu-praha-zavreno-uzavreni-uprchlici-ukrajina-hrib_2206161000_ako, (accessed 10 May 2023).

¹¹ See Resolution of the Government of the Czech Republic no. 579, 29 June 2022, <https://odok.cz/portal/services/download/attachment/2022/579/pdf/>, (accessed 10 May 2023).

The Ministry of the Interior or the Police of the Czech Republic shall issue the applicant for confirming temporary protection, if temporary protection cannot be confirmed on the spot, with a certificate of application for temporary protection. The decision on temporary protection shall be issued by the Ministry of the Interior or the Police of the Czech Republic without undue delay, in particularly complex cases within 60 days from the date of the application for the confirmation of the temporary protection.

The Temporary Protection of Foreigners Act applies in the matter of the refusal to confirm enjoyment of the temporary protection or loss of beneficiary status.

The right of residence for the purpose of temporary protection shall furthermore expire:

- a. by lodging an application for confirming temporary protection status pursuant to a Decision 2022/382 in another Member State of the European Union,
- b. the confirmation of temporary protection pursuant to a Decision 2022/382 by another Member State of the European Union,
- c. by lodging an application for international protection in another Member State of the European Union bound by Regulation (EU) No 604/20134 of the European Parliament and of the Council; or
- d. the granting of a visa for a stay exceeding 90 days, a residence permit or international protection in the territory of the Czech Republic or in another State.

The applicant for confirmation of the temporary protection must submit the following:

- a. filled application form,
- b. travel document, if he or she is in possession of one, and a photograph upon request.
- c. proof that he or she was residing in Ukraine on 24 February 2022 and left Ukraine as a result of the invasion by the Russian Federation (e.g. passport details, humanitarian entry certificate or other document issued in your name attesting to your stay in Ukraine),
- d. confirmation of accommodation, unless it is provided by a crisis management authority.

If a foreigner in respect of whom the status of the beneficiary of the temporary protection has been confirmed pursuant to Lex Ukraine I. applies for international protection or if, at the time of the application for confirming temporary protection, international protection proceedings are pending pursuant to the Act no. 325/1999 Coll., the Asylum Act, the international protection proceedings shall be suspended for the duration of the temporary protection. The foreigner will not be in the position of an applicant for international protection during this period.

If a person sentenced to a punishment of deportation who is a person eligible for temporary protection has applied for the confirmation of the temporary protection or his/her status as a beneficiary of the temporary protection has been confirmed, the execution of the punishment of deportation is suspended for the duration of the proceedings on the application or for the period for which temporary protection can be enjoyed.

If the foreigner is also an applicant for one of the residence permits under the Act on the Residence of Foreigners, then at the moment of confirming the status of the beneficiary of the temporary protection, the proceedings on the application for the issuance or extension of the validity of the residence permit under the Act on the Residence of Foreigners are

terminated. Temporary protection therefore takes precedence over any residence permit under the Act on the Residence of Foreigners.

A foreigner in respect of whom the beneficiary status of the temporary protection has been confirmed under Lex Ukraine I. is obliged to report a change of place of residence in the territory of the Czech Republic to the Ministry of the Interior within 3 working days from the date of the change, by submitting a proof of accommodation.

2.2. Mechanism of the loss of the status of displaced persons.

The Temporary Protection of Foreigner Act applies in the matter of non-confirming or loss of beneficiary status of the temporary protection.

According to it, a residence permit for the purpose of temporary protection cannot be granted if there are reasonable grounds for suspecting that the applicant for confirming temporary protection:

- a. has committed a crime against peace, a war crime or a crime against humanity within the meaning of international instruments containing provisions on such crimes,
- b. is guilty of acts contrary to the principles and purposes of the United Nations; or
- c. constitutes a threat to the security of the state.

A residence permit for temporary protection may be refused if the applicant for temporary protection:

- a. has been convicted by a final judgment of a particularly serious crime, provided that this continues to constitute a danger to society; or
- b. has given false information or concealed facts essential for a reliable determination of the true state of affairs.

The right of residence for the purpose of temporary protection may furthermore be refused if there are reasonable grounds for suspecting that the applicant for confirming temporary protection has committed a serious criminal offence in the territory of another state prior to the application for temporary protection.

A residence permit for temporary protection shall be revoked if:

- a. a foreigner enjoying temporary protection is granted temporary protection by another state or has been granted a permanent or similar residence permit in the territory of another state,
- b. a foreigner enjoying temporary protection has been granted a permanent residence permit in the territory, or
- c. a reason has been established for which a residence permit for temporary protection cannot be granted (see above).

Temporary protection may be withdrawn if grounds have been established for which a temporary protection may be refused because of: a conviction by a final judgment of a particularly serious crime, provided that this continues to constitute a danger to society; giving false information or concealed facts essential for a reliable determination of the true state of affairs; suspicion that the applicant for temporary protection has committed a serious

criminal offence in the territory of another state prior to the application for temporary protection.

If the reason for which a confirmation of the temporary protection was granted for the purpose of family reunification ceases to exist and no other valid reason for retaining it is found, the permit shall be also withdrawn.

The right of residence for temporary protection also ceases:

- a. on the death of the person or on his being declared dead,
- b. on the expiry of the period laid down for the granting of temporary protection,
- c. by granting of asylum or subsidiary protection in the territory or the granting of refugee status under an international treaty,
- d. on the date on which the Ministry of Interior has received a written declaration with a verified signature from the foreigner enjoying temporary protection that he or she has renounced the right to stay for temporary protection,
- e. by a decision of the Council of the European Union to terminate temporary protection.

Furthermore, as stated above, based on Lex Ukraine I., the right of residence for the purpose of temporary protection shall be terminated in four situations mentioned in sec. 2.1.

2.3. Mechanism of getting a document which is a confirmation of the status of displaced persons.

As described in detail above, the acquisition of temporary protection was certified by a visa sticker, which was issued to the persons concerned with a validity period until 31 March 2023, now the validity period is until 31 March 2024, i.e. the validity corresponds to the validity of the special legislation adopted for this situation. The course of the war so far does not indicate that the return of war migrants to their homes is possible in the near future. This is why temporary protection will be extended within the European Union, as confirmed by the Member States' interior ministers at their meeting in October 2022.

Following the outbreak of the military conflict on the territory of Ukraine, some persons arriving from Ukraine are being granted long-term visas instead of temporary protection for the purpose of toleration of their stay, the reason for which is also the ongoing conflict in Ukraine, but they are not persons who fall within the personal scope of temporary protection as defined in Lex Ukraine I. (for more details see above).

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

3.1. Accommodation.

According to Lex Ukraine I., persons enjoying temporary protection and applicants for the confirmation of the temporary protection are entitled to accommodation and related services. Accommodation is provided in facilities listed in the information system for

registering emergency accommodation and temporary emergency shelter. Accommodation in the form of emergency accommodation shall be provided for a period not exceeding 150 days free of charge. If a person to whom accommodation is provided free of charge refuses the accommodation allocated or leaves the accommodation without good reason, he or she shall be deemed to have exhausted the maximum period of free of charge stay. If a person who is provided with free accommodation stops using the accommodation without giving reasons for more than 10 consecutive days, he or she shall be deemed to have abandoned the accommodation.

Until 31 March 2023, accommodation was provided also in a so called “temporary emergency shelters” for a period not exceeding 1 month in buildings set up or adapted on a one-off basis for that purpose. Temporary emergency shelter was to be used as a priority for the accommodation of applicants for temporary protection, persons who could not be accommodated in emergency accommodation for reasons of capacity, and persons who have refused emergency accommodation or who have ceased their stay in emergency accommodation.

The scope of related services to be provided and the distribution of accommodation capacities in the territory are listed in the Government Regulation no. 206/2022 Coll., which establishes the distribution of the required accommodation capacities in the Czech Republic according to regions, the amount of flat-rate compensation for accommodation costs per person accommodated per night and services related to the provision of accommodation.

The regional governors and the mayor of the capital city of Prague established facilities in the territory of the regions or the capital city of Prague for the processing of applications for the confirmation of the temporary protection and for the allocation of accommodation.

Allocation of accommodation to a person enjoying temporary protection or an applicant for the confirmation of the temporary protection, change of accommodation and removal of such a person from accommodation is carried out by the regional authority or the Prague City Hall, the Ministry of the Interior, the Fire and Rescue Service of the Czech Republic or the Police of the Czech Republic. As a rule, accommodation is allocated in a building in the territory of the region according to the place where the application for the confirmation of the temporary protection was submitted and, if temporary protection has already been confirmed, according to the place where the request for accommodation was made.

The person entitled to dispose of the accommodation facility is obliged to allow the provision of accommodation in the facility included in the register to the extent of the registered capacity for the period of its inclusion in the register. He or she shall provide accommodation free of charge to the person accommodated.

An accommodation provider included in the register is entitled to a flat-rate compensation for accommodation costs per person and night. These funds are provided by the region. Funds in the amount of the region’s expenditure are provided by the Ministry of Finance on the basis of its application in the form of a subsidy.

3.2. Humanitarian aid.

Lex Ukraine II stipulates that a foreigner with temporary protection shall be paid a humanitarian benefit (hereinafter referred to as “the benefit”) of CZK 5 000 (equal to EUR 210) for the calendar month in which he or she enjoys temporary protection. This does not apply if the foreigner with temporary protection is provided with accommodation, daily meals and basic personal hygiene products free of charge.

If the income, social and property conditions of a foreigner with temporary protection are such that they do not allow him/her to meet the basic needs of life, a benefit may be granted to him/her on the basis of his or her application, starting from the month immediately following the calendar month in which status of the beneficiary of the temporary protection was confirmed. This does not apply if the foreigner with temporary protection is provided with free accommodation, all-day meals and basic personal hygiene products. The application for the benefit must contain the applicant’s identification data, the place of residence in the Czech Republic and documents proving that the applicant is a foreigner with temporary protection. The applicant shall indicate his or her income, social and property situation in the territory of the Czech Republic in the application and shall substantiate it with all available documents.

The amount of the benefit is per calendar month:

- a. from the first to the fifth calendar month immediately following the calendar month in which status of the beneficiary of the temporary protection was confirmed, the amount of CZK 5 000,
- b. from the sixth calendar month immediately following the calendar month in which status of the beneficiary of the temporary protection was confirmed,
 1. for foreigners with temporary protection from the age of 18, the amount pursuant to § 2 of Act No. 110/2006 Coll., on the minimum subsistence level,
 2. for foreigners with temporary protection up to the age of 18, the amount pursuant to § 3(3)(b) of Act no. 110/2006 Coll., on the minimum subsistence level.

The period for which the fulfilment of the conditions for entitlement to the benefit is determined is the period of the calendar month for which the application for the benefit is submitted.

The benefit is paid out by the Labour Office of the Czech Republic. The benefit is paid in cash or by transfer to a payment account in a bank. The benefit is not to be paid abroad.

The fundamental problem with this procedure proved to be the fact that Act No. 500/2004 Coll., the Administrative Code, does not apply to the process of applying for the benefit. This has eliminated the requirements and rules that are normally applied in the administrative procedure. Thus, if a situation arises where a benefit is not paid, no justification is provided. The Labour Office also did not issue a confirmation to foreigners that they have been to the office in person to apply for the benefit.

Other problems have arisen in 2022 in connection with the above-mentioned rule that a person is not entitled to the benefit if he or she has a free-of-charge accommodation, food and hygiene products (an exhaustive list). The application form introduced by the Ministry

of Labour and Social Affairs for the purpose of applying for the benefit did not include hygiene products as a condition at all. According to an NGO representative¹² this led to situations where persons who had free accommodation and food not receiving the benefit, although they did not have free hygiene products either.

The Labour Office also in some cases required people to come in person to its workplace to be paid the benefit, but at the same time did not subsequently give confirmation that Ukrainians were there to apply.

The above-mentioned sometimes led to the Labour Office refusing to pay the benefit, whilst not giving the reason for this, failing to issue a confirmation that the person had been there, and the superior authority, after a complaint, stating that the foreigner should have appeared in person and would have received the benefit. However, the foreigner had no way of proving that he or she had been to the office in person.

Lex Ukraine V. remedies some of these deficits, but also changes the system of provision of the benefit as of 1 July 2023. The amount for establishing entitlement and the amount of benefit is linked from the first month to the amount of the minimum subsistence level (according to age), which corresponds to the amount necessary to ensure the basic living needs of an individual or, in the case of a child under 18 years of age, a child aged 15-26 years according to Act No. 110/2006 Coll., on the minimum subsistence level. The amount for determining entitlement and the amount of benefit is the amount of the subsistence minimum for 150 days from the month in which status of the beneficiary of the temporary protection was confirmed. After this period, it will be examined whether the person has objective obstacles to joining the labour market (e.g. due to age, care of a small child, disability, studies) and if this is not the case, the amount for determining entitlement and the amount of the benefit will be the existence minimum from the month following the expiry of the 150 days. This modification is explained by the government by the requirement for greater participation of persons with temporary protection in the payment of their living costs and their integration.

There is a possibility for an increase though for persons with a disability and for children aged 6-10. For the purposes of entitlement and the amount of the benefit, income (if the person with temporary protection has any), both from the Czech Republic and from abroad (mainly from Ukraine), will be compared with the amount for determining entitlement and the amount of the benefit. The resulting amount of the benefit will be compared with the financial situation (i.e. account balance or other assets as declared by the claimant); if the person has sufficient resources (i.e. not only from regular income) to meet the basic needs of life and housing, the benefit will not be payable.

The law restricts the access of persons with temporary protection to the benefit systems of state social support, care allowance and substitute maintenance. According to the legislator, it reflects the specific nature of temporary protection – it is assumed that after the end of the conflict temporary protection holders will not remain in the Czech Republic but intend to return to their homeland, so there is no closer and longer-term connection of these

¹² Based on own research.

persons with the Czech Republic and their intention to join the social environment of the Czech Republic in the long term.¹³

3.3. Contribution to a solidarity household.

A natural person who has provided accommodation free of charge to a foreigner with temporary protection is granted a solidarity household allowance. The provision of accommodation is deemed to be free of charge even if the accommodated person has paid the costs of gas and electricity to the extent that they use gas and electricity. The condition for the grant of the allowance is that it is not accommodation in an accommodation establishment and that the accommodation has been provided continuously for a minimum period of time determined by the Government.

The accommodation provided must provide the person accommodated with sufficient space for rest, food preparation, personal hygiene and toilet facilities and access to drinking water.

The allowance is granted on application after the expiry of the calendar month for which it is due. The application must include:

- a. identification of the applicant,
- b. the address of the property in which the accommodation is provided and the legal title to the property,
- c. identification of the persons accommodated,
- d. details of the duration of the accommodation,
- e. an affidavit by the applicant that the accommodation was provided free of charge,
- f. an affidavit by the applicant that the conditions for accommodation referred above are met.

The allowance shall be paid by the regional branch of the Labour Office.

According to data from the Ministry of Labour and Social Affairs as of the end of November 2022, the number of temporary protection holders who depend on state assistance is steadily decreasing. While 173 000 people were dependent on humanitarian benefits in August, there were 80 000 fewer in November 2022 – 93 000. Large number of benefits recipients are children. Ukrainians are also increasingly finding accommodation other than in Czech households. Expenditure on the solidarity household allowance has fallen by about 12 per cent over the same period – in October 2022, 19 400 people received solidarity household allowance.¹⁴

¹³ Explanatory memorandum to the Lex Ukraine V stipulates that: “The basic feature of temporary protection is the temporary nature of the stay, whereby it is assumed that these persons will not remain after the end of the conflict in the Czech Republic but intend to return to their home country. In view of the above, it can be concluded that there is no closer and longer-term link between these persons and the Czech Republic and their intention to long-term involvement in the social environment of the Czech Republic” (22), <https://www.psp.cz/sqw/text/orig2.sqw?idd=222559>, (accessed 10 May 2023)

¹⁴ Ministry of Labour and Social Affairs press release 23 November 2022, *The number of benefits paid to refugees from Ukraine is falling, they are increasingly finding employment in the labour market*,

According to the Lex Ukraine V, the conditions and amount of the solidarity household allowance are determined by regulation of the government until 30 June 2023. As no further government regulation was adopted for period after 30 June 2023, the solidarity household allowance is not currently available – the legislation of Lex Ukraine II became obsolete in the part of the contribution to a solidarity household.¹⁵

4. Social policy measures for Ukrainians: supporting professional activity.

Pursuant to § 32 of the Temporary Protection of Foreigners Act, a foreigner enjoying temporary protection is considered to be a foreigner with a permanent residence permit under the Act on the Residence of Foreigners for the purposes of employment and self-employment.

According to § 98(a) of the Act no. 435/2004 Coll., Employment Act, a foreigner with permanent residence permit has a free access to the labour market.

In such a case, no special permit is required for such a foreigner to be employed. However, employers are still obliged to inform the relevant regional branch of the Labour Office in writing of this fact when the foreigner starts work, no later than on the day the foreigner starts work.

Other obligations include the registration obligation of employers. The employer must keep the following data:

- a. identification data of the foreigner;
- b. the foreigner's address in the country of residence and delivery address;
- c. the number of the travel document and the name of the issuing authority;
- d. the type of work, the place of work and the period for which the work is to be performed;
- e. the sex of the foreigner;
- f. classification according to the sectoral (branch) classification of economic activities;
- g. the highest level of education attained, the education required for the exercise of the profession;
- h. the period for which the foreigner has been issued with a work permit, an employment card, an intra-corporate transferee card or a blue card and for which he or she has been granted residence;
- i. the date of commencement and the date of termination of employment or secondment by the foreign employer.

In addition, employers must keep copies of the documents proving the foreigner's lawfulness of stay in the territory for the duration of the employment and thereafter for 3 years after the end of the employment of the foreigner.

https://www.mpsv.cz/documents/20142/2786931/TZ_UA_zamestnanost_davky_23112022_v.2.pdf/26f42e12-89b7-1f3e-c171-71bece5d3214, (accessed 14 February 2023).

¹⁵ Ministry of Labour and Social Affairs, *Solidarity Household Allowance and Housing and Contract Register*, <https://www.mpsv.cz/prispevek-pro-solidarni-domacnost>, (accessed 27 August 2023).

4.1. The scale of entry into the labour market.

Concrete data on the number of working temporary protection holders can only be ascertained on the basis of information published by the public authorities. As the statistics for 2022 have not yet been released, the information presented here is based on the press release of the Ministry of Labour and Social Affairs dated 23 November 2022.

According to this press release, the number of war migrants working from Ukraine is increasing month by month. In November 2022, there were over 98,000 temporary protection holders working in the Czech Republic, in September there were 89,000 and in June 2022 only 68,000, for example. Especially Ukrainian women are increasingly working in services compared to the summer months. The largest number of people from Ukraine find employment in the Central Bohemia (16 684) and Pilsen regions (14 347) and in Prague (10 766). They most often work as assemblers of products and equipment or as helpers in construction, production, transport or machine operators.¹⁶

4.2. Posting persons under temporary protection to/from the country.

Since temporary protection holders are persons with free access to the labour market (see above), there is generally nothing to prevent their posting to another country in terms of Czech legislation. Of course, the question that remains is the need for a valid residence permit in the state where the foreigner is to be posted.

4.3. Special rules for recognition of qualifications/diplomas/admission to the professions.

Recognition of evidence of the achievement of primary, secondary or higher vocational education is regulated in Czech law by § 108 of Act no. 561/2004 Coll., on pre-school, primary, secondary, higher vocational and other education (Education Act), and its implementing Decree no. 12/2005. The regional authority (Department of Education) competent according to the applicant's place of residence in the Czech Republic is the decision-making administrative authority in this matter. If the local jurisdiction of the regional authority cannot be determined according to the place of permanent residence – in the case of a foreigner, the place of registered residence – it is governed by the place of application. A bilingual Czech-Ukrainian application form for recognition of education is available.

¹⁶ Ministry of Labour and Social Affairs press release 23 November 2022, *The number of benefits paid to refugees from Ukraine is falling, they are increasingly finding employment in the labour market*, https://www.mpsv.cz/documents/20142/2786931/TZ_UA_zamestnanost_davky_23112022_v.2.pdf/26f42e12-89b7-1f3e-c171-71bece5d3214, (accessed 14 February 2023).

According to Lex Ukraine III and information from Ministry of Education, Youth and Sports¹⁷ holders of visas with the codes D/VS/U, D/DO/667, D/DO/668 and D/DO/669 (i.e. holders of temporary protection) are exempt from the application fee. The exemption is still valid for applications submitted until 31 August 2023.

The applicant shall submit proof of temporary protection with the application and may substitute an affidavit for any missing educational documents that he or she is unable to provide with his or her application. For this purpose, the applicant may use the model affidavit drawn up by the Ministry of Education, Youth and Sports. To verify the declared knowledge, the regional authority may order a nostrification examination.

Under Act no. 111/1998 Coll., Higher Education Act, applicants for admission to higher education institutions with institutional accreditation who have temporary protection may apply directly to the institution concerned for an assessment of their previous education as a condition for proving that they meet the entry requirements.

According to the information from Ministry of Education, Youth and Sports¹⁸ Ukrainian diplomas issued in the period from 6 June 1972 to 27 February 2000 inclusive are covered by the “Protocol on the Equivalence of Documents on Education, Scientific Degrees and Titles Issued or Granted in the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics” (signed in Prague on 6 June 1972, published in Czech under No. 123/1973 Coll.) (hereinafter referred to as the “Protocol”).

The Protocol establishes the equivalence of diplomas issued after graduation from higher education institutions in the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics, of which Ukraine was a part. The Protocol shall apply in full to diplomas issued exclusively between 6 June 1972 and 27 February 2000 inclusive and these diplomas shall automatically be equivalent to Czech diplomas without nostrification procedures.

The Protocol ceased to be in force for the Czech Republic and Ukraine as successor States of the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics according to the Communication of the Ministry of Foreign Affairs published in the Collection of International Treaties under No 81/2000 Coll. on 28 February 2000.

The application for recognition of foreign higher education and qualifications, so-called nostrification, shall be accompanied by a diploma and a diploma supplement (or other similar document containing details of the education completed), which shall be originals or certified copies.

Ukrainian citizens with temporary protection or a special visa issued by the Ministry of the Interior or the Police of the Czech Republic pursuant to Lex Ukraine I., will be treated as persons in a similar situation as refugees in the procedure for recognition of foreign higher education and qualifications (i.e. nostrification) – i.e., an applicant with this temporary protection or special visa may substitute in his or her application for nostrification by an

¹⁷ Ministry of Education, Youth and Sports, *Recognition of foreign education, special information for applicants from Ukraine*, <https://www.msmt.cz/file/58410/>, (accessed 14 February 2023).

¹⁸ Ministry of Education, Youth and Sports, *Special information for applicants for nostrification from Ukraine*, <https://www.msmt.cz/vzdelavani/vysoke-skolstvi/zvladni-informace-pro-zadatele-o-nostrifikaci-z-ukrajiny>, (accessed 14 February 2023).

affidavit the missing educational documents (diploma and diploma supplement) which he or she is unable to provide with his or her application.

The holder of the temporary protection document shall provide this document with the application (it is recommended to provide a plain copy bearing the applicant's handwritten signature and the date of the copy).

In the case of a missing diploma, the applicant shall submit an original handwritten affidavit containing the following information: name of the university attended, the location of the university attended, the name or type of university diploma (bachelor's, specialist, master's, PhD, or other), the name of the degree programme/field of study attended, the date or year of issue of the diploma only, or any other information the applicant is able to provide to describe the document.

In the case of a missing diploma supplement, the applicant shall submit an original self-signed affidavit containing the following information: the name of the university attended, the location of the university attended, the place of study, the level of education attained (bachelor's, master's, doctoral, or other), the name of the study programme/discipline attended, the duration of study, a list of courses or information on courses taken, if applicable. information on the content of final examinations and graduation thesis, or any other information the applicant is able to provide on the content and extent of education completed.

Pursuant to Lex Ukraine III., the holder of temporary protection is exempt from the statutory fee associated with the submission of an application for recognition of foreign higher education and qualifications. For the purpose of exemption from the nostrification fee, the applicant shall submit with the application a proof of the temporary protection granted (it is recommended to submit a plain copy bearing the applicant's handwritten signature with the date of the copy). This fee exemption applies to applications submitted by 31 March 2023.

Applicants for study at universities with institutional accreditation who have temporary protection may apply directly to the university for an assessment of their previous education as a condition for proving that they meet the entry requirement for study. Such a request is not subject to administrative proceedings. Such applicants, if they are accepted by the admitting university, do not have to submit a nostrification certificate (decision) when enrolling.

Applicants for studies at universities without institutional accreditation who have temporary protection may also request the above-mentioned assessment of prior studies for the purposes of the admission procedure, on the basis of an agreement between the receiving university and the university with institutional accreditation which will carry out the assessment, if such an agreement is in place.

5. Final considerations.

As can be seen from the above-mentioned, the legal regulation of temporary protection in the Czech Republic is currently based on several interconnected laws. It has to be admitted

that although the Czech Republic is coping well with the influx of persons fleeing the war conflict within the limits, certain situations arise which pose considerable problems.

These include, for example keeping temporary protection holders in the temporary protection regime and not allowing them to apply for any other residence titles. A lot of war migrants are logically nervous that they are fully in the power of the Ministry of Interior or the EU, that if at some point the EU or the government conclude that it is safe for them to travel back and temporary protection will not be extended, they will have to leave everything behind for the second time and exit the Czech Republic. This proves to be demotivating in terms of integration activities when Ukrainians know that there are little to no ways to go from their current status to another regime governed by the Act on the Residence of Foreigners. Some of the problems of the benefit system for Ukrainians described above are also contributing to the frustration of a significant group of war migrants.

In this connection it should be emphasised that the Czech Republic currently has, together with Poland, the highest proportion of war migrants from Ukraine per the country's population. Given that the war in Ukraine unfortunately appears to be a conflict that has the potential to last for a very long time, it seems essential to not only accept war migrants from Ukraine temporarily and in dignified conditions, but also to take care of their integration into society. However, the integration of these persons in particular appears to be problematic in the current legislative setting. This brings considerable uncertainty for all actors in the field of assistance to Ukrainians – employees of the state, NGOs, employers, but mainly for the war migrants themselves.

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Mass influx of people from Ukraine: social entitlements and access to the labour market: Denmark. Bjørn Holtze*

1. Preliminary remarks. 2. EU Temporary Protection Directive. 3. Ukraine law – and other legislative measures. 3.1. Subsequent changes. 3.2. Obtaining employment. 3.3. Integration efforts. 4. IGU-education. 5. Labour market initiatives. 6. Final considerations.

1. Preliminary remarks.

February 24, 2022 will be a day that many Ukrainians will remember in the future. It was the day Russia invaded and the war began.

When a war begins, it drives many people to flee. This situation was confirmed during the war in Ukraine - many Ukrainians came to the EU, as war migrants.

At the common European level, the EU also acted because of the war, implementing regulations to facilitate the entry of Ukrainian war migrants. Denmark is not obliged to do so due to the opt-out clause on certain areas, including this one.

However, the fact that Denmark is outside the EU regulations does not mean that supplementary legislation has not been implemented that facilitates access from Ukrainians to the Danish labour market. The purpose of this chapter is to shed light on some of the measures that have been taken in the light of war on the Ukraine concerning social entitlements and access to the labour market and what opportunities have been offered.

The focus is thus on some of the Danish regulation, which has been implemented by virtue of the Ukraine crisis, and thus not specific aspects of EU law. There have also been other actions, but not all specific regarding employment.

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2. EU Temporary Protection Directive.

The Council Directive on temporary protection¹ and its entry into force by Council Implementing Decision (EU) 2022/382² of 4 March 2022 does not apply in Denmark, based on the so-called legal opt-out, which was negotiated by the Edinburgh Agreement in 1993, after Denmark had voted against the Maastricht Treaty in 1992.

Denmark is thus not obliged to implement the Council Directive 2001/55 by any means, but the Ukraine Act, cf. immediately below, is inspired by the Council Directive 2001/55, and thus some of the points contained in the Council Directive 2001/55 are implemented with the special law.

3. Ukraine law – and other legislative measures.

In the spring of 2022, Denmark implemented a special law (Act on Temporary Residence Permit for Displaced Persons from Ukraine; *Lov om midlertidig opholdstilladelse til personer, der er fordrevet fra Ukraine*)³ that gave exceptional rights to persons from Ukraine who were displaced due to the war with Russia. The law thus gave special rights to Ukrainians, rights that other nationalities don't have when they want to take up residence in Denmark.

It was precisely the special situation in Ukraine that led to the implementation of this legislation and was therefore also a special and extraordinary effort.

Fundamentally, therefore, there may be challenges as to whether this law constitutes discrimination. This topic is dealt with in U2022B.279,⁴ which also goes into more detail about the purpose of the law.

The Act grants the right to temporary residence, stating in section 3(1) that the stay is temporary and limited in time until 17 March 2024.

During the processing of an application for a residence permit, the applicant has the right to stay in Denmark, but the processing of the case does not confer a special right to employment, cf. section 4 of the Act. The right to employment must also be determined for Ukrainians in accordance with the Danish Aliens Consolidation Act.⁵

The Danish Aliens Consolidation Act provides more opportunities to perform work when a residence permit has either been applied for or notified to the person concerned. This is stated in section 9a of the Act, which deals with the possibility of residence based on employment or self-employment.

¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L 212/12-23, later on as: Council Directive 2001/55.

² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6.

³ Act 2022-03-16 No. 324, later on as: Special Act.

⁴ Published in Denmark by Karnov.dk (Ugeskrift for Retsvæsen).

⁵ Legislative Order 2022-08-25 No. 1205.

Thus, the Special Act does not in its own way provide for the right to obtain employment; the possibility of this must be sought in the general rules on the right of foreigners to take up an employment.

3.1. Subsequent changes.

However, the possibility of finding employment faster than typical was changed when the possibility of this was extended, so that taking up employment was already possible when submitting an application for residence under the Special Act.⁶

The appropriate decision given such an entitlement was taken by the Minister for Immigration and Integration, who has the authority to do so in accordance with the Danish Aliens Consolidation Act.

This is a change in practice, not a change in the law. However, the change means that Ukrainian war migrants have been given a special status in terms of employability, as they can work while awaiting a response to their application.

3.2. Obtaining employment.

In order to be employed in Denmark as a third country national, there are certain requirements that must be met before the employment can be established. The first step is to obtain a residence permit, as mentioned above. Once this is achieved, there are certain other required elements that are automatically fulfilled, including the assignment of a social security number.⁷

If the person concerned has not yet obtained a social security number because a residence permit has not been obtained, a personal identification number can be obtained from the tax authorities, which is valid temporarily until a residence permit is obtained.⁸

As stated in the job guide,⁹ a digital ID (MitId) must also be made and there must be a bank account so that digital communication with the public sector can be made and a salary can be deposited in the bank.

Furthermore, the job guide shows how terms of employment are generally in Denmark, and here the rules do not differ from other employments.

⁶ Ukrainians gain faster access to the labour market, <https://uim.dk/nyhedsarkiv/2022/april/ukrainere-faar-hurtigere-adgang-til-arbejdsmarkedet/> (accessed 15 June 2023).

⁷ <https://jobguideukraine.dk/for-ukrainian-jobseekers/> (accessed 15 June 2023)

⁸ <https://skat.dk/data.aspx?oid=2349629&vid=0?oid=2349629&vid=0> (accessed 15 June 2023)

⁹ See nt. (4).

3.3. Integration efforts.

Once Ukrainians (as war migrants) have entered Denmark, they must become on an equal footing with others participate in integration initiatives. Here they do not differ from other foreigners, which is why this topic will not be addressed further. Reference is made to the special Danish literature on the subject.¹⁰

4. IGU-education.

A special area which covers refugees is the Integration Basic Education, IGU. It aims to provide war migrants with skills and practical experience with the Danish labour market.¹¹

The programme was established by the government and the social partners in 2016 and is currently valid until 31 December 2023.

The training is not specifically aimed at Ukrainians and is thus not a new initiative taken against the background of the conflict. Nevertheless, it is relevant to make a few comments on this, as it provides an opportunity for contact with the labour market also for war-migrants.

To be able to start the program, one must have legal residence in Denmark, which must be documented when applying for admission to the program. This requirement does not apply to Ukrainians who can access the program even while awaiting a response to their application for residence, however, it is a requirement that they have a permit for temporary residence.

The program consists of two main elements, partly consisting of school teaching and practical training. The teaching currently amounts to 23 weeks of 37 hours and can be composed in different ways. These may therefore be both practical and theoretical subjects designed to provide a better basis for access to the labour market.

The internship must also be organized in such a way that it provides competencies that are relevant on the labour market, i.e. experiences that pave the way for permanent attachment to the labour market and also insight into the structure and working conditions at a Danish workplace.

The payment on the education consists of tuition reimbursement on the teaching part, and salary during the internship. This is fixed at the rates applicable to initial vocational training. In practice, this means that the salary is set as that of an apprentice, cf. the relevant collective agreement in the area.

¹⁰ Christensen L. B., Homann G., Hansken N. E., Brinholdt Mikkelese P., Hallberg K., *Udlandingeret*, Djøf Forlag, København, 2020; Adamo S., *Integrationsret*, Djøf Forlag, København 2022; Nilas C., *Migrationsjura. Udenlandske arbejdskraft og EU-borgere*, Djøf Forlag, København, 2021.

¹¹ For more information please visit:

<https://www.ug.dk/uddannelser/andreerhvervsrettedeuddannelser/andreuddannelserforvoksne/andresaerligeuddannelser/integrationsgrunduddannelsen-igu>, (accessed 15 June 2023).

5. Labour market initiatives.

Denmark is known for, via the Danish model, having very little regulation in the labour market, as this is left to the social partners, i.e. employee organizations and employers' associations.

This also means that many initiatives in connection with Ukrainians coming to Denmark have been made through agreements or initiatives from these parties.

Thus, there have been initiatives locally that gave Ukrainians the opportunity to obtain employment in various workplaces. Similarly, various organizations have been working on initiatives that could help Ukrainians indirectly, by giving employees the opportunity to participate in various activities aimed at Ukrainians' access to the labour market, for example by mentoring or otherwise helping to facilitate access to employment.

There have been various initiatives, e.g. *Kommunerens Landsforening*¹² (KL) and the Confederation of Danish Industry (DI) have started a network in April 2022, in relation to employment for the Ukrainian war-migrants. This has provided some experiences, which are described in a letter from KL.¹³

The letter, which mentions 10 good experiences, refers extensively to individual initiatives taken by various companies, which are also mentioned in the report.

That various initiatives have been taken very well, that the greatest efforts have been made locally, and not at national level, through general legislation and regulation. Instead, solutions have been used at the individual workplace or in the individual municipality, which can be supported for the employment of Ukrainians.

However, the report mentions the IGU training, which has thus also acquired an importance in this context.

6. Final remarks.

As can be seen from the following, Denmark has only introduced limited amended rules to accommodate war-migrants from Ukraine. This cannot be interpreted as meaning that no special effort is being made, just that the rules have not been necessary to change particularly in relation to the requirements that are already made of foreigners and refugees, as well as the opportunities they have.

It also appears that many initiatives have been local, and therefore quite diverse. This means that these cannot be briefly described. However, based on the report mentioned above, training/upskilling, language teaching, transport options (to and from the workplace) etc. can be mentioned.

¹² Organisation of Danish municipalities

¹³ See: <https://www.kl.dk/tema/situationen-i-ukraine/ti-gode-erfaringer-fra-kl-og-dis-netvaerk-om-job-til-ukrainere>, (accessed 15 June 2023)

Figures from the Ministry of Employment in February 2023 show that one year after the Russian invasion, there are 7,055 Ukrainians in employment in Denmark, equivalent to 56% of those available for work.¹⁴

¹⁴ <https://bm.dk/nyheder/pressemeddelelser/2023/02/et-aar-efter-ruslands-invasion-af-ukraine-er-7055-ukrainere-i-arbejde/>, (accessed 15 June 2023)

Mass influx of people from Ukraine: social entitlements and access to the labour market: Estonia.

Gaabriel Tavits*

1. General framework. 2. Personal scope of applicable measures. 2.1. Termination of temporary protection status. 3. Housing, access to healthcare, education and food aid. 3.1. Right to housing. 3.2. Right to healthcare services. 3.3. The right to education. 3.3.1. Preschool children's institutions. 3.3.2. Applying for a school place and studying. 3.4. Right to food aid. 4. Supporting professional activity. 4.1. Right to work. 4.2. Unemployment allowance. 5. Final considerations.

1. General framework.

According to §9 of the Estonian Constitution¹ (hereafter Constitution), all rights, freedoms and obligations arising from the Constitution extend to the citizens of the Republic of Estonia as well as to the citizens of foreign countries, regardless of whether the persons have citizenship or not.

In a situation of danger, where a person is forced to flee their home country, the European Union offers international protection to ensure that the person has equivalent or at least similar living conditions in another European Union Member State until the person has the opportunity to return to their home country.²

In recent years, the number of refugees applying for international protection in various European Union Member States has grown significantly. In the years 2015 and 2016, more than a million applications were submitted in the Member States of the European Union, in the following years the number of applications has remained within the range of 600,000 - 700,000 applications.³ In order to regulate the issues of which Member State and how it should resolve the submitted application for international protection, the European Union has adopted the Dublin Regulation. Dublin II Regulation applies to applications submitted

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¹ Constitution of Republic of Estonia – RT I (*Eesti Vabariigi põhiseadus, Riigi teataja, State Gazette*), 15 May 2015, 2.

² Act on granting international protection to aliens – RT I (*Välismaalasele rahvusvahelise kaitse andmise seadus*), 06 August 2022, 10.

³ Eurostat, *Asylum and first time asylum applicants - annual aggregated data*, in *Eurostat – Data Browser*, 15 February 2023, available at <https://ec.europa.eu/eurostat/databrowser/view/tps00191/default/table?lang=en> (accessed 12 July 2023).

before 01.01.2014. and Dublin Regulation III applies to applications for international protection submitted from 01.01.2014.⁴

Temporary protection is one of the possible types of international protection. The regulation of temporary protection has been created through the legislation of the European Union, as far as the Council of the European Union in 2001 has adopted the Directive 2001/55/EC⁵ which establishes the minimum requirements for the Member States of the European Union to provide temporary protection in the event of a mass influx of displaced persons.⁶ The Directive 2001/55 was adopted at the time when Europe had to face mass displacement of people for the first time since the Second World War. The Kosovo crisis that took place in 1999 and the accompanying large refugee migration clearly showed the need for a legal framework, as the problems associated with mass migration in the Member States were uncoordinated and needed better solutions.

Russia's military invasion of Ukraine began on 24.02.2022, which created the need for the European Union to adopt the Council of Europe Implementing Decision (EU) 2022/382,⁷ which determined the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and as a result of which temporary protection is provided for them in the Member States of the European Union. According to § 52 of the Act on the Granting of International Protection to Aliens⁸ (hereinafter: VRKS), the implementation decision is the basis for Order No. 6622 of the Government of the Republic of Estonia dated 08.03.2022 "Granting Temporary Protection" (hereinafter: the Order).

The main concern in Estonia is that the State cannot process war migrants' data quickly enough to confirm temporary protection status when there is a mass influx of war migrants. According to the Estonian legislation, the review of the request for confirmation of the temporary protection takes place in an accelerated procedure, but there is essentially no previous experience in such a situation in Estonia. In the case of a delay in the granting of confirmation of the temporary protection status, access to all social services that are necessary to cope with everyday life is not guaranteed.

Estonia's current law and work organization do not sufficiently support the provision of social benefits to recipients of temporary protection, the procedure for applying for temporary protection is not fast enough, and necessary social services are not guaranteed by local governments without State's support to local governments. For example, the State sets language learning (A1 level) as a criterion for war migrants in order to integrate into society,

⁴ Urke K., *Applicants for international protection and the Member States of the European Union in the maze of rules of the Dublin system*, in *Õiguskeel*, 3, 2017, 1-3.

⁵ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

⁶ Chancellor of Justice, *Applying for international protection*, 20 April 2022, available at: https://www.oiguskantsler.ee/sites/default/files/field_document2/Rahvusvahelise%20kaitse%20taotlemine.pdf (accessed 12 July 2023).

⁷ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁸ Act on granting international protection to aliens.

but the responsibility for ensuring the possibility of language training rests with the local government. Likewise, the State has decided to end supporting war-migrants from Ukraine with the accommodation as of 31.03.2023 but has not presented solutions or proposed what will happen to war-migrants after the aforementioned date, given that the war activities in Ukraine have not ended.

2. Personal scope of applicable measures.

The Directive 2001/55 enables the Member States to offer immediate and effective protection to persons who need it and to avoid excessive implementation of national asylum systems in the event of a mass arrival of displaced persons. The Council of the European Union has found that temporary protection is the most appropriate tool in the current situation, which has now lasted for more than a year, to help reduce the pressure on the different conventional reception systems of the Member States.⁹

Temporary protection can be considered as an emergency mechanism that can be used in situations where people in need of help arrive *en masse* and it is necessary to ensure quick and effective protection. The peculiarity of temporary protection is that its granting does not require review and processing of individual applications; it is granted as soon as citizenship or the need for protection status is proven, i.e. the residence of the person was in Ukraine or his family has lived in Ukraine.¹⁰

The legal definition of temporary protection in Estonian law is determined by VRKS. According to §5 paragraph 1 of the VRKS:

Temporary protection is an exceptional procedure, the purpose of which is to provide immediate and temporary protection in the event of mass immigration or expected mass immigration to aliens who cannot return to their country of origin, especially if there is a risk that the international protection system is unable to process said immigration without harming its own effective functioning in the interest of aliens seeking temporary protection.

In light of the ongoing war in Ukraine, temporary protection has also been explained in such a way that temporary protection means granting a person a one-year residence permit (may be extended depending on the situation), which guarantees the applicant and his family members similar rights (different social services (education, medical care, etc.), free movement within the EU) compared to an Estonian citizen.¹¹

The Tallinn Administrative Court has clarified the understanding of the current regulation regarding temporary protection, including its granting. The court has pointed out, according to the notification of the European Commission, that if there is no procedure for applying

⁹ European Parliament, *Temporary Protection Directive*, 2022, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729331/EPRS_BRI\(2022\)729331_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729331/EPRS_BRI(2022)729331_EN.pdf) (accessed 12 July 2023).

¹⁰ European Parliament, *ibidem*.

¹¹ Police and Border Guard Board, *Information about the war in Ukraine*, available at: <https://www.politsei.ee/et/juhend/info-seoses-ukraina-sojaga/ajutine-kaitse-ukraina-kodanikele-ja-nende-pereliikmetele> (accessed 12 July 2023).

for temporary protection or adequate protection¹² under national law, the applicant for the confirmation of the protection should prove to the competent authority that the person has the right to temporary protection or adequate protection under national law. If necessary, additional formal actions are provided by the Member State, but the temporary protection confirmation procedure must be as quick and efficient as possible. It must be clear to the applicant what benefits are granted with benefit from the protection.¹³

A war migrant can only have temporary protection status in one EU Member State. According to the operational guidelines issued by the European Commission on March 21, 2022, a person covered by the Decision 2022/382 has the right to choose the Member State where he wishes to use the rights associated with temporary protection. The Member State is obliged to provide temporary protection rights as long as the person falls within the scope, regardless of whether the person was previously registered in another Member State. There is no basis for a Member State to refuse the registration of a person within the scope of regulation, thereby limiting the person's access to rights in the relevant Member State on the grounds that the person is registered in another Member State. In a situation where a person is registered in one Member State, for example in Estonia, and then moves to another Member State, i.e. Finland, the Member State, upon moving (Finland), must guarantee the person all the rights prescribed in the Member State. The residence permit issued in the first Member State and the rights arising therefrom shall cease to be valid and must be revoked in the first Member State in accordance with Article 15(6) of the Decision 2022/382 in conjunction with Article 26(4).¹⁴

According to VRKS § 5 (2), an alien is considered to be a recipient of temporary protection, who is forced to leave his country or region of origin, primarily as a result of a call from international organizations, or has been evacuated from there, and who due to the situation in the said country is unable to return safely and permanently, and who may belong to the groups regulating international protection within the scope of the provisions, and who have fled from an area of armed conflict or persistent violence, or who are in serious danger of falling, or who have fallen victim to a systemic or general violation of human rights.

In paragraph 2 of Article 1 of the Convention on the Status of Refugees, a refugee is defined as a person who, due to a well-founded fear of persecution due to race, religion, nationality, membership of a social group or political beliefs, stays outside the country of citizenship and is unable or, due to fear, does not want to receive protection from that country, or who as a result of the mentioned events is stateless outside his former country of residence and is unable or unwilling to return there due to fear.¹⁵ In Estonian case law,

¹² Adequate protection under domestic law is, according to the European Commission's notification, an alternative to temporary protection that Member States may offer, but are not obliged to do so.

¹³ Tallinn, Administrative court, case 3-22-59, 6.

¹⁴ European Commission, *Frequently asked questions received on the interpretation of the Temporary Protection Directive and Council Implementing Decision 2022/382*, 3-4, https://home-affairs.ec.europa.eu/system/files/2022-07/Frequently%20asked%20questions%20received%20on%20the%20interpretation%20of%20the%20Temporary%20Protection%20Directive%20and%20Council%20Implementing%20Decision%202022-382_en.pdf (accessed 12 July 2023).

¹⁵ Refugee Convention – RT II 1997 (*Pagulasseisundi konventsioon*), 6, 26.

questions have arisen as to when it is possible to say that a person is in refugee status. The Tallinn District Court has explained the following in the case 3 – 22 - 1076:

A foreigner is recognized as a refugee if he has reasonable grounds to fear persecution, at least one of the five reasons mentioned in section 4 s. 1 of VRKS and Article 10 s. 1 of Directive 2011 / 95 (race, religion, nationality, membership of a social group, political beliefs) is present for persecution. and there is a causal connection between the persecution (or lack of protection against it) and the cause. There must also be no circumstances precluding recognition as a refugee listed in § 22 subsection s 1 of VRKS.

Therefore, it must be clearly identifiable that one of the characteristics of a social group is present (one does not exclude the other) and that there is a causal link between the cause and the persecution.

The definition of an applicant for international protection can be found in VRKS. According to § 3, subsection 1 of the VRKS, an applicant for international protection is a foreigner who has applied for international protection and whose application has not been subject to a final decision.

The recipient of additional protection is a person who has not been granted refugee status, but upon returning to his home country, the person would face a threat to his health or life.¹⁶ The European Court of Justice has stated that a person can be considered as meeting the requirements of additional protection if there is a reasonable basis that the applicant faces a real, not hypothetical, threat in the home country.¹⁷ Persons who do not have grounds to be qualified as refugees may still need international protection in certain cases, as there may be a threat to their life and/or health upon returning to their home country. In the aforementioned situation, a third-country citizen may meet the criteria of a beneficiary of subsidiary protection. The need for additional protection is associated with a serious threat. A serious threat according to VRKS § 4 (s) 3 and within the meaning of point 31 of the decision of the European Court of Justice No. C 465 / 07 is a situation that must occur in reality, that is, it must not be hypothetical.

Temporary protection covers not only citizens who have arrived from a country engaged in hostilities, but also their family members with whom the person lived in the same household and who are dependent on the arrived person. The current Estonian legislation does not stipulate the conditions that a family must necessarily stay together in a Member State when applying for a residence permit on the basis of temporary protection. Likewise, there is no requirement that people applying for confirmation of the temporary protection must necessarily apply for confirmation of the temporary protection in the country where they crossed the external border of the European Union.¹⁸

In cases where non-Ukrainian third-country nationals are separated from a family member or family members with Ukrainian citizenship, the non-Ukrainian third-country national married to a Ukrainian citizen should provide the competent authorities with evidence proving the family relationship or family unity, including the fact that the family was present

¹⁶ Refugee Convention – RT II 1997 (*Pagulasseisundi konventsioon*), *ibidem*.

¹⁷ CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie, section 31.

¹⁸ Chancellor of Justice, nt. (6).

and lived in Ukraine before 24. February 2022. If a person is unable to present such documents upon arrival in the country, a family relationship may be established on the basis of evidence received from the Ukrainian authorities.¹⁹

According to VRKS § 52 (1), the presence of mass immigration of resettled aliens is confirmed and the need to apply for the confirmation of the temporary protection is decided by the Council of the European Union. The implementing decision of the Council of Europe defines the persons who are automatically granted temporary protection. Article 2(1) of the Decision 2022/382 states that the decision in question applies to the following group of persons who were forced to flee on 24.02.2022. or after the indicated date due to Russian military invasion:

- a) citizens of Ukraine who lived in Ukraine before 24.12.2022;
- b) stateless persons and citizens of third countries other than Ukraine who had international protection or equivalent national protection in Ukraine before 24.12.2022;
- c) family members of persons referred to in points a) and b).

However, the Decision 2022/382 gives the Member States the freedom to decide whether, in addition to the persons listed in the decision, the circle of recipients of temporary protection in a particular Member State is wider. The order issued by the Government of the Republic of Estonia does not expand the range of recipients of temporary protection specified in the Decision 2022/382. Therefore, the circle of persons towards whom temporary protection can be confirmed in Estonia is very clearly defined. If the persons do not meet the criteria listed in the § 52 (1) VRKS, then the person has the option of applying for another form of protection.

Temporary protection applies automatically to persons who have had to flee their home due to a dangerous situation, which is why it has not been possible to permanently continue their daily life in their home country. In order to establish a living situation in a Member State of the European Union and to receive equivalent rights, including benefits, a person who has arrived in a Member State must submit an application for confirmation of the temporary protection.²⁰ VRKS § 54 subsection 1 also stipulates the aforementioned condition for obtaining a residence permit.

One important aspect concerns the legal position of unaccompanied minors. Article 8 of the Dublin III Regulation more broadly regulates applications for international protection of unaccompanied minors. According to this regulation, if the applicant for international protection is an unaccompanied minor, the country in which a relative (family member, relative) of the unaccompanied minor is present is considered responsible in the Member State. When deciding, the best interests of the child must be ensured. If the minor does not have close relatives in the Member States, the responsible Member State must be designated as the country where the minor has applied for international protection.²¹ Estonian law also puts the rights and interests of the minor as primary (VRKS § 17 section 1). An

¹⁹ European Commission, nt. (14), 2.

²⁰ European Council, *EU temporary protection for refugees*, 23 March 2023, available at: <https://www.consilium.europa.eu/et/infographics/temporary-protection-displaced-persons/> (accessed 12 July 2023).

²¹ Dublin III Regulation, art 8.

unaccompanied minor is assigned a reliable representative with relevant knowledge and skills, who can be both a natural person and a legal entity. Until family members are found, the unaccompanied minor is placed in an accommodation centre, with an adult relative or referred to foster care (VRKS § 11 and 12).

In order to ensure the principle of procedural economy and quick procedure, Article 11 of the Dublin Regulation III stipulates that if family members submit an application for international protection in one Member State at the same time or with a small gap, it is possible to process the applications together. Among other things, it has been considered that family members are not separated due to the criteria given in the regulation. Therefore, the Member State responsible for family members is determined according to which of the countries is responsible for examining the largest number of applications according to the criteria, or which country is responsible for examining the application of the oldest family member.²²

The length of the temporary protection confirmation procedure is not explicitly stipulated by VRKS. The procedure of confirming the temporary protection is also referred to in the notification of the European Commission, according to which, as if there is no procedure for applying for temporary protection, the right to temporary protection arises immediately.²³ In connection with the war that started in Ukraine and the large number of war migrants who arrived, a number of reception points were temporarily created in Estonia as an exception, where the arrived war migrants were given basic information on how to proceed in order to ensure equal living conditions with other citizens living in the country.²⁴ To apply for the confirmation of temporary protection, a person must contact the Police and Border Guard Board,²⁵ who, as a rule, will make a decision immediately if the person meets the criteria for the recipient of temporary protection and if there are no circumstances excluding the enjoyment of temporary protection. The residence permit is issued to the recipient of temporary protection within 30 days from the submission of the application.²⁶ In a situation where the applicant is unable to fulfil the formal requirements set by the Member State, the person should be referred to the reserve procedure according to the notification of the Council of Europe.²⁷

In the event that a person is a beneficiary of the temporary protection, the granted temporary protection does not prevent him from additionally applying for refugee status or other prescribed forms of protection.²⁸ According to Article 19 of Directive 2001/55,

²² Dublin III Regulation, Art. 11.

²³ European Commission, *Commission notice – Operational guidelines for the implementation of Council Implementing Decision (EU) 2022 / 382 (determining the existence of a mass influx of refugees from Ukraine within the meaning of Article 5 of Directive 2001 / 55 / EC and providing temporary protection as a result)*, 21 March 2022.

²⁴ EMN, *Temporary protection for Ukrainian citizens in Estonia*, available at: <https://www.emn.eu/wp-content/uploads/2022/03/ajutise-kaitse-final-onepager-a4.pdf> (accessed 12 July 2023).

²⁵ Competent administrative body appointed in accordance with VRKS § 18 (1).

²⁶ EMN, nt. (24).

²⁷ European Commission, nt. (23).

²⁸ European Council, Council of the European Union, *Infographic - EU temporary protection for displaced persons*, 23 March 2023, available at <https://www.consilium.europa.eu/et/infographics/temporary-protection-displaced-persons/> (accessed 12 July 2023).

Member States may provide for the criterion that temporary protection cannot be used simultaneously with the status of asylum seekers. This means that persons who are entitled to temporary protection and who also apply for additional international protection may be asked to choose between the exercise of the rights provided for in Directive 2001/55 or the rights provided for in Directive 2013/33 on the reception conditions of applicants for international protection.²⁹ According to § 28 VRKS, if a person simultaneously applies for international protection in addition to temporary protection, the Police and Border Guard Board suspends the international protection procedure for the period of validity of the temporary protection.

2.1. Termination of temporary protection status.

According to the European Commission, it is important to distinguish between voluntary return in the sense of Article 21 of the Decision 2022/382 (for example, in a situation where a person has moved his residence back to Ukraine) and short-term visits to the home country by persons who have been granted temporary protection. Persons receiving temporary protection may need to visit their home country for reasons other than voluntary return before the end of temporary protection (for example, visiting or rescuing family, bringing documents, etc.). Therefore, in the commission's opinion, it is not appropriate to treat a short-term return to a state of war as a voluntary return, through which the temporary protection status and the accompanying rights can be cancelled.³⁰

It is possible to extend the status of temporary protection for a good reason, which is primarily considered to be the fact that the threat to the person's life and/or health continues to be at risk.³¹ An application for the extension of temporary protection can be submitted at the earliest three months prior to the expiry of the issued residence permit. The request for an extension requires that the applicant has a registered place of residence in Estonia.³²

According to § 54 (2) of VRKS, the status of temporary protection is extended in six-month increments and by a maximum of one year. The Council of the European Union has the competence to extend the status for another year if the hostilities in the person's country of origin have not ended or at least eased.³³ At the same time, temporary protection must not last too long, because it is not allowed to leave persons in a situation of minimum protection indefinitely.

The person is given free authority to return to his country of origin even before the temporary protection status expires. The person must notify the Police and the Border Guard

²⁹ European Commission, nt. (14), 5.

³⁰ European Commission, nt. (14), 6-7.

³¹ Kriis E., *Ajutine kaitse*, available at <https://www.kriis.ee/julgeolekuolukord-euroopas/info-ukraina-sojapogenikele/ajutine-kaitse> (accessed 12 July 2023).

³² Police and Border Guard Board, *Extension of temporary protection*, available at: <https://www.politsei.ee/et/juhend/info-seoses-ukraina-sojaga/ajutise-kaitse-pikendamine> (accessed 12 July 2023).

³³ EMN, *Ajutine kaitse*, available at <https://www.emn.ee/wp-content/uploads/2022/03/ajutise-kaitse-final-onepager-a4.pdf> (accessed 12 July 2023).

Board of the wish to end temporary protection.³⁴ In case of voluntary return to the home country before the end of temporary protection, the person who acquired the status loses the right to temporary protection. In day-to-day practice, this means that Member States can invalidate the issued residence permit and stop guaranteeing the rights associated with temporary protection. The above, however, does not mean that, in case of later return, the persons do not have the right to temporary protection again and the accompanying rights.³⁵

Ukrainian citizens are exceptionally provided with the possibility that holding or extending temporary protection is not mandatory, they have the right to stay in the country even without holding temporary protection. However, in the absence of temporary protection, the person is not granted a residence permit and the accompanying social benefits to cope with everyday life.³⁶

The residence permit expires or is revoked. As long as the issued temporary protection is valid, the recipient of temporary protection has the right to move freely between the Member States of the European Union without the person losing their status.³⁷

3. Housing, access to healthcare, education and food aid.

3.1. Right to housing.

According to section 62 of VRKS, the applicant for a residence permit on the basis of temporary protection is obliged to live in an accommodation centre for applicants for international protection or in a place designated by the Social Insurance Board during the processing of the residence permit. Based on the written permission of the Police and Border Guard Board, the applicant for temporary protection may stay outside the accommodation centre or the place designated by the Social Insurance Board, if the accommodation and maintenance of the applicant for temporary protection is provided by a person legally staying in Estonia, the applicant has sufficient economic resources or if it is necessary to ensure the safety of the applicant. The applicant for the confirmation of the temporary protection must prove that the person staying in Estonia guarantees accommodation and/or has sufficient financial resources.

According to VRKS § 31 (2), the Social Insurance Board must ensure that the tasks of the accommodation centre are fulfilled. Since the arrival of war migrants, accommodation has been guaranteed for them until they are able to establish their daily life in the country and find longer-term accommodation. Long-term accommodation means that the displaced person rents an apartment with the help of a rent subsidy or the local government, or that the displaced person finds accommodation with the help of volunteers.

³⁴ Kriis E., nt. (31).

³⁵ European Commission, nt. (14), 7.

³⁶ Majandus P.M., *Lugeja küsib: kas töösuhe lõpeb, kui välismaalasest töötaja jääb ajutise kaitse pikendamisega hiljaks?*, in *Postimes*, 20 February 2023, available at <https://majandus.postimees.ee/7716698/lugeja-kusib-kas-toosuhe-lopeb-kui-valismaalasest-tootaja-jaab-ajutise-kaitse-pikendamisega-hiljaks> (accessed 12 July 2023).

³⁷ European Commission, nt. (14), 7.

To ensure short-term accommodation, the Social Insurance Board cooperates with local governments, which assist war migrants in finding accommodation, food and other necessary primary assistance. Short-term accommodation assistance is guaranteed with State's support for up to one month. In a situation where the Social Insurance Board offers the war migrant the opportunity to settle in a long-term residence and the war migrant declines the opportunity, the war migrant is informed that the rejection of the long-term residence means for the war migrant an obligation to find a permanent residence for himself within two months. The aim is to use all the possibilities offered in the provision of residence to ensure either short or long-term residence for someone who needs it equally or more.

In 2022 permanent residences were created in Tallinn, where war migrants from hotels were relocated. Later, however, the Social Insurance Board changed its position, and it was decided that only short-term accommodation could be offered in the buildings, and that war migrants, who have become their own home, must 31.03.2023 as of moving out of residence. The Social Insurance Board justified its decision with the fact that there was no operator to manage the houses, and today the Social Insurance Board's task is to provide only short-term accommodation. The problem of communication between State's institutions is clearly identified, because the situation should have been foreseen before the war migrants were allowed a permanent place of residence. Considering today's rental market and the fact that people have had to move and lost their permanent residence and safe, normal living environment, this kind of constant relocation of people is psychologically exhausting. On the other hand, it is a situation where the State covers costs at the expense of taxpayers to support war migrants, which puts Estonian residents in an unequal situation, even though the persons with temporary protection status are, as it were, equal. In connection with today's cost of living and income, many families with Estonian citizenship are faced with the question of how to pay for a rental apartment and the associated costs, or how to find them at all.

The conducted study³⁸ confirms that one of the main non-property benefits offered, which the Estonian's State cannot adequately guarantee, is accommodation. To fulfil the task, the Social Insurance Board created an accommodation option in *Tallink* ships and hotels, which fulfils the function of providing short-term accommodation, but there are no longer-term solutions to offer. Queues in social housing are long, and smaller cities again lack good enough transport connections and jobs to generate income.

3.2. Right to healthcare services.

War migrants who have arrived in Estonia, and who have received a residence permit and an Estonian personal identification number, are not covered by health insurance. War migrants must apply for health insurance under the same conditions as other Estonian citizens. For this, the person must, for example, have worked for at least one month under

³⁸ UNHCR, *Regional refugee reception plan for the situation in Ukraine*, January-December 2023, available at <https://www.unhcr.org/neu/wp-content/uploads/sites/15/2023/02/Estonia-RRP.pdf> (accessed 12 July 2023).

an employment contract or be registered as unemployed at the Unemployment Insurance Fund. Like other Estonians, health insurance is guaranteed for children, students, pregnant women, people with partial or no working capacity, pensioners, members of a religious community or dependent spouses.³⁹

War migrants are guaranteed primary healthcare services (medical treatment in case of emergency), regardless of whether the war refugee has acquired health insurance or not. The primary healthcare service that is guaranteed can be, for example, emergency aid in case of serious health problems, which also includes dental care.⁴⁰

In addition to the provision of emergency healthcare, GP centres⁴¹ offer general medical care to all war refugees, regardless of whether the person has valid health insurance or not. **Getting aid does not require membership in the GP's register.**⁴²

Individuals are also offered the opportunity to undergo an additional health check. The purpose of the health check is to assess the war migrants' state of health aiming to plan additional examinations, planned treatment, drug prescription, vaccination, etc. if necessary.⁴³ The results obtained from the health check-up are suitable for submission to the employer upon starting work.⁴⁴

Likewise Estonian citizens, war migrants are also guaranteed the opportunity to be vaccinated against COVID-19 free.⁴⁵

War migrants between the ages of 6 and 8 who start school in Estonia undergo a health check-up to assess the child's development and the appropriateness of their development for their age. If the child does not have the corresponding certificate, the school cannot refuse to accept the child. In this case, the health check must be carried out within three months. The costs related to the health check-up are borne by the Health Insurance Fund.⁴⁶

The provision of healthcare services is one of Estonia's concerns, because even before mass immigration there was a crisis in healthcare mainly due to a lack of qualified workforce. The added significant number of persons has not improved the situation and it leads to a situation where both persons who have received temporary protection and all other permanent residents of Estonia have to wait longer for the reception time. The unexpected addition of patients to the list of family doctors has further increased the crisis, which the State must deal with. On the one hand, there may be a right to a service, but on the other hand, the State is not able to provide the latter effectively enough due to the prevailing labour shortage. In the same way, a possible language barrier must be considered when referring a recipient of temporary protection, which is why the number of GP-s and nurses providing services may be significantly smaller.

³⁹ Tervisekassa, *Ukraina sõjapõgenikele*, available at:

<https://www.tervisekassa.ee/inimesele/ukraina-sojapogenikele> (accessed 12 July 2023).

⁴⁰ Tallinn, *Health care and first aid in Tallinn*, 29 August 2022, available at:

<https://www.tallinn.ee/et/ukraina/tervishoid-ja-esmaabi-tallinnas> (accessed 12 July 2023).

⁴¹ General medical practitioner (GP).

⁴² Tervisekassa, nt. (39).

⁴³ Tervisekassa, *ibidem*.

⁴⁴ Tervisekassa, *ibidem*.

⁴⁵ Tallinn, nt. (40).

⁴⁶ Tervisekassa, nt. (39).

3.3. The right to education.

3.3.1. Preschool children's institutions.

Pursuant to § 75 of the VRKS, a minor recipient of international protection during their stay in Estonia is guaranteed access to education under the same conditions as Estonian citizens.

Until 31.08.2022, support from the State's budget for free education was guaranteed for war migrants. The educational institution was given the opportunity to decide whether the study place for basic and interest education is with a place fee or without a place fee, including food allowance. The subsidy set by the State allowed educational institutions not to charge a fee for the child.

The grounds set out in the law apply to guaranteeing a kindergarten place for the children of war migrants. In kindergartens, it is possible to increase the number of groups if this is accepted by the local government. If the groups are full and there are no places, the State has foreseen the possibility of organizing day activities, either in youth centres, libraries or elsewhere, until other quick solutions are found.

Although in Ukraine, for example, compulsory schooling starts at the age of 6, the war migrants staying in Estonia, like other children, start school as of October 1 when they turn 7 years old, according to the current Estonian legislation.

3.3.2. Applying for a school place and studying.

The State guarantees a minor child the opportunity to acquire an education, regardless of whether temporary protection has been applied for or not. Likewise, the child does not have to be enrolled at the time of submitting the application. If there is no entry, the Estonian Education Information System has created an option to enter only the child's date of birth. If temporary protection is acquired, the school is obliged to update the child's data in the information system. The VRKS does not stipulate the aforementioned possibility and criteria, so the State has put recipients of temporary protection in a more favourable situation. On the other hand, the State sets the opportunity for the child to acquire an education, but the availability of school places and its guarantee are not considered.

The right to a school place is guaranteed for the child if the parent submits a corresponding application to the local government. The local government guarantees the opportunity to acquire an education for war refugees of school age. The State has made it a prerequisite that the child starts studying at a school where the language of instruction is Estonian. This makes it easier for the child to be integrated into the environment. Therefore, the State has shifted the responsibility for securing a school place to the local government.

The number of classes the child starts to study is decided according to the request submitted by the parent and the interview conducted, if, as a rule, the child starts to study in a class that corresponds to the child's age group. According to the need and possibilities, the Estonian education information system has the ability to create cross-age groups, in which case it is not necessary to determine the age group.

17.03.2022 the Government of the Republic approved the reimbursement of educational expenses of school-aged children of Ukraine at least until 31.08.2022. The average cost of one pupil receiving early childhood education is 465 euros, 506 euros for a student receiving general education, and 353 euros for a student receiving vocational education. The support **should cover the costs related to the pupil's place of study, acquisition of the national language at the basic level, support services, catering, interest education, youth work and, if necessary, support services.** State support to local governments guarantees the educational institution the opportunity not to ask for a fee for a war migrant. Based on the above, war migrants have been somewhat at an advantage, because depending on the county and more precisely the region, high school students, for example, have to pay the costs related to catering themselves.

In addition, the International Ukrainian School has opened in Estonia, offering distance learning. There is also a distance learning platform where lessons for every age group are guaranteed. The Ukrainian-language educational material has been created from the funds of the Ukrainian's State.

An opportunity has been created for elementary school graduates to take an elective exam in a foreign language and Estonian as a second language. In order to pass the mathematics exam, the school is guaranteed the possibility to order a Russian language version, and it is not excluded that work with a Ukrainian translation is also guaranteed for the time of passing the exams.

For students graduating from high school, it is possible for the school to order an exam paper in Estonian as a second language, i.e. at a lower than B2 language proficiency level. In the same way, the possibility to order an exam paper at the A2 level based on the acquisition of the war migrants' language skills is guaranteed. In addition, similar to elementary school graduates, exceptions have been made for high school graduates when preparing a research paper. A practical paper can be prepared instead of a research paper from high school.

Although VRKS stipulates the obligation to ensure education on the same basis, the work plans of the State and local governments remain partially ill-considered here. For a long time, there has been a situation where kindergarten queues are long and several pupils apply for one study place. The situation in which kindergarten and school places must be guaranteed for all immigrants while ensuring equivalent conditions for permanent minor residents of Estonia who previously lived in the country has not been analysed carefully enough. At the same time, when there is a shortage of places, smaller educational institutions have to close their doors, because local self-governments are not able to adequately finance educational institutions. At this point, the State could have a plan to take advantage of those educational institutions that are in danger of being closed, where classes can be created for those who have received temporary protection, similar to the already opened International School of Ukraine.

3.4. Right to food aid.

Food aid issues are processed by the local government. In a situation where a person is unable to provide food for himself and his family members, he must contact the local government.⁴⁷ Social workers of local government draw up a list of those in need, and then it is possible to issue food aid to those in need at food bank distribution points.⁴⁸

On the example of the city of Tallinn, food aid is organized in such a way that after receiving the list, food packages are assembled and issued, either once in two consecutive weeks or over a week. It is therefore possible to receive food aid twice a month.⁴⁹

If a person has acquired temporary protection and is unable to provide food for himself and his family, the recipient of temporary protection can apply for subsistence allowance. Apart from the possible receipt of subsistence allowance, the social worker can, when necessary, add a person, including his family, to the list of food aid recipients, in which case, as a rule, two food aid packages are issued.⁵⁰

4. Supporting professional activity.

4.1. Right to work.

VRKS § 75 stipulates the right of the recipient of international protection to work in Estonia under the same conditions as other Estonian residents. Therefore, the legal basis for the employment of a war migrant may be a temporary residence permit, temporary protection, short-term employment or employment on the basis of the special provisions of §§ 309¹⁴ and 309¹⁵ of the Aliens Act.

The employer has the responsibility to determine that the foreigner who starts work meets the criteria of the recipient of this right. The employer's obligation is to pay wages for the work performed, which is at least equivalent to the Estonian annual average monthly salary (gross) multiplied by the coefficient of 0.8 of the last published by Statistics Estonia of the field of activity in which the job is started.

It is important to distinguish that if a foreigner works on the basis of short-term registration, the salary is paid in accordance with the Aliens Act, according to § 178 (1) of which the salary must be at least equal to the average annual gross salary in Estonia.

In order to start a job, a war migrant does not necessarily have to have an Estonian personal identification number. If the person does not have the latter, the employer has the opportunity to register the person's employment for up to five days based on the person's date of birth. Since the application for confirmation of the temporary protection is done on an urgent basis, the person will also be issued a personal identification number on an urgent

⁴⁷ Kriis E., nt. (31).

⁴⁸ Toidupank, *Ask for help. Estonian Food Bank and Tallinn Food Bank*, available at: <https://www.toidupank.ee/vajad-abi/taotle-abi/> (accessed 12 July 2023).

⁴⁹ Tallinn City Government, *Distribution of food aid to Ukrainian war refugees*, 27 July 2022, available at <https://www.tallinn.ee/et/ukraina/toiduabi-jagamine-ukraina-sojapogenikele> (accessed 12 July 2023).

⁵⁰ Tallinn City Government, *ibidem*.

basis, and the person should presumably have an identity code within five days. The employer then corrects the entry in the register and replaces the date of birth with the personal identification number.

A war migrant's language skills or lack thereof is not a basis for refusing employment, as there are many jobs today that do not necessarily require knowledge of the national language. If the workplace where the war migrant starts work requires a certain level of language skills, then the employer should, first of all, support the war migrant in settling into the position. The war migrants' own initiative is also important, because language skills help the war migrant integrate into society and adapt to the country faster.

The Unemployment Insurance Fund has created more convenient opportunities for war migrants, i.e. a separate internet environment has been opened, which is specifically designed for war migrants who have arrived in the country. Employers can add job ads to the environment, and Ukrainian citizens can easily find offers that meet, among other things, language requirements, i.e. they do not necessarily need Estonian language skills to start working immediately.

To motivate the employer, a motivation package was created for employers as well. The employer is paid a mentoring fee, which is 75% of the minimum monthly salary in accordance with TLS § 29 (5), the cost of obtaining the employee's qualification and the cost of translation services related to work are reimbursed in the amount of up to 500 euros including VAT, and the costs of professional training in the amount of up to 2500 euros including VAT (until 30.11.2023). The purpose of issuing subsidies is for employers to employ more persons who have received confirmation of the temporary protection, thereby helping employers to cover the possible costs of employee training and translation services. In order to receive subsidies, the employer must submit a completed application to the Estonian Unemployment Insurance Fund, which will decide on reimbursement of expenses within 14 days from the submission of the application.

Immigration is rather positive for the Estonian labour market, because there has been a labour shortage in Estonia for a long time, which the persons benefiting from temporary protection will help to change. Statistics show that mainly women with minor children and/or elderly people who already need additional care have arrived as war migrants. Similarly, displaced persons have a higher level of education, which may give an advantage in the labour market, but not necessarily, because language skills or the need for childcare services may appear as an obstacle. Considering the lack of specialists needed in Estonia, for example in the fields of healthcare and education, the Government should find faster solutions on how to hire qualified war migrants and apply people's skills and strengths in the best possible way for them. Current legislation prevents the filling of positions mainly because of the language requirement, lack of knowledge of the legislation, or the person does not have a qualification certifying the level of education recognized domestically, but the document required in the home country has been issued. Unfortunately, it is clear that language skills at an advanced level are not obtained quickly enough, which is why it is not possible for a top specialist who previously worked in Estonia to start working in a similar position, but has to settle for simple work. At the same time, this person's contribution to the development of any field can be significant, but the only obstacle remains language skills,

which will come with time, and which would be helped by an Estonian-speaking working environment.

4.2. Unemployment allowance.

For those war migrants who have gotten the temporary permit and have not found a job, there is a possibility to register as unemployed by the Unemployment Insurance Fund. In case a person has registered as an unemployed there is a right to claim unemployment allowance. The unemployment allowance is a social protection benefit, which is paid in case an unemployed does not have an income. This benefit is generally guaranteed for everyone who has stayed in Estonia for more than four months.

The determination of unemployment benefits must also be based on the criteria set forth in the Labour Market Services and Benefits Act. Special criteria are not set for VRKS recipients of temporary protection. In a situation where the recipient of temporary protection is looking for a job, unemployment benefit is paid to the person if the war migrant has worked as unemployed for at least 180 days during the 12 months prior to registration (previous work in the home country is also included in the mentioned days), raised a child under 8 years old, studied full-time or in an inpatient studying or engaged in other similar activities. It is not possible to receive unemployment benefits if the person receives a monthly income that is greater than the amount of unemployment benefits.

According to the data as of 09.04.2023. 6,011 Ukrainian citizens who are in temporary protection status in Estonia have registered as unemployed and make up 11.1% of the total share of unemployed people in the country. However, it also appears that from 14.03.2022. a. until 09.04.2023 13,733 war migrants who have found work, retired or left for other personal reasons the unemployed status.⁵¹

5. Final considerations.

In summary, it can be said that the rights of the recipient of temporary protection can be found in the main legislation aimed at them, but they are dealt with in a minimalistic way and do not provide sufficient information to the newly arrived in the country, considering the initial language barrier.

The primary provision of cash benefits and benefits in kind to those who benefit from temporary protection has taken place from the State's budget, which has been supported by the European Union with financial aid.

It is rather difficult for the recipient of temporary protection to find out where and under what conditions benefits in cash and benefits in kind must be applied, because different institutions grant them. Mainly, opportunities and conditions can be found on the websites of various ministries. Likewise, it appears that in some important issues (e.g. education), the

⁵¹ Tallinn City Government, *ibidem*.

State has not created a clear system and solutions, and responsibility and taking a position is directed to local governments.

The national social policy relating to mass influx of displaced persons from Ukraine: Finland.

Annika Rosin* - Katarzyna Kärkkäinen**

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

The number of Ukrainian citizens in Finland has been growing since the 1990s. Particularly in the 2010s, after the outbreak of conflict in eastern Ukraine, the inflow of Ukrainian citizens to Finland has increased. In recent years, Finland has been an attractive destination for seasonal workers, including several thousand Ukrainians employed in agriculture and forestry. Before the Russian attack on Ukraine, there were about 7,000 Ukrainian citizens living in Finland. In 2022, Finland granted temporary protection residence permits to approximately 45,000 individuals who had fled from Ukraine.¹ According to the United Nations High Commissioner for Refugees (UNHCR), by 2023, 52,790 persons from Ukraine were registered for temporary protection or a similar scheme in Finland.² It is

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¹ Alho R., Eronen E., Paljakka M., Penttilä A., Simonen J., Välimäki M., Väyrynen T., *Ukrainalaiset Suomessa 2022*, E2 Research, Ministry of Interior & Sitra, 2022.

² UNCHR, *Operational data portal. Ukraine refugee situation*, 2023, <https://data.unhcr.org/en/situations/ukraine> (last accessed 5 April 2023).

estimated that in 2023, an additional 30,000-40,000 Ukrainians will be covered by temporary protection in Finland.³ In comparison to some other countries, these numbers are small.

The Temporary Protection Directive⁴ from 2001 was incorporated into Finnish Law through the Aliens Act (*Ulkomalaislaki*) on April 30, 2004 (301/2004).⁵ The law came into force on May 1, 2001. The Act defines the main groups of beneficiaries. In response to the Council Implementing Decision (EU) 202/328 from March 4, 2022,⁶ the Finnish Government made a decision, SM/2022/24, to grant temporary protection in response to the crisis in Ukraine. This decision came into force on March 7, 2022, and regulates the situation of persons who fled the war in Ukraine. A residence permit granted in Finland based on temporary protection is directly valid for as long as temporary protection continues in the EU. Residence permits are extended without a separate application.⁷

Access to the labour market, social security, and welfare for war migrants from Ukraine is regulated by already existing laws, such as:

- Act on the Promotion of Integration, further referred to as the Integration Act (*Laki kotoutumisen edistämisestä*), dated December 30, 2010 (1386/2010).⁸ The Act came into force on September 1, 2011;
- Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings, further referred to as the Reception Act (*Laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrin tunnistamisesta ja auttamisesta*), dated June 17, 2011 (746/2011).⁹ The Act came into force on September 1, 2011;
- Employment Contracts Act (*Työsopimuslaki*), dated January 26, 2001 (55/2001).¹⁰ The Act came into force on June 1, 2001;
- Social Welfare Act (*Sosiaalihuoltolaki*), dated December 30, 2014 (1301/2014).¹¹ The Act came into force on April 1, 2015.

³ Alho R. *et al.*, nt. (1).

⁴ 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* (later as: Directive 2001/55).

⁵ Ulkomaalaislaki (Aliens Act) from 30 April 2004, 30.4.2004/301, available at: <https://www.finlex.fi/fi/laki/ajantasa/2004/20040301> (last accessed 20 March 2023).

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 *establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection* (later as: Decision 2022/382).

⁷ Ministry of the Interior, *Temporary protection for people fleeing from Ukraine*, 2023, available at: <https://intermin.fi/en/ukraine/temporary-protection> (last accessed 30 March 2023).

⁸ Laki kotoutumisen edistämisestä (Act on the Promotion of Integration) from 30 December 2010, 1386/2010, available at <https://www.finlex.fi/fi/laki/kaannokset/2010/en20101386.pdf> (accessed 30 March 2023).

⁹ Laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrin tunnistamisesta ja auttamisesta (Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings) from 17 June 2011, 17.6.2011/746, available at <https://www.finlex.fi/fi/laki/ajantasa/2011/20110746#L3P16> (last accessed 20 March 2023) (later as: Reception Act).

¹⁰ Työsopimuslaki (Employment Contracts Act) from 26 January 2001, 55/2001, available at: <https://www.finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> (last accessed 30 March 2023).

¹¹ Sosiaalihuoltolaki (Social Welfare Act) from 30 December 2014, 1301/2014, available at: <https://www.finlex.fi/fi/laki/ajantasa/2014/20141301> (last accessed 5 April 2023).

On March 1, 2023, Amendments (1083/2022) to the Integration Act (1386/2010) and to the Reception Act came into force.¹² In accordance with the amendment to the Integration Act, municipalities and well-being counties can be reimbursed for the cost spent on providing services to the Ukrainian war migrants who have been granted a municipality of residence. The reimbursement costs are the same as in the case of compensation for beneficiaries of international protection. To receive the compensation, the municipality has to draw up an integration programme and conclude an agreement with the Centre for Economic Development, Transport and the Environment (ELY Centre). Ukrainians have the opportunity to apply for a home municipality residence (*kotikuntapaikka*) when they have been in Finland for a year starting from March 2023. This will enable an individual to access a broader spectrum of services offered by the municipality. After living for one year in Finland, it is also possible to apply for social security card and benefits. A survey conducted in 2022, however, shows that Ukrainians lack information about some of these possibilities.¹³

The amendments to the Reception Act specify how the reception service provision would end when a person residing under temporary protection is assigned to a municipality of residence.¹⁴

2. Personal scope of applicable support measures.

In Finland, temporary protection applies to a broader category of persons than that foreseen in Article 2(1) of the Decision 2022/382. According to Article 2(1) of Decision 2022/382, it applies to the following categories of persons displaced from Ukraine on or after 24 February 2022:

- a) Ukrainian nationals residing in Ukraine before February 24, 2022;
- b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before February 24, 2022; and,
- c) family members of the persons referred to in points (a) and (b).

Article 2(2) of the Decision 2022/382 enables Member States to choose between the application of temporary protection and a corresponding national permit category to stateless persons and nationals of third countries other than Ukraine who are legally residing in Ukraine. Finland has decided to apply temporary protection to these persons.

In addition to the persons listed in Article 2(1) of the Decision 2022/382, Finland recognises temporary protection for the following categories of persons:

- Ukrainian citizens and their family members who fled Ukraine shortly before February 24 and cannot return home because of the conflict;

¹² Ministry of Economic Affairs and Employment of Finland, *Municipalities will be compensated for services promoting integration*, 19 January 2023, available at <https://tem.fi/en/-/municipalities-will-be-compensated-for-services-promoting-integration>- (last accessed 5 April 2023).

¹³ Alho R. *et al.*, nt. (1).

¹⁴ Reception Act, nt. (9).

- Other Ukrainian citizens and their family members who are already living or have arrived in Finland;
- Third-country nationals who have resided legally (including on a short-term basis) in Ukraine and cannot return to their home countries.¹⁵

In Finland, temporary protection is recognised for the persons mentioned above through a swift process that is lighter than the one foreseen for asylum seekers.¹⁶ The conditions and process of granting temporary protection are regulated in Sections 109-117 of the Aliens Act (*Ulkomaalaislaki*).¹⁷ After the person has arrived in Finland, she/he needs to visit the police or a border control authority and inform them of the intention to benefit from temporary protection. Applying is free of charge. Applications for the confirmation of being beneficiaries of temporary protection are processed considerably faster than asylum applications.

The police or border control authority registers the application and records the personal details and place of residence of the applicant. Details related to the **applicant's** arrival in Finland, travel route, and **family members' details** are also collected. The applicant needs to provide a photo, fingerprints, and a signature. The police or border control authority asks whether the person wishes to apply for confirmation of being a beneficiary of temporary protection only or also for asylum. The differences between the two are explained beforehand.

Following registration, the Finnish Immigration Service decides on the application to confirm the status of being a beneficiary of temporary protection. The applicant will be heard before a decision is made only if the Finnish Immigration Service considers there to be a particular reason to do so. The decision is issued in approximately one week and sent by post to the reception centre or other address where the applicant is staying. If the person does not receive the decision by post, she/he will be informed of the decision by the Finnish Immigration Service or the police.

After the person is granted confirmation of being a beneficiary of temporary protection, the Finnish Immigration Service will order a residence permit card for the applicant in approximately 2 weeks. The residence permit card is also sent by post. The applicant also receives a personal identity code, which will be indicated on the residence permit card.

If the person has also applied for asylum, the Finnish Immigration Service will suspend the processing of the asylum application for as long as the residence permit issued based on temporary protection is valid.¹⁸

In the case of people fleeing from Ukraine, residence permits are valid until the Decision 2022/382 is in force. Currently, all residence permits that are granted based on temporary

¹⁵ Valtioneuvoston päätös, SM/2022/24 tilapäisen suojelun antamisesta Ukrainan tilanteeseen vastaamiseksi, 7 March 2022, available at <https://valtioneuvosto.fi/paatokset/paatokset?decisionId=0900908f807a060e> (last accessed 20 March 2023); Ministry of the Interior Press Release, *Government decides on temporary protection category of people fleeing Ukraine*, 08 March 2022, available at https://valtioneuvosto.fi/-/1410869/valtioneuvosto-paatti-ukrainasta-paenneiden-tilapaisen-suojelun-kohderyhmasta?languageId=en_US (last accessed 20 March 2023).

¹⁶ Ministry of the Interior Press Release, *ibidem*.

¹⁷ Ulkomaalaislaki (Aliens Act), nt. (5).

¹⁸ Finnish Immigration Service, *Temporary protection for those fleeing Ukraine*, available at <https://migri.fi/en/temporary-protection> (last accessed 20 March 2023).

protection are valid until March 4, 2024. Starting from January 19, 2023, all residence permits granted on this basis are automatically extended until March 4, 2024.¹⁹

If a person who has applied for temporary protection leaves Finland and does not intend to return, she/he needs to cancel the application for the confirmation of being a beneficiary of temporary protection in Finland. This can be done by informing an official of the Finnish Immigration Service, the police or border control authority, or the director or deputy director of the reception centre. The person who is being covered by temporary protection can also cancel the temporary residence permit by personally notifying an official of the Finnish Immigration Service, the police, the border control authorities, or the director or the deputy director of a reception centre, filling in the cancellation form, and returning the residence permit card. If the person has left Finland, the residence permit can be cancelled in writing.²⁰

A residence permit can also be cancelled by the authorities for the following reasons:

- Giving false information: residence permits may be cancelled if, at the time of application, the person has knowingly given false information about her/his identity or other factors affecting the decision or if she/he has concealed facts that could have prevented the granting of a residence permit.
- Changes in the grounds for a residence permit: if the grounds on which it was granted no longer exist, the residence permit may be cancelled. The EU residence permit will be cancelled if the person has lived outside the EU for a continuous period of two years or outside Finland for a continuous period of six years.
- Prohibition of entry into the Schengen area: residence permit may also be cancelled if another Schengen country requests Finland to do so. This may happen if the person has been prohibited from entering the Schengen area and ordered to be removed from it due to a crime or conduct that endangers safety.
- Moving away from Finland and living abroad: if the person moves permanently away from Finland or has lived outside Finland for a continuous period of two years, the residence permit will be cancelled.²¹

3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education.

According to Article 13(1) of the Directive 2001/55, Member States are required to ensure that individuals enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing. According to Article 13(2), Member States need to make sure that persons enjoying temporary protection receive necessary assistance in terms of social welfare and means of subsistence if they do not have sufficient resources, as well as medical care. The assistance necessary for medical care shall include at least

¹⁹ Ulkomaalaislaki (Aliens Act), nt. (5), Section 110a.

²⁰ Finnish Immigration Service, *If you have applied for temporary protection and will leave Finland permanently*, available at <https://migri.fi/en/withdrawal-of-applications-or-permits> (last accessed 20 March 2023).

²¹ Finnish Immigration Service, *Withdrawal of residence permits*, <https://migri.fi/en/cancellation-of-a-permit> (last accessed 20 March 2023); Ulkomaalaislaki (Aliens Act), nt. (5), Section 58.

emergency care and essential treatment of illness. Article 13(3) foresees that in cases where individuals under temporary protection are engaged in employed or self-employed activities, their ability to meet their own needs should be considered when determining the proposed level of assistance. Article 13(4) requires Member States to provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

In Finland, the housing of individuals who have applied for confirmations of being beneficiaries of temporary protection is regulated in Sections 16-18 of the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings.²²

Individuals applying for confirmations of being beneficiaries of temporary protection can live in a reception centre or private accommodation. The persons that need accommodation are accommodated at a reception centre that has room. The reception centre will provide the person with the needed reception services. Families are accommodated in a separate apartment or a room. Others are offered communal accommodation where women and men live in separate rooms or apartments.

The person applying for confirmations of being beneficiaries of temporary protection can also arrange the accommodation by her/himself and stay with friends or relatives, for example. In this case, the person will still be registered at a reception centre that will provide the person with the needed reception services. In case the person chooses to live somewhere else than in a reception centre, she/he must be able to pay for the accommodation by her/himself. The person needs to notify the reception centre of a new address without delay to maintain the right to reception services.

Unaccompanied children are usually provided with accommodation in a group home. Children may also stay in private accommodation with relatives, for example. The decision about the accommodation of the unaccompanied child to a private accommodation will be made by the director of the reception centre after hearing the child, her/his legal representative and social worker.²³

The right of an individual applying for confirmation as a beneficiary of temporary protection in Finland to receive financial support depends on her/his income and assets. If the person and her/his family members do not have enough income and funds to cover the immediate basic needs, such as food and clothing, the person can get a reception allowance. The amount of reception allowance depends on the person's financial resources, income, and the fact on whether the person stays at a reception centre, lives in private accommodation, or lives in private accommodation with other people. The basic amounts of reception allowance are:

- 290 EUR per month for an adult living alone or a single parent; 85 EUR per month if food is provided at the reception centre;

²² Reception Act, nt. (9).

²³ *Ibidem*, Sections 16-18; Finnish Immigration Service, *Accommodation*, <https://migri.fi/en/accommodation> (last accessed 20 March 2023).

- 245 EUR per month for an adult other than those mentioned above; 70 EUR per month if food is provided at the reception centre;
- 185 EUR per month for a child; 55 EUR per month if food is provided at the reception centre.

If the reception centre takes care of the child, the child is granted “pocket money” of 25-45 EUR per month.²⁴

Sections 25 and 26 of the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings regulate the rights of individuals enjoying temporary protection to social insurance and medical care. Persons applying for confirmations of being beneficiaries of temporary protection or that have already received it have the right to specific social services outlined in Section 14 of the Social Welfare Act²⁵ in the same way as Finnish nationals if the official of the social services regards these as inevitable.

These services include:

1. Social services organised by municipalities, such as:
 - social work,
 - social guidance,
 - social rehabilitation,
 - family work,
 - home service,
 - home care,
 - housing services,
 - institutional services,
 - services supporting mobility,
 - drugs abuse work,
 - mental health work,
 - educational and family counselling,
 - supervision of appointments between the child and the parent,
 - the freedom of a person caring for relatives and close relatives, and
 - other social services necessary for the well-being of such a person that meet the requirements outlined in Section 11.
2. Social services for certain types of groups organised by municipalities.

Municipalities also bear responsibility for organising child and youth welfare, providing special care for the mentally handicapped, offering services and support for people with disabilities, delivering services related to substance abusers' treatment, fulfilling the statutory functions of child welfare officers, conducting investigations and establishing paternity, providing adoption counselling, facilitating family conciliation, managing measures about

²⁴ Reception Act, nt. (9), sections 19-21; Finnish Immigration Service, *Financial support*, <https://migri.fi/en/financial-support> (last accessed 20 March 2023).

²⁵ Sosiaalihuoltolaki from 20 March 2015, 30.12.2014/1301.

conciliation related to the enforcement of decisions on child custody and visiting rights, and offering expert services related to court conciliation of matters concerning child custody and visitation rights. Municipalities are also responsible for providing support for informal care and other social services as mandated by the Act on Rehabilitative Work, in accordance with any additional provisions established for these services.

Social work, referred to in the Social Welfare Act, is performed by a social care professional at the reception centre. Section 25 of the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings states that this work includes counselling, guidance, social problem-solving, and other support activities that maintain and promote the safety and performance of individuals and families, as well as the functioning of communities.

Individuals who have been granted a residence permit based on temporary protection in Finland are entitled to the same healthcare services as permanent residents.²⁶ Finland has implemented Article 13(2) of the Directive 2001/55 broadly, providing temporary protection beneficiaries with access not only to emergency care and essential treatment of illnesses but also to healthcare services on par with permanent residents.

Article 14 of the Directive 2001/55 regulates the access to education for individuals enjoying temporary protection. According to Article 14(1), Member States need to grant individuals under 18 years of age enjoying temporary protection access to the education system under the same conditions as host Member State nationals. Member States may stipulate that such access must be limited to the state education system. According to Article 14(2), Member States may also allow adults enjoying temporary protection access to the general education system.

In Finland, individuals granted a residence permit based on temporary protection may pursue studies without limitations. Children enjoy the same rights to early childhood education and care as resident Finnish children. Individuals are free to apply for vocational education, training, and general upper secondary education on the same terms as Finnish citizens.²⁷ Finland provides access to general education for both minors and adults. Individuals with granted temporary protection can also apply for higher education. Regarding vocational education, language requirements for entry into VET programmes have been revised in favour of immigrant applicants.²⁸ Both levels of institutions offer a variety of programmes supporting immigrants in entering vocational and/or higher education, with program specifics varying by institution.²⁹

²⁶ Reception Act, nt. (9), section 26.

²⁷ Ministry of Education and Culture, *Russia's invasion of Ukraine and its effects in the administrative branch of the Ministry of Education and Culture*, available at <https://okm.fi/en/ukraine> (last accessed 20 March 2023).

²⁸ Ministry of Education and Culture, *Maahanmuuttajien koulutuspolut ja integrointi. Kipupisteet ja toimenpide III*, Helsinki, 2019, available at <http://urn.fi/URN:ISBN:978-952-263-613-3> (last accessed 05 April 2023).

²⁹ See for example, University of Jyväskylä, JYU.INTEGRA, <https://movi.jyu.fi/en/development/integra> (last accessed 6 April 2023).

4. Social policy measures for Ukrainians: supporting professional activity.

Article 12 of the Directive 2001/55 foresees that Member States need to authorise, for the period of temporary protection, protected persons to engage in employed or self-employed activities. This authorization is subject to the rules relevant to the profession, as well as to educational opportunities for adults, vocational training, and practical workplace experience. Member States may give priority to EU citizens and citizens of the European Economic Area and to legally resident third-country nationals who receive unemployment benefits. The general laws in force within the Member States, applicable to remuneration, access to social security systems concerning employed or self-employed activities, and other conditions of employment, should be applied.

In Finland, according to Section 78(3) of the Aliens Act, individuals granted a temporary residence permit based on temporary protection or other humanitarian immigration are allowed to work.³⁰ This unrestricted right to work is expressed in the decision on temporary protection and the residence permit card.³¹ As soon as a person registers their application for temporary protection recognition with the police or the border control authority, they gain the unrestricted right to work or be self-employed in Finland. The police or border control authority provides a certificate of the pending application, and the Finnish Immigration Service aims to issue decisions quickly and without undue delay.³² After receiving the card, the Finnish Immigration Service is required to provide a brochure titled 'Welcome to Finland' where information on workers' rights can be found. The brochure is available in several languages, including Ukrainian and Russian.³³

There are no separate regulations concerning self-employed individuals displaced from Ukraine who wish to apply for a residence permit in Finland. In this case, Section 76 of the Aliens Act applies, according to which the intended business activities have to be profitable and obtain sufficient financial resources.³⁴ Finland has robust employment legislation that guarantees adequate working conditions, equal treatment, and non-discrimination for all workers, including immigrants or refugees. The posting of individuals enjoying temporary protection is not separately regulated. As a general rule, Ukrainian war migrants with temporary protection (and a work permit) can be posted by their employers to other EU countries, and *vice versa*. However, as the time of travelling in the Schengen area without a visa is restricted to 90 days during the 180-day period, the maximum time for posting is

³⁰ Ulkomaalaislaki (Aliens Act), nt. (5), Section 78.

³¹ Ministry of Economic Affairs and Employment of Finland, *Those granted temporary protection can work immediately after receiving permit decision – Leaflet by the MEAE advises people fleeing Ukraine on finding employment*, 5 April 2022, available at https://intermin.fi/en/-/1410877/those-granted-temporary-protection-can-work-immediately-after-receiving-permit-decision-leaflet-by-the-ministry-of-economic-affairs-and-employment-advises-people-fleeing-ukraine-on-finding-employment?languageId=en_US (last accessed 3 April 2023).

³² Finnish Government, *People fleeing Ukraine may start working immediately after applying for temporary protection*, 11 April 2022, available at <https://valtioneuvosto.fi/en/-/1410869/people-fleeing-ukraine-may-start-working-immediately-after-applying-for-temporary-protection> (last accessed 13 April 2023).

³³ Ministry of Economic Affairs and Employment of Finland, *Welcome to Finland guide*, 2023, available at <https://tem.fi/en/welcome-to-finland> (last accessed 5 April 2023).

³⁴ Ulkomaalaislaki (Aliens Act), nt. (5), Section 76.

limited.³⁵ Posting legislation at the EU level (Directive on the posting of workers)³⁶ and the Finnish Act on Posting Workers (447/2016), with amendments from 2020,³⁷ apply to both EU and non-EU citizens.³⁸ Nevertheless, research conducted under the auspices of the SMUG³⁹ project – *Uncovering Gaps in the Social Protection of Posted Workers* (2021-2022) shows that social protection, work conditions and safety of posted workers especially from third countries need improvement. Usually, these workers are at the bottom of posting hierarchies and the easiest to be abused. This can be explained by workers' dependency on their employers and a lack of context-specific knowledge.⁴⁰ One of the experts reflected on it as follows: “If posted worker is coming from Ukraine or Poland the information search skills are quite poor. If you ask ‘do you belong to trade union?’ they do not know what a trade union is and if they belong to it, they do not know what a collective agreement, pension or social security is and about nothing as such.” The same expert comments, later, that this information can be also difficult to be found and, at least during spring 2022, this key information for posted workers was not available either in Ukrainian or in Russian. Furthermore, awareness of salary levels in Finland may be lacking, leading posted workers to be satisfied with lower wages. Contacts of Ukrainian posted workers are often limited to their employers and own country nationals, which may further perpetuate inadequate information. However, Ukrainian workers seemed to be aware of their disadvantaged position. One of the interviewees in the SMUG project commented: “On the surface, it wasn’t too bad, but you could tell that the attitude as a bit humiliating, they definitively make a difference between those that were from Ukraine and the rest. Firstly, when they give you a job, it’s going to be a dirtier one, a job that people with EU passport did not want to do.”

Currently, Ukrainians come to Finland on different terms. However, it can be predicted that the attitudes towards what kind of job and salary is appropriate for migrants with this background may also apply in the case of Ukrainians staying in Finland based on temporary protection.

Most of the Ukrainian war migrants, 30,000 individuals, are of working age and they live in different regions of Finland. About 8,000 (30%) of these working-aged Ukrainians have applied for job seeker services, but the uncompleted or invalidity in Finland of degrees completed in Ukraine, as well as deficiencies in language skills hinder employment.⁴¹ Those benefiting from temporary protection also spend their time addressing practical issues, which

³⁵ Finnish Immigration Service, *Traveling from Finland*, <https://migri.fi/en/traveling-from-finland> (last accessed 10 April 2023).

³⁶ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1414663758884&uri=CELEX:31996L0071> (last accessed 11 April 2023).

³⁷ Act on Posting Workers (447/2016, amendments up to 62/2022 included), available at <https://www.finlex.fi/en/laki/kaannokset/2016/en20160447.pdf> (last accessed 11 April 2023).

³⁸ Your Europe, *Posting staff abroad*, 2023, available at https://europa.eu/youreurope/business/human-resources/posted-workers/posting-staff-abroad/index_en.htm (last accessed 11 April 2023).

³⁹ University of Jyväskylä, *Secure mobility: Uncovering Gaps in the Social Protection of Posted Workers (SMUG)*, 15 July 2022.

⁴⁰ Lillie N., Kärkkäinen K., Ndomo Q., *Posting, short-term labour migration and social rights access: how to rework an alienating system?*, Policy Brief 2022/10, European Centre, Wien, 2022.

⁴¹ Alho R. *et al.*, nt. (1).

slow down the job search and employment. Integration into the labour market is also challenged by the unclarity of future plans of people under temporary protection and the lack of adequate information related to employment and employment services.⁴²

There are no specific guidelines released for the recognition of qualifications, diplomas, or education for displaced individuals from Ukraine. To seek recognition of their professional qualifications or education, displaced persons from Ukraine, like any other foreign individuals, must apply for qualification recognition with the Finnish National Agency for Education (EDUFI), relevant authorities in their field, private sector employers, or higher education institutions.⁴³ EDUFI makes decisions on:

- the comparability of higher education studies and eligibility of foreign qualifications for posts requiring a higher education degree or specific education, such as positions in education and early childhood education;
- the recognition of professional qualifications obtained abroad, which often requires proof of professional experience in the field, an adaptation period and an aptitude test;
- issuing statements regarding vocational qualifications obtained abroad. These statements confirm the completion of certain qualifications in another country but do not give eligibility for applying for certain positions.

The right to practice a so-called regulated profession (eg., practical nurse) or use a professional title is granted by field-specific authorities, such as the National Supervisory Authority for Welfare and Health, Valvira.⁴⁴ Educational institutions, including higher education institutions, decide on their own whether foreign qualifications or studies give eligibility for further studies in Finland. Individuals have the right to apply for recognition of prior learning in both higher education⁴⁵ and vocational education⁴⁶ (Cedefop, 2023). Following the Vocational Education and Training Act (531/2017)⁴⁷ and Decree (673/2017)⁴⁸, each student is required to have a competence development plan that includes a note on the possible recognition of learning gained in formal, non-formal and informal contexts. Private sector employers have a right to assess themselves the competence presented through a foreign qualification. The decision-making process, the processing of applications for recognition of qualifications and studies completed abroad, as well as the

⁴² Ssynarenko A., Koptsyukh A., *The situation of Ukrainians in Finland who fled the war: Survey results*, Migration: Publications of the Ministry of the Interior, 2022:34, Helsinki, 2022, available at https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164318/SM_2022_34.pdf?sequence=1 (last accessed 5 April 2023).

⁴³ Finnish National Agency for Education (EDUFI), *Recognition of foreign qualifications in Finland*, Libris Oy, Helsinki, 2017.

⁴⁴ Finnish National Agency for Education (EDUFI), *Regulated professions in Finland*, 2023, available at <https://www.oph.fi/en/services/regulated-professions-finland> (last accessed 5 April 2023).

⁴⁵ Universities Finland UNIFI and the Rectors' Conference of Finnish Universities of Applied Sciences, 2009.

⁴⁶ Cedefop, *Vocational education and training in Finland*, 2019, available at: <https://www.cedefop.europa.eu/en/publications/4176> (last accessed 5 April 2023).

⁴⁷ Vocational Education and Training Act, 531/2017, available at: <https://www.finlex.fi/en/laki/kaannokset/2017/en20170531.pdf> (last accessed 5 April 2023).

⁴⁸ Vocational Education and Training Decree, 673/2017, available at: <https://www.finlex.fi/fi/laki/alkup/2017/20170673> (last accessed 5 April 2023).

statements regarding completed vocational qualifications abroad, are subject to an administrative fee.

There are many challenges related to the recognition of foreign qualifications, especially for third-country nationals in the Finnish labour market and by Finnish employers. On one hand, migrants are welcomed workers and appreciated for their willingness to work and good communication skills. On the other hand, they are suspected of not having adequate skills.⁴⁹ Earlier studies have highlighted the importance of language skills and cultural background in making one's knowledge and skills visible.⁵⁰

There is no precise information available concerning the educational background of Ukrainians covered by temporary protection in Finland. According to the last reports, many Ukrainian job seekers hold secondary or higher education degrees.⁵¹

5. Final considerations.

Further inflow of Ukrainians to Finland is expected. The situation and measures in other European countries are monitored, as this may influence the extent of the future inflow of Ukrainians to Finland. The longer the war in Ukraine continues, the more likely Ukrainians will remain in the countries they have fled to. Many also do not have a home to return to. It is, therefore, expected that Ukrainians will form a large immigrant group in the future in Finland.⁵²

According to one of the recent reports Finns are rather positive about the reception of Ukrainians.⁵³ However, cases of negative attitudes (negligence, rudeness), for example among reception centre personnel, were also reported.⁵⁴ Finland has broadened temporary protection to a larger group of Ukrainians than foreseen in the Decision 2022/382. Finland does not apply full social protection to the persons who are covered by temporary protection. Nevertheless, the necessary housing and social services are provided, a monthly reception allowance is paid, and Finnish healthcare services are granted to refugees. War migrants have access to primary, secondary, vocational, and higher education, they can work as an employee and/or act as an entrepreneur.

However, there are also many challenges related to the residence of Ukrainians in Finland. Though Ukrainians can work and participate in education, this is seldom the case. Insufficient proficiency in the official languages of Finland and difficulties in applying for education owned by Ukrainian war migrants in the labour market are some of the main

⁴⁹ Näre L., *Ideal workers and suspects*, in *Nordic Journal of Migration Research*, 3, 2, 2013, 72-80.

⁵⁰ Ahmad A., *When the Name Matters: An Experimental Investigation of Ethnic Discrimination in the Finnish Labor Market*, in *Sociological Inquiry*, 2020, 90, 3, 468-496; Kärkkäinen K., *Learning, teaching and integration of adult migrants in Finland*, University of Jyväskylä, 2017, available at <http://urn.fi/URN:ISBN:978-951-39-7212-7> (last accessed 12 April 2023); Olakivi A., *The problematic recruitment of migrant labor: A relational perspective on the agency of care work managers*, in *Current Sociology*, 68, 3, 2020, 333-352.

⁵¹ Alho R. *et al.*, nt. (1).

⁵² *Ibidem*.

⁵³ *Ibidem*.

⁵⁴ Svyrenenko A., Koptsyukh A., nt. (42).

problems. Implementation of some good initiatives, such as the possibility to apply for residence in the municipality and for certain services, recognition of qualification and earlier studies or even the possibility of undertaking studies in Finland, is challenged by Ukrainians lacking information on such opportunities and their advantages. Living in-between space and on hold accompanied by the lack of specified future plans and the spontaneous trips to Ukraine make some measures ineffective despite good intentions. Adequate information on existing opportunities and services can be one of the keys to increase the effectiveness of undertaken initiatives.

Mass Influx of People from Ukraine: Social Entitlements and Access to the Labour Market: Germany.

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1. Preliminary remarks and general framework. 1.1. The Implementation of Directive 2001/55 in German law. 1.2. Residence Act. 1.3. Additional legal sources. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 3.1. Housing, social security and healthcare. 3.1.1 Prior to *Rechtskreiswechsel* – social security under the AsylbLG. 3.1.2. Post *Rechtskreiswechsel* – social security under SGB II and XII. 3.2. Education. 4. Social policy measures for Ukrainians: supporting professional activity. 4.1. Employment of Ukrainian protection seekers - facts and figures. 4.2. Recognition of foreign qualifications and regulated professions. 4.3. Conclusions. 5. Final considerations.

1. Preliminary remarks and general framework.

Russia's full-scale invasion of Ukraine since 24 February 2022 resulted in the biggest movement of displaced persons in Europe since World War II.¹ Second to Poland, Germany

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¹ See: UNCHR, *Ukraine-Fastest Growing Refugee Crisis in Europe Since WWII*, 6 June 2022, <https://www.unhcr.org/hk/en/73141-ukraine-fastest-growing-refugee-crisis-in-europe-since-wwii.html>, (accessed 22 October 2023).

is by far the country with the highest number of war migrants from Ukraine.² Between the end of February 2022 and 2 March 2023, over one million protection migrants from Ukraine were registered (1.072.248), resembling the numbers at the peak of the so-called “refugee-crisis” in 2015.³ However, given that the Ukrainian protection seekers qualified for Temporary Protection under Council Directive 2001/55/EC,⁴ their integration into Germany was fundamentally different from those having arrived in 2015 – a fact that shall be analysed in the following contribution, focusing first on the implementation of the Directive 2001/55 in German law (1.1), before looking at several aspects of its implementation, specifically at the personal scope of protection (2), the access to social security, education, and housing (3), and the labour market (4). Ultimately, this chapter will conclude that while Germany has fully and successfully implemented the Directive 2001/55, this results in a striking disparity between Ukrainian and other protection seekers, which should be further critically assessed (5).

1.1. The Implementation of Directive 2001/55 in German law.

The Directive 2001/55 was implemented into federal German law in 2004 mainly by § 24 of the *Aufenthaltsgesetz* (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (“Residence Act”)) titled “Granting of residence for temporary protection” as part of a wider legislative act. The Residence Act governs the entry, residence, employment and termination of the residence of foreigners and includes a variety of different grounds for residency, with § 24 Residence Act regulating the granting of residence for temporary protection in case of activation of the Directive 2001/55. Other aspects and requirements of this Directive were already part of different provisions in German national law. Further, it is important to note the implications of Germany’s federal system for the implementation of the Directive 2001/55: not all of the areas covered in this Directive fall within the federal legislative competence – some areas, such as education (Art. 14 of the Directive), are traditionally within the legislative competence of the federal states (“Länder”), resulting in a fragmented implementation of the Directive 2001/55.⁵

² See data provided by the UNHCR, <https://data.unhcr.org/en/situations/ukraine>, (accessed 22 October 2023).

³ 1.091.894 registrations, 441.899 applications for asylum, see BAMF, *Das Bundesamt in Zahlen 2015. Asyl, Migration und Integration*, Bundesamt für Migration und Flüchtlinge, 2016, 10, https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2015.pdf?__blob=publicationFile&v=16, (accessed 22 October 2023).

⁴ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

⁵ See: Arts. 30, 70ff. of the German basic law (Grundgesetz).

1.2. Residence Act.

Notably, the implementing § 24 Residence Act is very brief and does not contain many details. It regulates (1) that a foreigner who is granted temporary protection on the basis of an Implementing Decision⁶ pursuant to the Directive 2001/55 is granted a temporary residence permit; (2) grounds for exclusion from the status; (3) procedural rules for the allocation of eligible person between and within the *Länder*; (4) restriction of freedom to choose place of residency; (5) rights and obligations of the protection seeker on housing and economic activities; (6) the obligation to notify the foreigner in writing of their rights and obligations.

This provision must be interpreted in light of the Directive 2001/55 and the Decision 2022/382 in accordance with the primacy of EU law.⁷ Further, due to the implementation by only a brief article, the Directive 2001/55, the Decision 2022/382, and other applicable or analogous national legal provisions are directly applied to fill any gaps.⁸ Ultimately, several other German laws reference § 24 Residence Act, which leads to the aforementioned fragmented implementation. Thus, while § 24 Residence Act defines who is a temporarily protected person, the substantial guarantees and benefits that are linked to this status are provided by other laws and legal sources.

1.3. Additional legal sources.

Regarding the scope of protection and the corresponding procedure, § 24 Residence Act was accompanied by legal ordinances, administrative regulations and communications from the Federal level to the implementing Ministries of Interior of the *Länder*, issued by the executive branch of government. The legal nature of these communications has been debated, however, with different regional courts disagreeing on the binding character of government communication to define or expand the scope of § 24 Residence Act.⁹ Some *Länder* circulated the communications to the local immigration authorities, others have

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁷ On the primacy of EU law in the interpretation of German laws, *see*: German Federal Constitutional Court, order of the First Senate of 19 July 2011 – 1 BvR 1916/09 –, para. 80.

⁸ *See* Dietz A., *Kriegsvertriebene aus der Ukraine*, in *Neue Zeitschrift für Verwaltungsrecht*, 8, 2022, 505-506.

⁹ VGH Baden-Württemberg, Beschluss vom 26.10.2022 - 11 S 1467/22 and VG München, Beschluss vom 30.09.2022 - M 12 S 22.4539.

adopted or amended the communications in state law, such as Berlin,¹⁰ Schleswig-Holstein,¹¹ and Baden-Wuerttemberg¹².

2. Personal scope of applicable support measures.

Germany has fully implemented Article 2 point 1 of the Decision 2022/382: Ukrainian nationals residing in Ukraine before 24 February 2022 (Article 2(1)(a)), Non-Ukrainian third-country nationals and stateless persons enjoying international protection or equivalent national protection in Ukraine before 24 February 2022 (Article 2(1)(b)), as well as the family members of both protection seeker groups (Article 2(1)(c)) shall be granted temporary protection without further requirements. As § 24 Residence Act does not further define the personal scope of application and refers to the Directive 2001/55 itself, most authority on this question when implementing the Decision 2022/382 was given to the Federal Ministry of the Interior and Community (Ministry of the Interior), which issued addressed several communications to the *Länder* to clarify the personal scope of application and the corresponding procedure.¹³ **These clarifications provided that “family members” include spouses and partners; regarding non-married couples, the German Government refers to the previously established criteria under the German Freedom of Movement Act, implementing**

¹⁰ See, e.g.: Senatsbeschluss vom 05.04.2022 zur Zuweisung von Kriegsflüchtlingen nach Berlin (Senatsbeschluss vom 05.04.2022 zur Zuweisung von Kriegsflüchtlingen nach Berlin) 05 April 2022; Senatsbeschluss vom 16.08.2022 zur Unterstützung von nicht-ukrainischen Drittstaatsangehörigen, die in der Ukraine vor Ausbruch des Krieges studiert haben, infolge des Krieges nach Deutschland geflohen sind und ihr Studium in Berlin fortsetzen möchten (Senatsbeschluss vom 16.08.2022 zur Unterstützung von nicht-ukrainischen Drittstaatsangehörigen, die in der Ukraine vor Ausbruch des Krieges studiert haben, infolge des Krieges nach Deutschland geflohen sind und ihr Studium in Berlin fortsetzen möchten) 16 August 2022.

¹¹ Ministry of Interior Schleswig-Holstein, Zusammengefasste Erlassregelung zur Aufnahme von Kriegsvertriebenen aus der Ukraine (Zusammengefasste Erlassregelung zur Aufnahme von Kriegsvertriebenen aus der Ukraine), 17 June 2022.

¹² Ministry of Justice Baden-Wuerttemberg, Allgemeinverfügung zur landesinternen Verteilung von Vertriebenen aus der Ukraine im Sinne des Durchführungsbeschlusses (EU) 2022/382 des Rates vom 4. März 2022 zur Feststellung des Bestehens eines Massenzustroms von Vertriebenen aus der Ukraine im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines vorübergehenden Schutzes (Allgemeinverfügung zur landesinternen Verteilung von Vertriebenen aus der Ukraine im Sinne des Durchführungsbeschlusses (EU) 2022/382 des Rates vom 4. März 2022 zur Feststellung des Bestehens eines Massenzustroms von Vertriebenen aus der Ukraine im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines vorübergehenden Schutzes) 12 May 2022.

¹³ Federal Ministry of the Interior, Communication of 14 March 2022, https://www.asyl.net/fileadmin/user_upload/dokumente/Dateien_fuer_Meldungen/BMI_Rundschreiben__24_220314.pdf, (accessed 19 October 2023); Communication of 14 April 2022, https://www.frnrw.de/fileadmin/frnrw/media/Ukraine/BMI_2.Laenderschreiben_Umsetzung-24-UKR_20220414.pdf, (accessed 22 October 2023); BMI, Communication of 5 September 2022, https://www.frnrw.de/fileadmin/frnrw/media/Ukraine/2022_09_05_BMI_voruebergender_Schutz_3_Laenderschreiben_des_BMI_vom_5_September_2022_zur_Umsetzung_des_Ratsbeschlusses_vom_4_Maerz_2022.pdf, (accessed 22 October 2023).

the Citizens Rights Directive 2004/38/EC.¹⁴ In short, the partnership should be exclusive and of such a nature that the partners are willing to support each other financially and emotionally in life. The German implementation also covers other close relatives, who lived in a close family union with and are fully or largely dependent on the displaced person. The German Government further clarified that family members are also included in case they seek protection without the displaced person covered by Article 2(1)(a) and (b), e.g. because the latter cannot leave Ukraine due to military conscription.¹⁵ In substantiating the family relations, comprehensible gaps in evidence caused by expulsion are to be taken into account by the authorities in favour of the affected persons in a conclusive presentation of the facts.¹⁶

Additionally, protection under § 24 Residence Act can also be granted to Ukrainian nationals who have resided in Germany (or other EU member states) and whose residence title can legally or factually not be extended.¹⁷ Similarly, protection also applies to Ukrainians who left the Ukraine “shortly before” the 24th of February (maximum of 90 days) and resided in Germany or other EU member States and are prevented by the war from returning to the Ukraine.¹⁸ Generally, Ukrainian citizenship is proved by means of a passport (with or without biometric features) or passport substitute, but in absence of such, nationality can also be assumed by an overall view of other documents, in particular identity cards.¹⁹

Regarding persons covered by Art. 2 point 2 of the Decision 2022/382, i.e. stateless persons and nationals of third countries, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit, and who are unable to return in safe and durable conditions to their country or region of origin, on the ground of German law such persons are beneficiaries of the temporary protection after they undergo a *sui generis* process: The permanent residence permit under Ukrainian law results in a rebuttable presumption of the existence of a meaningful connection to Ukraine and the inability to return to their country of origin.²⁰ This presumption can be rebutted by the local immigration authorities in individual cases, which would then entail an individual assessment of the safety of returning to their country of origin.

¹⁴ Referencing § 1(2), (4)(c) Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU). See also for the definition of eligible partners: Application notes of the Federal Ministry of Justice on the implementation of the law reconciling the Act on the General Freedom of Movement for EU Citizens and other Acts with European Union law (Anwendungshinweise des BMI zur Umsetzung des Gesetzes zur aktuellen Anpassung des Freizügigkeitsgesetzes/EU und anderer Gesetze an das Unionsrecht) Version 1.0, at Number 3.1.5.3, 22 January 2021, <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/verfassung/anwendungshinweise-umsetzung-freizuegigkeitsgesetz.html>, (accessed 22 October 2023).

¹⁵ Federal Ministry of the Interior, Communication of 5 September 2022, *nt.* (13), 23.

¹⁶ Federal Ministry of the Interior, Communication of 14 March 2022, *nt.* (13), 3.

¹⁷ Federal Ministry of the Interior, Communication of 14 April 2022, *nt.* (13), 5.

¹⁸ Federal Ministry of the Interior, Communication of 14 March 2022, *nt.* (13), 6; Federal Ministry of the Interior, Communication of 14 April 2022, *nt.* (13), 10; confirmed by VG München, Beschluss vom 30.09.2022 - M 12 S 22.4539.

¹⁹ Federal Ministry of the Interior, Communication of 14 March 2022, *nt.* (13), 2.

²⁰ Federal Ministry of the Interior, Communication of 5 September 2022, *nt.* (13), 5.

In accordance with Article 2 point 3 of the Decision 2022/382, Member States may also apply this Decision to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine based on a temporary residence permit and who are unable to return in safe and durable conditions to their country or region of origin. Germany has made use of this option by covering with the protection non-Ukrainian individuals residing in the Ukraine prior to the 24 February 2022 for non-short-term stays, who cannot return safely and permanently to their State of origin.²¹ “**Short-term stay**” is defined as any stay for a temporary purpose that was not intended for longer than 90 days and for a temporary purpose. Thus, individuals who can substantiate that they were residing in Ukraine for not mere short-term purposes but could not retrieve a Ukrainian residency permit or protective status before 24 February 2022 are protected by § 24 Residence Act.²² Contrary to those with a permanent residence permit, these persons need to prove they cannot return safely to their home country. For this purpose, the German Government defined “safe return” independently from other protection grounds and relied on the Communication of the Commission from 21 March 2022. The procedure assesses ongoing armed conflicts, systematic human rights violations, ongoing violence, risk of persecution or inhumane, and degrading treatment in the home country.²³ Syria, Eritrea and Afghanistan are presumed to not allow for a safe and durable return, other countries of origin require individual assessments for every protection seeker.²⁴ Hence, based on the declarations issued by the Ministry of the Interior, further protection than foreseen by the Directive 2001/55 is granted by including third-State nationals without permanent Ukrainian residence permit. However, several judgements have denied the entitlement of such third-state individuals to protection under § 24 Residence Act arguing that in order to extend the scope of the Directive 2001/55, communications of the Ministry of the Interior would not suffice and that a formal law would be required to this end to ensure participation of both the legislator and the *Länder*.²⁵

In terms of procedure, displaced persons under § 24 Residence Act must file an application to the responsible immigration authority to confirm their status. Theoretically, the procedure would be different for those that are not directly protected under the Directive 2001/55 but were additionally included by the German extension of the personal scope under §§ 23(1), (3) and 24(1) Residence Act.²⁶ Before applying for the permit under § 24 Residence Act, these individuals would need to first file an application of admission to the Federal Office for Migration and Refugees. However, Germany has abstained from such a

²¹ Federal Ministry of the Interior, Communication of 14 April 2022, *nt.* (13), 6.

²² Federal Ministry of the Interior, Communication of 5 September 2022, *nt.* (13), 7.

²³ Federal Ministry of the Interior, Communication of 14 March, *nt.* (13), 8.

²⁴ Federal Ministry of the Interior, Communication of 14 April, *nt.* (13), 8; Federal Ministry of the Interior, Communication of 5. September, *nt.* (13), 9.

²⁵ VG Darmstadt, Beschluss vom 10.02.2023 - 5 L 89/23.DA; VGH Baden-Württemberg, Beschluss vom 26.10.2022 - 11 S 1467/22, para. 29; differently VGH Mannheim, Beschluss v. 26.10.2022 – 11 S 1467/22, para. 26 and VG München, Beschluss vom 30.09.2022 - M 12 S 22.4539, para. 28-29.

²⁶ See in detail: Dietz A., *Kriegsvertriebene aus der Ukraine*, in *Neue Zeitschrift für Verwaltungsrecht*, 2022, 505, 506, 509.

two-step approach.²⁷ The immigration authorities register the displaced persons in the central foreigners register and according to § 91a Residence Act, a register specifically listing displaced persons under § 24 Residence Act has to be implemented.

To conclude, the German implementation goes beyond the personal scope of the Directive 2001/55 by including third-state nationals with temporal residency permit in the Ukraine; not entitled to protection under § 24 Residence Act are thus only individuals who cannot present proof that they were legally residing in Ukraine on 24 February 2022, individuals who were residing in Ukraine merely for a short term stay, persons who can return safely to their country or region of origin and stateless individuals without a permanent residency permit in Ukraine. However, given the divided jurisprudence on the legal nature of the communications issued by the Ministry of the Interior, Germany has failed to provide for legal certainty on the personal scope of application and should reconsider its procedure to this end.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

After some initial teething problems, Germany now fully complies with Arts. 13 and 14 of the Directive 2001/55 and even goes beyond what is required in its national law concerning housing, social security and healthcare (3.1) as well as education (3.2).

3.1. Housing, social security and healthcare.

The situation of displaced persons in Germany in terms of social security (including healthcare and housing) has significantly changed in June 2022 with the so-called *Rechtskreiswechsel* (change of applicable law).²⁸ While prior to this date, social security was primarily governed by the Asylum Seekers Benefits Act [*Asylbewerberleistungsgesetz* (“AsylbLG”)], protection seekers under § 24 Residence Act are now entitled to social protection under books two and twelve of Germany’s social code (SGB II and SGB XII). Thus, the protection seekers now enjoy nearly the same protection and can benefit from the same services as recognized refugees and German nationals. Given this drastic change in law, this section will first give a short overview of the social policy measures prior to the *Rechtskreiswechsel* and will subsequently shed light on the current state of the law since June 2022.

²⁷ Federal Ministry of the Interior, Communication of 14 March 2022, *nt.* (13), 8.

²⁸ Implemented by Act regulating an immediate allowance and a one-off payment in the minimum social security systems and amending the Financial Equalization Act and other laws (Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze), BGBl 2022 I No. 17, 760.

3.1.1 Prior to *Rechtskreiswechsel* – social security under the AsylbLG.

The AsylbLG governs the amount and form of social benefits and services that displaced persons, tolerated persons and certain other foreigners are entitled to in the Federal Republic of Germany. According to § 3(1) AsylbLG, persons entitled to benefits under § 1 AsylbLG, including displaced persons under § 24 Residence Act and those with a provisional certificate under § 81(5) Residence Act (so-called “*Fiktionsbescheinigung*”, a document issued until an application for protection is decided upon), receive benefits to cover the need for food, accommodation, heating, clothing, healthcare and household utensils (necessary needs). In addition, benefits are granted to cover personal needs of daily life (necessary personal needs). While in the case of accommodation in reception facilities, the necessary needs pursuant to § 3(2) AsylbLG are covered by benefits in kind, § 3(3) AsylbLG stipulates the priority of monetary benefits for those accommodated outside of such facilities. Both forms of provision (monetary and in kind) comply with the requirements of Art. 13(1) and (2) of the Directive 2001/55.

§ 4 AsylbLG regulates basic medical care and provides for a limited entitlement to health protection compared to those entitled to it under SGB XII. This includes the medical and dental treatment required only for the treatment of acute illnesses and pain conditions, including the provision of medicine as well as other benefits required for recovery, improvement or alleviation of illnesses or the consequences of illnesses. This limited healthcare provision is in line with Art. 13 point 2 of the Directive 2001/55 which only requires Member States to provide for emergency care and essential treatment of illness. Beyond this limited provision of healthcare, § 6(2) AsylbLG contains a special provision for displaced persons under § 24 Residence Act - foreseeing privileged healthcare security for those with “special needs”, including unaccompanied minors and those who have been subjected to severe physical, psychological and sexual violence. This provision mirrors Art. 13 point 4 of the Directive 2001/55 and secures its full implementation in Germany.

While since the *Rechtskreiswechsel* social protection under the SGBs is foreseen, the protection under the AsylbLG still remains applicable for those who do not fulfil the requirements for receiving benefits under SGB II and XII, specifically those who have not undergone the mandatory formal identification procedure under § 49 Residence Act (§ 1(8) AsylbLG).

3.1.2. Post *Rechtskreiswechsel* – social security under SGB II and XII.

While the protection offered under the AsylbLG has already fulfilled the requirements of the Directive 2001/55, the social benefits offered under SGB II and XII significantly exceed these standards.

According to § 146 SGB XII social protection under the SGB applies to all persons who have been subjected to identification procedures in accordance with § 49 Residence Act and who have received a residence permit in accordance with § 24(1) Residence Act or have received a corresponding provisional certificate (*Fiktionsbescheinigung*) in accordance with §

81(5) Residence Act. Thus, protection seekers entering Germany after 1 June 2022 receive benefits under the AsylbLG until they receive their *Fiktionsbescheinigung* and will thereafter receive social security under § 146 SGB XII. For those who arrived in Germany prior to the *Rechtskreiswechsel*, an application to receive social protection under § 146 SGB XII is assumed and requires no further action by the individuals (§ 146(5) SGB XII). However, this is conditioned upon storage of the personal data in accordance with § 3(1) AZR (registration in the central register for foreigners) and the mandatory identification procedure must have been subsequently conducted by the end of 31 October 2022 if necessary (§ 146(3) SGB XII).

Social security under § 146 SGB XII in connection with § 23 SGB XII covers assistance for subsistence, assistance in case of illness, assistance in case of pregnancy and maternity as well as assistance for nursing care. In contrast to the AsylbLG, this does not entail any limitations in terms of healthcare provisions and enables access to public and private healthcare insurance, thus equalling standards for German nationals.

According to § 74 SGB II, the same group of entitled persons as under § 146 SGB XII also receives benefits provided for in SGB II, most importantly basic income for persons without employment (*Arbeitslosengeld II* prior to 1 January 2023, now the more generous *Bürgergeld*). This does not only preclude the option to receive benefits in kinds as foreseen in the AsylbLG for displaced persons living in reception centres, but does also amount to much higher monetary support than under the AsylbLG. To give concrete numbers, while the standard rate for individual beneficiaries under the AsylbLG currently (October 2023) stands at 410 €/month, beneficiaries of *Bürgergeld* receive a monthly 502 €, with both regimes additionally covering housing. Additionally, since the *Rechtskreiswechsel*, displaced persons are also entitled to apply for child support (*Kindergeld*) and educational support (BaFÖG).

3.2. Education.

The German integration of Ukrainian children into the school- and education system had to overcome several obstacles. With displaced persons starting to arrive in the spring of 2022, the school year was already coming to a close, while in and of itself not an insurmountable challenge, coupled with the fact that the German school system was still strained due to the Covid-19 pandemic, resources were scarce to accommodate the Ukrainian children.²⁹ The German federalist system posed a further challenge, considering that education is traditionally within the exclusive competence of the *Länder* (Lands).³⁰ Thus, while all the

²⁹ See Infomigrants, *German schools prepare for influx of Ukrainian refugee children*, 17 March 2022, <https://www.infomigrants.net/en/post/39247/german-schools-prepare-for-influx-of-ukrainian-refugee-children>, (accessed 22 October 2023).

³⁰ See, e.g.: The Education System in the Federal Republic of Germany 2018/2019: A description of the responsibilities, structures and developments in education policy for the exchange of information in Europe, by the Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany, https://www.kmk.org/fileadmin/Dateien/pdf/Eurydice/Bildungswesen-engl-pdfs/dossier_en_ebook.pdf, (accessed 22 October 2023).

Länder were confronted with similar challenges, their responses were not identical; however, several common themes can be identified and this contribution will focus on those instead of analysing all 16 *Länder* policies in detail.

When the first displaced persons arrived, the federal states had to make two fundamental decisions. First of all, whether to include Ukrainian children into the German school system immediately, and if so, whether to create special “welcome classes” or whether to include them within regular classes.³¹ While Art. 14 of the Directive 2001/55 provides that “access to the education system” shall be provided “under the same conditions as nationals”, which could be read to mandate an inclusion within regular classes, the special situation of Ukrainian children had to be taken into account. Any integration effort that would have not accounted for their trauma would arguably have been a barrier to education and integration. In this regard, it is noteworthy that the education laws of the respective federal states also provide for exceptions to compulsory education in cases of particular hardship.³² Thus, federal states that opted to suspend compulsory education (e.g. to allow for online Ukrainian classes) or provide for separate classes for Ukrainian children arguably complied with Art. 14 of the Directive 2001/55.

Notably, the approach towards compulsory education changed in the summer of 2022. In June 2022, the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (*Kultusministerkonferenz*, KMK) adopted a resolution on education of Ukrainian children for the 2022/23 school year, providing for mandatory education and a progressive integration into the German school system.³³ While resolutions of the KMK are not legally binding for the authorities of the Länder, they are perceived as a form of voluntary self-commitment that is usually followed.³⁴ Thus, the approach towards mandatory education and integration into the German school system was streamlined. Importantly, in order to prevent academic disadvantages for Ukrainian war migrants in their final year of high school, the KMK decided to allow access to universities even without formal high school degree, if the students were prevented from obtaining their admission certificate to higher education because of the war.³⁵

³¹ Similar “welcome classes” had been created in 2015 to respond to the mass influx of mainly Syrian protection seekers, see Infomigrants, *nt.* (29).

³² See, e.g.: §§ 34, 40 School Act for the State of North Rhine-Westphalia (Schulgesetz für das Land Nordrhein-Westfalen); §§ 39, 40 Hamburg School Act (Hamburgisches Schulgesetz).

³³ See: resolution of the Kultusministerkonferenz of 23 June 2022, Schooling of protection-seeking children and youth from Ukraine in the 2022/23 school year (Beschulung der schutzsuchenden Kinder und Jugendlichen aus der Ukraine im Schuljahr 2022/2023), https://www.kmk.org/fileadmin/veroeffentlichungen_beschluesse/2022/2022_06_23-Beschulung-Kinder-Ukraine-SJ-22-23_01.pdf, (accessed 22 October 2023).

³⁴ See, e.g.: the many resolutions during the Covid-19 pandemic, which have generally been implemented by all Länder, <https://www.kmk.org/aktuelles/entscheidungen-der-kmk-in-der-corona-krise.html>, (accessed 22 October 2023).

³⁵ Order of the Standing Conference of the Ministers of Education and Cultural Affairs of 05.04.2022 on access to German universities with Ukrainian education certificates (Beschluss Kultusministerkonferenz, 05.04.2022, Hochschulzugang mit ukrainischen Bildungsnachweisen), https://www.kmk.org/fileadmin/Dateien/pdf/ZAB/Hochschulzugang_Beschluesse_der_KMK/220405_KMK_Beschluss_Hochschulzugang_Ukraine.pdf, (accessed 22 October 2023); Order of the Standing Conference of the Ministers of Education and Cultural Affairs of 09.02.2023 on access to German universities

Finally, while Art. 14 point 1 of the Directive 2001/55 only covers child education, Germany adopted several educational measures for adults as well, in line with Art. 12 point 1 of this Directive. One of such measures provides that persons protected under § 24 Residence Act could enrol in language courses, so-called “integration-courses” and further measures, such as courses tailored to female protection seekers (“MiA-courses” on empowering women in everyday-life), all free of charge.³⁶ Arguably, these measures go beyond what is required by Arts. 12 and 14 of the Directive 2001/55. These opportunities are, of course, closely linked to efforts to integrate Ukrainian’s into the job market, which leads over to the next section.

4. Social policy measures for Ukrainians: supporting professional activity.

Persons enjoying temporary protection according to § 24 Residence Act receive a work permit simultaneously with the issuance of their temporary residence permit, permitting both employed and self-employed activities. Prior to 1 June 2022, § 24(6) Residence Act stated that the residence permit itself would not *per se* entail a work permit and thus formally required a separate application to receive a confirmation according to § 4a(2) Residence Act. As the relevant authorities were to issue both permits simultaneously without the need of a separate application,³⁷ § 24(6) Residence Act was abolished in June 2022 and the work permit now officially has to be issued together with the residence permit confirmation under § 24 Residence Act. Following an official Statement of April 2022 by the Ministry of the Interior, prior to obtaining the residence permit, a *Fiktionsbescheinigung* issued under § 81 Residence Act simultaneously entails a working permit in analogous application of § 81(5a) Residence Act.³⁸ Thus, individuals protected under § 24 Residence Act would be allowed to enter the labour market almost directly after arrival. While indeed most of the *Fiktionsbescheinigungen* have been issued with a preliminary work permit, the legal reasoning concerning the analogous application of § 81(5a) Residence Act and thus the entitlement of individuals to claim such work permits before a final decision under § 24 Residence Act has been issued, was severely questioned by jurisprudence, specifically concerning third State nationals with temporary residence permits in the Ukraine.³⁹

According to the Ordinance on the Employment of Foreigners (§ 31 *BeschV*) and contrary to the regular procedure for asylum seekers, persons enjoying temporary protection under §

with Ukrainian education certificates (Beschluss Kultusministerkonferenz, 09.02.2023, Hochschulzugang mit ukrainischen Bildungsnachweisen), https://www.kmk.org/fileadmin/Dateien/pdf/ZAB/Hochschulzugang_Beschluesse_der_KMK/230209_KMK_Beschluss_Hochschulzugang_Ukraine.pdf, (accessed 22 October 2023).

³⁶ See FAQ on Language Support and Integration Courses by the German Federal Office for Migration and Refugees, <https://www.germany4ukraine.de/hilfeportal-en/language-support-and-integration-courses>, (accessed 22 October 2023).

³⁷ Federal Ministry of the Interior, Communication of 14 April 2022, *nt.* (13), 17.

³⁸ Federal Ministry of the Interior, Communication of 14 March 2022, *nt.* (13), 14.

³⁹ OVG Nordrhein-Westfalen, Beschluss vom 19.12.2022 - 17 B 1017/22; VGH Baden-Württemberg, Beschluss vom 26.10.2022 - 11 S 1467/22.

24 Residence Act do not need the permission of the federal work agency. Additionally, mirroring the strict requirements of Art. 12 of the Directive 2001/55, the authorities do not enjoy any discretion to consider the regular requirements for granting work permits under German law, particularly a concrete employment available, and must thus issue the work permit for any person falling under § 24 Residence Act. Since the *Rechtskreiswechsel* in June 2022, Ukrainian war migrants can also benefit from the full support-system of the “Jobcenters”, German institutions jointly operated by the federal work agency and local municipalities. This support system includes a significant number of preparation and advanced training courses.

Asylum seekers are generally not allowed to work during the first three months after arrival and as long as they live in reception centres, § 61 Asylum Act. Additionally, only restricted work permits are issued during the first 15 months conditioned upon approval by the federal work agency (§ 39 Residence Act) and self-employment remains completely prohibited until a residence permit is issued (§ 21 Residence Act). Hence, displaced persons under § 24 Residence Act face significantly fewer legal barriers in entering the labour market than regular asylum seekers.

4.1. Employment of Ukrainian protection seekers - facts and figures.

According to first statistics, in summer 2022, 17% of Ukrainians in working age enjoying temporary protection in Germany have entered the labour market with nearly half of those working full-time.⁴⁰ By early 2023, this number had only slightly increased to 18%.⁴¹ However, experts expect a significant increase in the near future as many Ukrainians are currently participating in preparatory language classes and have voiced strong commitment to this end.⁴² The employment rate rises to 28% twelve months after arrival.⁴³ These numbers may seem low at first glance, but are explained by reference to the educational opportunities such as welcome- or language courses, which most displaced persons attend before searching for work.⁴⁴

Notably, the employment rate is significantly lower for women than for men if they have households with children.⁴⁵ Further, a strong polarization in terms of qualification level of

⁴⁰ Brücker H. et al., *Geflüchtete aus der Ukraine in Deutschland: Ergebnisse der ersten Welle der LAB-BiB/ FReDA-BAMF- SOEP- Befragung*, in *Forschungsbericht*, 41, 2023, 58 ff., https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Forschungsberichte/fb41-ukr-gefluechtete.pdf?__blob=publicationFile&v=15, (accessed 22 October 2023).

⁴¹ Brücker H. et al., *Geflüchtete aus der Ukraine: Knapp die Hälfte beabsichtigt längerfristig in Deutschland zu bleiben*, in *DIW Wochenbericht*, 28, 2023, 387 ff., https://www.diw.de/documents/publikationen/73/diw_01.c.877240.de/23-28.pdf, (accessed 22 October 2023).

⁴² Brücker H., nt, (41), 57 ff.; Kosyakova Y. et al., *Arbeitsmarktintegration ukrainischer Geflüchteter: Erwerbstätigkeit steigt ein Jahr nach dem Zuzug*, in *LAB-Kurzbericht*, 14, 2023, 2, <https://www.econstor.eu/handle/10419/278697>, (accessed 22 October 2023).

⁴³ Kosyakova Y., nt, (42), 4.

⁴⁴ Brücker H., nt, (41), 57 ff.

⁴⁵ Kosyakova Y., nt, (42), 3.

employments obtained has been identified: most of the displaced persons work in jobs which require a rather high level of qualifications (e.g. IT sector and academic research) or rather low level of qualification (e.g. maintenance and gastronomy), with only a low percentage working in professions requiring a medium-level of qualifications (e.g. office management).⁴⁶ According to statistics, the formal qualification level of the Ukrainians displaced persons under § 24 Residence Act is comparatively high with approx. 75% having obtained a university degree.⁴⁷ However, about half of the Ukrainians work in a profession that is below their professional qualification level.⁴⁸ Experts link this primarily to problems in recognition of qualifications (specifically within regulated professions), insufficient language skills and also insufficient child-care options.⁴⁹ These factors are also mirrored in statistically obtained data on areas where interviewed Ukrainians voiced additional need for support, specifically German language courses, recognition of qualifications, and support in obtaining child care services.⁵⁰

However, these practical obstacles to the implementation of the Residence Act do not affect **Germany's compliance with the Directive 2001/55**, as the German laws go beyond what is required by Art. 12 of this Directive.

4.2. Recognition of foreign qualifications and regulated professions.

In Germany, no specific rules on recognition of foreign qualifications for persons under temporary protection are in place. Thus, Ukrainian displaced persons were mainly subjected to the regular recognition procedure. This is in line with the wording of Art. 12 point 1 of the Directive 2001/55, but arguably not with its spirit, considering that it poses a significant practical hurdle to those wanting to work, particularly in regulated professions.

Generally, recognition of specific academic and professional qualifications is only mandatory to enter certain professions with specific entry requirements (so called regulated professions, e.g. medical professions, teachers, architects); these requirements are spelled out in laws regulating the respective profession. Federal law provides for an act governing the recognition of foreign qualifications (*Berufsqualifikationsfeststellungsgesetz* – BQFG) that foresees the recognition of foreign qualifications if there are no significant differences between the qualifications obtained and the German equivalent (§§ 4, 9 BQFG). Additionally, many specific laws governing the regulated professions entail specific – and thus prevailing – provisions on recognition of foreign qualifications.⁵¹ There is no central authority responsible for the recognition of academic and professional qualifications in place; conversely, every profession has its own respective authority which also differs depending

⁴⁶ Brücker H. *nt.* (41), 61 ff.

⁴⁷ Brücker H., *nt.* (41), 9.

⁴⁸ Kosyakova Y., *nt.* (42), 3.

⁴⁹ Kosyakova Y., *nt.* (42), 8.

⁵⁰ Brücker H., *nt.* (41), 48.

⁵¹ *See, e.g.:* for dentists § 2 of the Act regulating the practice of dental medicine (Gesetz über die Ausübung der Zahnheilkunde).

on the place of residence. For many non-regulated professions, formal recognition procedures are entirely lacking. Mirroring this de-central approach, the procedure and additional requirements to compensate for differences in the qualification process (e.g. by work experience, exams or additional courses) as well as the success of Ukrainian displaced persons in obtaining recognition of their qualifications differs significantly between the professions.⁵² In addition, all of the *Länder* have their own laws on recognition of foreign qualifications and several specific laws on regulated professions in place⁵³ and the recognition of academic titles, grades and qualifications varies significantly between the *Länder*. While no comprehensive assessment on the success of the recognition procedures for Ukrainians are available yet, figures from the past show that the recognition rate from qualifications obtained in the Ukraine are comparatively high. For about half of the applications, full equivalence has been identified and only 7% of the applications have been rejected as significantly different.⁵⁴ Nevertheless, despite these promising figures, the decentral organization of the recognition procedure poses a significant challenge in terms of accessibility and Ukrainians have voiced the need for additional support in this regard.⁵⁵

The Central Office for Foreign Education (*Zentralstelle für ausländisches Bildungswesen - ZAB*) is the only central institution on matters related to foreign qualifications operating in Germany. However, this institution does primarily offer statements of comparability for foreign higher education qualifications, a non-binding assessment of foreign titles and their academic and professional usage not equivalent to formal recognition. Nevertheless, specifically for the non-regulated professions, this procedure provides for an objective assessment of the foreign qualifications that can be an advantage in the application process. To this end, the ZAB offered the assessment of qualifications from April 2022 onwards in Ukrainian language and also provided for a simplified procedure if not all relevant documents could be submitted by the applicants. This simplified procedure was also available to nationals of third state countries if they have obtained Ukrainian academic or professional qualifications.

4.3. Conclusions.

Altogether, Germany fully implemented Art. 12 of the Directive 2001/55 into national law and even went a bit further, considering, e.g., the equality of Ukrainian displaced persons and German citizens when it comes to unemployment benefits and integration into the

⁵² Abgeordnetenhaus Berlin, Drucksache 19/11 732, <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/19/SchrAnfr/S19-11732.pdf>, (accessed 22 October 2023); Kosyakova Y., Kosyakova Y., *nt.* (42), 8.

⁵³ See for an overview of the different laws:

<https://www.anerkennung-in-deutschland.de/html/de/pro/laendergesetze.php#gs-3134-1852>, (accessed 22 October 2023).

⁵⁴ Werner D. et al., *Integration durch berufliche Anerkennung für Geflüchtete aus der Ukraine*, in *IW-Report*, 25, 2022, 10, <https://www.econstor.eu/handle/10419/258986>, (accessed 22 October 2023).

⁵⁵ Brücker H., *nt.* (41), 48.

labour market. However, there remains a factual inequality, considering the many barriers Ukrainians have to overcome to find work in Germany, particularly in regulated professions or generally in professions requiring a higher degree of professionalization.

5. Final considerations.

Overall, Germany has fully implemented the Directive 2001/55. In most of the analysed areas, Germany's implementation even went beyond what was required by this Directive, at least on paper. However, shortcomings could be identified in the practical implementation, e.g. due to Germany's federal structure, which leads to a web of applicable laws and competent authorities that is not easy to disentangle, especially for protection seekers, who typically lack German language skills. Moreover, several teething problems have been identified, e.g. in the area of social and financial support as well as education, which have also resulted in several legislative changes in 2022, most prominently with the *Rechtskreiswechsel*. These issues were certainly also caused by the high number of displaced persons admitted by Germany. Compared to other EU states, Germany has taken in the second-highest number of displaced persons, specifically more than 1 million people. This dimension is almost identical to the influx of mainly Syrian protection seekers in 2015. While the latter influx was termed a "refugee-crisis", the reactions to the influx of Ukrainians were overwhelmingly positive and their integration into the labour market, school system, and social security scheme. This is mainly attributable to the Directive 2001/55 and its comparably high protection standards, which go beyond the rights and benefits provided to "ordinary" protection seekers under German law. However, it is also important to acknowledge that this practice leads to different classes of protection seekers: whereas some have to wait for years for work permits, cannot start university because their school diplomas are not recognized, and are in an even more precarious situation due to less financial support and exclusion from the social security scheme, Ukrainian displaced persons were significantly better off. Thus, while the Directive 2001/55 might have fulfilled its goals and can be considered successfully implemented in Germany, this implementation sheds light on shortcomings in Germany's (and indeed Europe's) integration of other protection seekers.⁵⁶ Analysis of Member State's handling of the Ukrainian mass influx should thus not stop at analysing the state of implementation of the Directive 2001/55, but should question the broader implications for Europe's migration politics.⁵⁷

⁵⁶ Cf. Stutz V., *Educating Ukrainian Children in German Schools: Addressing Key Challenges*, 02 June 2023, <https://www.chaberlin.org/en/blog/educating-ukrainians-in-german-schools-addressing-key-challenges-2/>, (accessed 22 October 2023).

⁵⁷ On racist tendencies in the admission policies of EU member states, see Katsoni S., *What Do We Do with the Non-“White, Blonde, Blue-Eyed” Asylum Seekers?: On States’ Legalistic Justifications for Discriminatory Admissions*, 02 June 2022, <https://voelkerrechtsblog.org/de/what-do-we-do-with-the-non-white-blonde-blue-eyed-asylum-seekers/>, (accessed 22 October 2023).

Mass influx of people from Ukraine: social entitlements and access to the labour market: Hungary.

Éva Lukács Gellérné*

1. General framework. 2. Personal scope of applicable support measures. 2.1. Persons covered. 2.2. Procedure to obtain the status of displaced person. 2.3. Loss of status as a displaced person. 3. Financial support, housing, access to healthcare and education. 3.1. Financial support, housing. 3.2. Healthcare. 3.3. Education. 4. Professional activity. 4.1. Free access to the labour market. 4.2. The link between financial support and employment. 4.3. Support for employers who employ persons under temporary protection. 4.4. Recognition of diplomas. 5. Final considerations.

1. General framework.

Ukraine is a neighbouring country of Hungary, and the very strong historical ties between the two countries have continuously generated vivid and natural migration.¹ According to Act CLXXIX of 2011 on the Rights of National Minorities, Ukrainians form a recognised minority group in Hungary, which is based on the fact that they have been resident in the territory of Hungary for at least a century and they have their own language, culture and traditions. Approximately 11000 people of Ukrainian ethnic origin are registered in Hungary.² A lot more people of Hungarian origin live in Ukraine. Many of them took advantage of the preferential naturalisation option introduced by Hungary in 2011. In 2015, the number of naturalised Hungarians altogether reached almost 700.000,³ but very few of them actually moved to Hungary (from Ukraine, only 61.000 people between 2011 and 2015).⁴ At present

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¹ Karácsonyi D., Kincses Á., *Ukrán állampolgárok Magyarországon: nemzeti összetartozás és gazdasági kényszer*, in *Területi Statisztika*, 2010, Vol. 13/3334-349; Karácsonyi D., Kincses Á., *Átrendeződség? Kárpátaljaiak Magyarországon, magyarok Kárpátján, a 2017-ig terjedő adatok tükrében* (Realignment? Transcarpathians in Hungary, Hungarians in Transcarpathia in the light of data up to 2017), in *Területi Statisztika*, 2020, Vol. 60 / 3, 309-351.

² Országgyűlés H., *Magyarország nemzetiségei 2021* (Ethnic groups in Hungary 2021), in *Infotabló*, 2021/29. 2021.

³ KSH, *Új magyar állampolgárok* (New Hungarian nationals), 2017: <https://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/ujmagyarallampolgarok.pdf> (accessed 16 May 2023).

⁴ Tóth J., *They Only Use the Opportunities Provided by the Law' Chapters from the History of Ukrainian-Hungarian Migration Relations*, in Minderhoud P., Mantu S., Zwaan K. (eds), *Caught In Between Borders: Citizens, Migrants and Humans, Liber Amicorum in honour of prof. dr. Elspeth Guild*, Wolf Legal Publishers, Tilburg, 2019, 221-230.

there are 1 million naturalised Hungarians, but there is no reliable data on how many of the dual nationals moved to Hungary or have left since 2015 due to the COVID⁵ or the war.

According to the data of the United Nations High Commissioner for Refugees, as a neighbouring country, Hungary is one of the countries highly affected by the war. Until the end of April 2023 more than 2.5 million border crossings have been recorded in Hungary from Ukraine, which is the second highest following Poland with more than 11 million border crossings.⁶ 35.000 persons applied for confirmation of temporary protection. The proportionally low latter number can be explained by the fact that most of the displaced persons consider Hungary as a transit country, and persons with Ukrainian-Hungarian dual citizenship are only entitled to benefits, but not to official status as a beneficiary of temporary protection.⁷

‘Displaced persons’ is a well-defined concept within EU law based on Directive 2001/55/EC.⁸ The beneficiaries and their entitlements have been incorporated into the national laws of EU Member States, meaning that certain defined rights are guaranteed by all Member States. On the other hand, Member States can adopt more favourable standards regarding the definition of refugee or displaced person and the content of the protection provided (Article 3 (5) of the Directive 2001/55).

The Directive 2001/55 was incorporated into Hungarian law first by Act CXXXIX of 1997 on Asylum with effect from 1 May 2004 (the date of accession of Hungary to the EU). That Act has been replaced by Act LXXX of 2007 on asylum (Asylum Act - Menekültügyi törvény) and its implementing Government Decree 301/2007. (XI. 9.) with effect from 1 January 2008. These rules are in accordance with EU law.⁹ On 4 March 2022, the Council of the EU adopted Implementing Decision 2022/382 (EU) establishing a mass influx of displaced persons from Ukraine.¹⁰ On 21 March 2022 operative guidelines were endorsed to assist Member States in proper implementation.¹¹ This activated the protection mechanisms of the Directive 2001/55. Hungary adopted the Decision 2022/382 on 7 March 2022 by

⁵ On an extensive review of COVID and Hungarian law, see: Gyulavári T., *Covid-19 and Hungarian Labour Law: the ‘State of Danger’*, in *Hungarian Labor Law: E-Journal*, 2020, 109-125; Hungler S., Rácz L., Gárdos-Orosz F., *Hungary: Legal Response to Covid-19*, in King, J., Ferraz O. L. M. (eds.), *The Oxford Compendium of National Legal Responses to Covid-19* (OUP 2021); Homicskó Á. O., *A járványhelyzet kezelésének kérdései az egészségügyi ellátórendszerben*, in *Glossa Iuridica*, 8/1-2., 2021, 233-249; Berke G., *Munkajog veszélyhelyzetben*, in: Pál, L., Petrovics, Z. (eds.), *Visegrad 17.0: A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer, Budapest, 2020, 21-41. Hoffman I., *Local development policies in the V4 countries – in the light of the impact of the COVID-19 pandemic*, in *Journal of Comparative Politics*, 2023, 16/1, 64-79.

⁶ <https://data.unhcr.org/en/situations/ukraine> (accessed 3 May 2023).

⁷ Tóth B., *Az ukrajnai menekültek helyzete Magyarországon* (Situation of Ukrainian persons in Hungary), Migrációkutató intézet, in *Gyorslemlések*, 2023, 1.

⁸ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55, Article 2. point c).

⁹ Gyeney L., Molnár T., *Migrációs és menekültpolitika*. (Migration and asylum policy) *PPKE Jog- és Államtudományi Kar*, Budapest, 2018, 4.

¹⁰ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1727 (accessed 3 May 2023).

Government Decree 86/2022. (III. 7.) as the main implementing instrument, while further legislative provisions have also been passed. The said Government Decree is still in force, its application has regularly been extended, the last extension has occurred by Government Decree 58/2023. (II. 28.) with effect from 1 March 2023. Pursuant to this last modification, the validity period of the documents issued to displaced persons, certifying their identity and right of residence, shall be 4 March 2024 instead of the validity period physically displayed on the document.¹² This means that protection is provided at least until this date in Hungary.

2. Personal scope of applicable support measures.

2.1. Persons covered.

In terms of Section 19 of the Asylum Act beneficiaries of temporary protection are not only those recognised as displaced persons by the Council of the EU (Article 2 of the Directive), but also those recognised as such by the Hungarian government in a Government Decision. Accordingly, Hungary can individually grant temporary protection to foreigners who are forced to flee their country as a result of armed conflict, civil war or ethnic strife, or generalised, systematic or serious violations of human rights. This gives the possibility to provide assistance quickly, if necessary, even without an EU decision. Importantly, the two categories together are called ‘beneficiaries of temporary protection’ – in Hungarian *menedékes*. Having said that, the Hungarian government has not yet exercised its individual competence. This mainly followed from the general Hungarian attitude, accustomed to individualised decision-making, which could not and/or would not grant status and rights without individual assessment to those who came here en masse.¹³

In accordance with Article 2 (1) of the Decision 2022/382, beneficiary of temporary protection is a) an Ukrainian citizen residing in Ukraine before 24 February 2022, b) a stateless person or a non-Ukrainian third-country national who has been granted international protection or equivalent national protection in Ukraine before 24 February 2022, or c) a member of the family of a person referred to in points a) and b).¹⁴ According to the practice of the National Directorate-General for Aliens Policing (OIF), the status is also granted to a person living in a stable partnership with a person under (a) or (b), or to the parent of a third-country national child under (a) or (b).¹⁵

In accordance with the choice provided by Article 2 (2) of the Decision 2022/382, Hungary applies adequate protection under its national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence

¹² Section 5 (3) of Government Decree 86/2022. (III. 7.)

¹³ Tóth J., Decmann B., *A menedékesekről szóló szabályozás hasznáról és káráról (About the benefits and drawbacks of rules relating to beneficiaries of temporary protection)*, in *Máltai Tanulmányok*, 2020, II. Vol. 2, 183- 199.

¹⁴ Government Decree 86/2022. (III.7.), Section 1.

¹⁵ *Magyar Helsinki Bizottság, Tájékoztató az Ukrajnából menekülők jogi helyzetéről* (Information on the status of Ukrainians displaced persons), 8 June 2022.

permit issued in accordance with Ukrainian law, and who are unable to return in safe and enduring conditions to their country or region of origin.¹⁶

Hungarian law is in conformity with the Decision 2022/382, it endorses the obligatory categories of displaced persons who are entitled to protection in terms of the Council Directive 2001/55, but it does not extend the personal scope to the optional categories enumerated in the Decision 2022/382. In case of the latter the immigration authority will act according to the general rules.

2.2. Procedure to obtain the status of displaced person.

A person falling within the scope of the Government Decree may apply for recognition as a beneficiary of temporary protection in Hungary, regardless of whether he or she has another legal title for residence or whether his or her entry into the country was lawful. It is necessary to prove that the applicant is indeed a person covered by the Government Decree. The application for recognition can be lodged at the OIF in Budapest and at its regional offices. In addition, it is possible to provide the applicant with the necessary identification data for the application in advance, via the dedicated website (<https://enterhungary.gov.hu/eh/>) or a mobile app. This is only intended to speed up the registration procedure and does not replace the obligation to appear in person, which in this case can be done not only at the OIF, but also at any regional government office.¹⁷ In case of granting the status as beneficiary of temporary protection the competent authority does not issue a separate decision on recognition, but merely communicates the decision by serving the plastic card attesting the status as a beneficiary of temporary protection.¹⁸ The decision of refusal is served on the person concerned if: the person's stay in the territory of Hungary is not in the interest of national security, he or she has been sentenced by a court to five years' imprisonment or more for a deliberate criminal offence, or he or she has committed a crime against peace, war or crimes against humanity as defined in international instruments. A person who meets any of these criteria shall not be recognised as a beneficiary of temporary protection.¹⁹

Until the issuance of the plastic card, the applicant is served with a residence document for humanitarian purposes which shall be used to identify himself or herself as a beneficiary of temporary protection and to access the benefits provided by law.

2.3. Loss of status as a displaced person.

The status of a person who benefits from temporary protection will be terminated in the following cases:

¹⁶ Government Decree 86/2022. (III.7.), Section 2 paragraphs (2)-(3).

¹⁷ Government Decree 86/2022. (III.7.), Section 5/A. paragraphs (1)-(2b)

¹⁸ Government Decree 86/2022. (III.7.), Section 5/A. paragraphs (3).

¹⁹ Asylum Act, Section 21 (1).

- when the period of temporary protection expires or the Council decides to terminate the status;
- if the displaced person becomes a legal resident or a refugee in Hungary or obtains Hungarian nationality;
- if the recognition as a displaced person is withdrawn by the authority.²⁰

The Asylum Act also lists the cases in which the recognition must be withdrawn. These are:

- if the displaced person is granted temporary protection in another Member State;
- if the recognition has been granted despite the existence of a ground for exclusion against the person,
- if the person renounces his or her status in writing;
- if the conditions for recognition were not met at the time of the recognition decision.²¹

The mere fact that a person returns to Ukraine does not mean that his or her status can be withdrawn. This is an important distinction between this status and the refugee or protected status, where return to the country of origin may lead to withdrawal of status. A written renunciation of the status and return to Ukraine does not exclude the possibility of being recognised as a displaced person again at a later date on a subsequent reapplication.²²

3. Financial support, housing, access to healthcare and education.

3.1. Financial support, housing.

According to the Implementing Government Decree of the Asylum Act²³ beneficiaries of temporary protection in general are entitled to a series of services and benefits. They shall be entitled to a) continuous provision of material reception conditions, b) healthcare, c) reimbursement of the costs relevant to schooling and education, d) cash benefits, and e) support facilitating social integration. Types of material reception services are a) accommodation and care at a reception centre, b) monthly spending money of free use and c) travel allowances. These latter benefits are only granted if the beneficiary of temporary protection lives in a reception centre.²⁴ Cash benefits are a) school enrolment benefit, b) reimbursement of costs incurred when getting documents translated, c) allowance facilitating final departure from Hungary. Benefits facilitating social integration are the free Hungarian language courses and regular subsistence allowance. These services and benefits – with the exception of Hungarian language courses and accommodation and care at the reception centre – are in general means-tested, they are conditional upon not exceeding a per capita maximum income which is 150% of the Hungarian social minimum.²⁵

²⁰ Asylum Act, Section 25 (1).

²¹ Asylum Act, Section 25 (2).

²² Government Decree 301/2007. (XI. 9.), Section 108.

²³ Government Decree 301/2007. (XI. 9.), Section 37/A.

²⁴ Government Decree 301/2007. (XI. 9.), Section 40.

²⁵ Government Decree 301/2007. (XI. 9.), Section 38 (2) and 39. The Hungarian social minimum is HUF 28.500.

The rules applicable to Ukrainian beneficiaries of temporary protection positively differ from the general rules, in their case the services and benefits are not means-tested. Government Decree 86/2022. (III.7.) explicitly states in Section 5 (1) c)-f) that the rules of the Implementing Government Decree of the Asylum Act on means-tests shall not be applied to them. It means that they are entitled to the services and benefits irrespective of their financial situation.

Ukrainian displaced persons who are recognised as beneficiaries of temporary protection are entitled to monthly regular subsistence allowance.²⁶ They must present themselves at OIF or at the district government office of their place of residence and submit the application for the benefit in person. They need to appear before the district office every month to continuously receive the benefit. The amount of the regular subsistence allowance is HUF 22.800 in case of adults and HUF 13.700 in case of children.²⁷ (See also point 4.2. on the link between the allowance and employment.)

Persons granted temporary protection shall be entitled to accommodation and care free of charge at the reception centre for the entire duration of the temporary protection.²⁸ If the persons live elsewhere, they can get support for the housing through their employer in a maximum amount of HUF 60.000 per month for a maximum of 12 months (see point 4.3. for more details.)

Ukrainian displaced persons are entitled to free of charge travel in Budapest (metro, trams, buses, trolley buses)²⁹ and also to intrastate travel by train with a solidarity ticket and bus.³⁰

3.2. Healthcare.

Article 13 of the Council Directive 2001/55 lays down that Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. The assistance necessary for medical care shall include at least emergency care and essential treatment of illness, while people with special needs shall receive necessary medical or other assistance. Hungarian law grants more extensive healthcare rights than those envisaged by the Council Directive 2001/55.³¹

²⁶ Government Decree 106/2022. (12.III.) on certain rules concerning the employment and benefits of persons recognised as beneficiaries of temporary protection in the event of a humanitarian disaster in a neighbouring country during a state of emergency (104/2022. (III. 12.) *Korm. rendelet a veszélyhelyzet ideje alatt a szomszédos országban fennálló humanitárius katasztrófiára tekintettel érkező személyek elhelyezésének támogatásáról és az azokkal kapcsolatos egyéb intézkedésekről*), Section 4.

²⁷ Government Decree 301/2007. (XI. 9.), Section 53 (2).

²⁸ Government Decree 301/2007. (XI. 9.), Section 41 (2).

²⁹ BKK, *Ingyenes utazás a BKK járatrain* (Free travel on public transport in Budapest):

<https://help.budapest.hu/blog/2023/03/31/ismet-meghosszabbítottuk-három-honappal-az-ukrajnai-menekultek-ingenyes-utazasi-lehetoseget-a-bkk-jaratain/> (Downloaded 14 April 2023)

³⁰ MÁV, *Ingyenes utazás az ukrainai menekülteknek* (Free of charge travel to Ukrainian displaced persons), <https://www.mavcsoport.hu/mavinform/minden-ukrajnai-menekultnek-ingeny-biztositja-mav-vasuti-utazast>

³¹ See more extensively: Lukács Gellérné É., *Gesundheitsversorgung für geflüchtete ukrainische Bürger in Ungarn im Lichte des EU-Rechts*, in *ANNALES – Sectio Iuridica*, 2022/61., 2022, 147-159; <https://www.ajk.elte.hu/annales> Tomus LXI, (accessed 16 May 2023).

Pursuant to Section 1 of Government Decree 86/2022. (III. 7.) Hungary offers recognition to all Ukrainian citizens residing in Ukraine before 24 February 2022 as beneficiaries of temporary protection. According to Section 6(2)(a), recognised persons and those who have submitted an application are eligible for the same healthcare coverage as beneficiaries of temporary protection under the 2007 Asylum Act.³² It predominantly covers emergency care, but also extends to the medical process until which the condition is stabilised, including the right to medication, medical aids and, as a separate area, antenatal care and vaccinations. A preferential rule has been introduced for the victims of the war, they can always obtain the benefits free of charge, the general means-test is not applicable to them.

Furthermore, Ukrainian persons are also entitled, according to Section 6 (2) b), to receive further benefits in addition to those prescribed by the Asylum Act: examination and medical treatment within the framework of specialist oncological care and other chronic care, and certain social insurance benefits for the purpose of improvement, maintenance of condition or pain relief within the framework of specialist oncological care and other chronic care, as well as price subsidy for necessary medicine.³³ In these cases, it is not the urgent need that is decisive, but the presence of a pre-existing chronic condition where failure to treat may lead to significant pain or even a life-threatening condition. Consequently, their access includes not only emergency services, but covers the continuous treatment of chronic diseases requiring costly medical infrastructure.³⁴

3.3. Education.

In accordance with Article 14 of the Council Directive 2001/55 Hungary grants to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as the nationals of Hungary.

In Hungary, the Public Education Act states that – with very few exceptions – non-Hungarian children are also subject to compulsory schooling. The law is clear: anyone who is beneficiary of temporary protection or has applied to be recognised as a beneficiary of temporary protection becomes obliged to go to school under the same conditions as Hungarian children.³⁵ The school of the place of residence must admit the child.

In Hungary, children over the age of 3 are obliged to attend kindergarten, mainly in the kindergarten of the municipality where they live. Compulsory school age is from 6 to 16 years of age. Compulsory education may be fulfilled in state and non-state schools. Primary education is provided by primary schools, after which children can move on to secondary

³² Asylum Act, Sections 28.

³³ The competent Minister of Health issued three individual orders for implementing Government Decree 86/2022. (III. 7.): 8/2022. (III. 9.) EMMI individual order, 9/2022. (III. 11.) EMMI individual order and 10/2022. (III. 25.) EMMI individual order.

³⁴ Those who do not submit an application for temporary protection are entitled to emergency care under an old bilateral social policy agreement between Hungary and Ukraine: Government Decree (Tvr.) 16 of 1963 (20.12.1962.). See more extensively: Mészáros Á., *National Approaches by EU Member States to Concluding Bilateral Social Security Agreements with Third Countries: Hungarian Experiences* in *ANNALES – Sectio Iuridica*, 2019, 31-58.

³⁵ Act CXC of 2011 on Public Education (2011. évi CXC. törvény a Nemzeti Köznevelésről), Section 92.

schools, such as gymnasiums, or to vocational schools. State-run schools and schools not run by the State but with a public education contract are free of charge for the children. Church-run or private kindergartens and schools are typically subject to tuition fees. For students at secondary schools there are also dormitories, the availability of which can be checked at the school district centres and vocational training centres.³⁶

Upon request, in order to facilitate participation in pre-school education and in public education, until the person seeking temporary protection turns 21, during his or her stay at the reception centre, the authority shall reimburse the costs of education at a kindergarten, primary school, secondary school, institution for the education of handicapped children or conductive educational institution, especially the costs of local or long-distance public transport for travelling to and from the educational institution, the costs of meals at the educational institution and the costs of accommodation at a student hostel.³⁷ The costs can't exceed the Hungarian social minimum per month and shall be certified by proper invoices.

Hungary has created the opportunity in the spring of 2022 for 1000 Ukrainian students to receive scholarships for studies in Hungarian higher educational institutions.³⁸ A sub-programme called Students at Risk has been set up under the Stipendium Hungaricum programme to “provide assistance to Ukrainian students who have fled Ukraine because of the Russian-Ukrainian war”. An amount of HUF 3.25 billion in 2022 and HUF 3.9 billion in 2023 has been allocated for this purpose.³⁹

4. Professional activity.

4.1. Free access to the labour market.

In case of recognised beneficiaries of temporary protection, the main rule for employment is laid down in the Asylum Act⁴⁰ according to which these persons can take up employment in accordance with the general rules applicable to foreigners, namely in possession of a work permit with certain exceptions.⁴¹ However, for displaced persons affected by the Ukrainian crisis, more beneficial rules have been introduced, beyond what is required under Article 12 of the Council Directive 2001/55.

At present, if a displaced person falls within the ambit of Government Decree 86/2022. (III.7.) and is recognised as a beneficiary of temporary protection or has submitted an

³⁶ Information on schooling is available at <https://kk.gov.hu/tankeruletek> and https://www.nive.hu/index.php?option=com_content&view=article&id=595&Itemid=267 (accessed 16 May 2023).

³⁷ Government Decree 301/2007. (XI. 9.), Section 29.

³⁸ <https://stipendiumhungaricum.hu/studentsatrisk/> (accessed 16 May 2023).

³⁹ https://hvg.hu/itthon/20220329_ukrajna_menekult_orvos_apolo_egeszsegugy (accessed 16 May 2023).

⁴⁰ Section 22 (1) d) of the Asylum Act.

⁴¹ Government Decree 445/2013 (XI. 28.) on the employment of third-country nationals in Hungary, Section 15(1) on automatic exceptions from the work permit (including EU law obligations) (445/2013. (XI. 28.) *Korm. rendelet a harmadik országbeli állampolgárok magyarországi foglalkoztatásának nem összevont kérelmezési eljárás alapján történő engedélyezéséről*) and Section 15 (3a)-(3c) on the determination of certain jobs that are exempted by the competent minister, including engineers, nurses, logistic managers etc. <https://net.jogtar.hu/jogszabaly?docid=a21k0501.kuk#lbj0id67ed> (accessed 16 May 2023).

application for temporary protection, she/he has the right to work on the territory of Hungary without a work permit, including in the framework of temporary agency work (placement).⁴² It is worth noting that there were slightly different rules in the first version of the Government Decree upon its entry into effect, on 7 March 2022, and until only 30 April 2022, according to which former rules free access was granted only in certain professions authorised by the competent minister. That limitation was lifted very soon, on 30 April 2022 when complete free access was adopted. Those displaced persons, who are not recognised as beneficiaries of temporary protection or have not submitted applications for temporary protection, are not entitled to free access. It means that a legal connection has to be set up by the person with Hungary that ties him or her to Hungarian society with the prospect of integration in order to become entitled to free access. The provisions of Article 71 of Act II of 2007 on the Entry and Residence of Third-Country Nationals shall apply to the notification of their employment to the Hungarian authorities, the notification shall be made within 5 days from the start of the employment through the online platform of the OIF.

One of the conditions of free access is that the work is pursued in Hungary, but posting to another EU Member State is not explicitly excluded under Hungarian labour law.⁴³ In terms of social security coordination, according to Article 2 of Regulation 883/2004/EC⁴⁴ and Article 1 of Regulation 1231/2010/EU,⁴⁵ displaced persons do not fall within the ambit of these regulations. Consequently, if they are sent to another Member State, social security contributions shall be paid there, and this way the administrative and financial burdens would probably dissuade Hungarian employers from posting their Ukrainian displaced person workers. *See* also the references on their numbers in point 3., which suggests that employers can well employ these workers within Hungarian territory.

4.2. The link between financial support and employment.

Ukrainian displaced persons who are recognised as beneficiaries of temporary protection are entitled to a monthly regular subsistence allowance.⁴⁶ If a displaced person with a recognised status is employable, she or he is obliged, in cooperation with the district office,

⁴² Government Decree 86/2022. (III.7.), Section 6 paragraph (4).

⁴³ *See* for more on posting and Hungarian law: Kártyás G., *Kikiüldött munkavállalók az uniós és a magyar jogban (Posted workers in EU and Hungarian Law)*, Budapest, Pázmány Press, 2020.

⁴⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, ELI: <http://data.europa.eu/eli/reg/2004/883/2014-01-01> (accessed 16 May 2023). “This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.”

⁴⁵ Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, ELI: <http://data.europa.eu/eli/reg/2010/1231/oj> (accessed 16 May 2023).

⁴⁶ Government Decree 301/2007. (XI. 9.), Section 37/A, (4) b) and Government Decree 106/2022 (12.III.) on certain rules concerning the employment and benefits of persons recognised as beneficiaries of temporary protection in the event of a humanitarian disaster in a neighbouring country during a state of emergency, Section 4.

to accept an offer of a suitable job, including public employment, within 45 days of receiving the first regular subsistence allowance.⁴⁷ A job is considered suitable if it is suitable for the age, health and qualifications of the person concerned, who is not obliged to accept the job offered if he or she is already working, has a child under 3 years old or is a minor who is studying.⁴⁸ If the employable person has a job or does not accept the job offered to him or her without a proper justification, the regular subsistence allowance is withdrawn. Consequently, either way, gainfully active Ukrainian displaced persons lose their entitlement to this allowance.⁴⁹

4.3. Support for employers who employ persons under temporary protection.

Not only has the employment been made possible without a work permit for those with the above-mentioned status, but the Hungarian state provides subsidies for employers who employ Ukrainian nationals or Ukrainian and Hungarian dual nationals under certain conditions.⁵⁰ According to Section 1 of Government Decree 96/2022. (III. 10.) the government provides support to the employer if a) the employer employs the Ukrainian national or Ukrainian and Hungarian dual national as a worker on or after 24 February 2022, b) the employment of the worker takes place in Hungary, c) the employment of the worker is for a fixed or indefinite period of at least 20 hours per week.⁵¹ Referring to point b), if the work takes place in Hungary in the framework of temporary agency work (placement), support can also be provided. The same benefit is available for Ukrainian nationals who arrived in Hungary before 24 February 2022 if, in addition to the above conditions, their employment has reached or exceeded 90 days within the 365 days preceding the submission of the application.⁵² It is important to note that only women can be recruited in Ukraine, hence men can't leave the country due to the general obligation of military service.

The county (capital) government office acting as a public employment body shall, upon the employer's request, provide non-refundable subsidies to the employer to cover the housing and travel expenses of the employee who is fleeing the armed conflict in Ukraine and who arrived in Hungary from Ukraine on or after 24 February 2022 and who has Ukrainian or Ukrainian-Hungarian dual citizenship (hereafter referred to as Ukrainian citizen), if the employee meets the conditions set out in the Announcement.⁵³ The amount

⁴⁷ Government Decree 106/2022 (12.III.), Section 2 (5).

⁴⁸ Ibid., Section 2 (7).

⁴⁹ AJBH (2023), Fontos információ az Ukrajnából menekülők számára (Important information for Ukrainian displaced persons from the Hungarian Ombudsman), <https://www.ajbh.hu/fontos-informaciok-az-ukrajnabol-menekulok-szamara> (accessed 16 May 2023).

⁵⁰ Government Decree 96/2022 (III. 10.) on granting aid for employment to Ukraine nationals arriving from Ukraine after 24 February 2022 (96/2022. (III. 10.) *Korm. rendelet az Ukrajna területéről érkezett, ukrán állampolgársággal rendelkező személyek munkavállalásának támogatásáról*).

⁵¹ Government Decree 96/2022 (III. 10.), Section 1.

⁵² Government Decree 172/2022. (IV. 29.) on aid for persons arriving from Ukraine before 24 February 2023 (172/2022. (IV. 29.) *Korm. rendelet az ukrán állampolgársággal rendelkező személyek foglalkoztatásának támogatásáról*).

⁵³ NFSZ, *Hirdetmény, Ukrajna területéről 2022. február 24-én vagy azt követően érkezett ukrán állampolgársággal rendelkező személyek gazdasági társaságoknál való munkavállalásához támogatást nyújtó munkaerő piaci programról*. National Employment Service Hungary, Announcement.

of the subsidy is 50% of the employee's housing and travel expenses per month per employee or, if the employer provides accommodation for the employee in a small settlement, the amount of the subsidy is 100% of the employee's housing and travel expenses per month, which may not exceed HUF 60.000 per employee and HUF 12.000 per child for minor children living in the same household. The child must be a minor when the application is submitted. If both parents of a minor child are employees of the same employer, the employer is only entitled to support for one of the working parents. The subsidy can be fixed in months only for the duration of the worker's employment, up to a maximum of twelve months.

According to the data of the Hungarian Central Statistical Office, more than 225 thousand foreign nationals (including Europeans) are currently employed in Hungary.⁵⁴ They are represented mainly in manufacturing, construction, electronics, the automotive industry, trade and catering. The number of Ukrainian workers in Hungary was constantly under 10 thousand in the last decade but increased to appr. 30 thousand during and after the COVID outbreak in the years of 2019/2020/2021. Their numbers have not changed since the outbreak of the war (Ukrainian nationals rather choose Western Europe as a destination) and labour shortage is filled in Hungary by growing number of workers from Asia (from 55 thousand in 2022 to 65 thousand until April 2023).⁵⁵

4.4. Recognition of diplomas.

As a main rule, diplomas shall be recognised in accordance with Act C of 2011 on recognition of qualifications, the recognition procedure is subject to a fee, but Ukrainian persons can request exemption from paying the costs of the procedure (including any expert fees).⁵⁶ More beneficial rules apply to certain professions. During the period of the emergency, a person recognised as a beneficiary of temporary protection from Ukraine, on the basis of a document issued in Ukraine certifying state-recognised qualifications and academic degrees, a) if he or she has a medical qualification, he or she is entitled to exercise medical activities under supervision, (b) if he or she is a qualified doctor, dentist, pharmacist, he or she may participate in the system of higher vocational training in the field of medicine without having his or her professional qualification or professional qualifications recognised or naturalised in Hungary, until the recognition or naturalisation procedure is completed.⁵⁷

⁵⁴ KSH, https://www.ksh.hu/stadat_files/nep/hu/nep0023.html (accessed 3 May 2023).

⁵⁵ Hornyák, J., Nagy, K., *Özönlenek Magyarországra a külföldiek, semmi sem állíthatja meg őket (Foreign workers come to Hungary, nothing can stop them*, www.portfolio.hu 17 February 2023, (accessed on 3 May 2023). Workers are welcome in rural areas, see for more: Uhljár P., Pári A., Papházi T., *A falusi CSOK hatása a települések népességére*, in *Modern Geográfia*, Vol. 18/3. 2023, 41-52; Fűrész T., Molnár B., *The first decade of building a family-friendly Hungary*, in *Quaderns de Politiques Familiars* 2021/7, 1-12.

⁵⁶ Oktatási Hivatal, Tájékoztató (Information on recognition): https://www.oktatas.hu/pub_bin/dload/meik/docs/Tajekoztato_Ukrajna.pdf (accessed 15 April 2023).

⁵⁷ Government Decree 121/2022 (28.III.) on emergency rules for the employment in Hungary of health workers who flee from Ukraine (121/2022. (III. 28.) *Korm. rendelet az Ukrajnából menekült egészségügyi dolgozók magyarországi foglalkoztatásának veszélyhelyzeti szabályairól*).

It means that the procedure for recognition shall be initiated but the applicant is entitled to start working without having to wait for the procedure to be completed.

5. Final considerations.

The support of displaced persons from Ukraine is continuously carried out with the involvement of the Defence Forces, the Police, the Civil Protection, the National Humanitarian Coordination Council, regional and local authorities, civil and religious organisations and the voluntary work of the population in Hungary. From the outset, the government has provided food, shelter, counselling and support for the administration of official businesses. They have also organised hospital and healthcare, free travel and made free accommodation available. They provide schooling for children of persons fleeing from the war in Ukraine and grant free access to employment for recognised beneficiaries of temporary protection or those who have submitted applications for that purpose. In terms of access to employment and access to healthcare the rights granted by Hungary are more extensive than the minimum requirements of the Council Directive 2001/55.

As has been mentioned, since February 2022 more than 2.5 million border-crossings have been recorded which is equivalent to 25 % of the population of Hungary. Between February and August 2022, the charitable activities cost HUF 28 billion (appr. 75 million EUR) in Hungary.⁵⁸ On 18 May 2022, the Commission of the European Union adopted a decision to support the Member States most affected by the mass influx of people from Ukraine (Poland, Slovakia, Hungary, Romania and the Czech Republic) from the resources of the Asylum, Migration and Integration Fund (AMIF) and the Border Management and Visa Instrument (BMVI) for the financial period 2021-2027. **The Commission allocated €9.6 million from the AMIF and €11.5 million from the BMVI to cover Hungarian expenditure related to refugees from Ukraine from 24 February to 23 August 2022.**⁵⁹

These cited numbers show the magnitude of the challenges the Hungarian infrastructure and Hungarian population have been facing since the outbreak of the war. It shall be recalled that this is the third time our country has been forced to take such a stand in the last 35 years: first in 1988-1989 when we received hundreds of thousands of refugees from Romania, followed by the war in Yugoslavia in 1991-1996, and now the crisis that led millions of Ukrainian people to leave their motherland.⁶⁰ We can only hope that the measures introduced

⁵⁸ Világgazdaság, *Megjött a pénz az uniótól, amelyet az ukrán menekültek miatt vártunk.* (The awaited money has arrived from the EU for the support of displaced persons from Ukraine) 2022.10.04. <https://www.vg.hu/kozelet/2022/10/megjott-a-penz-az-uniotol-amit-az-ukran-menekultek-miatt-vartunk> (accessed 3 May 2023).

⁵⁹ <https://ecre.org/eu-eastern-borders-eu-commission-to-provide-100-million-euros-more-to-countries-hosting-ukrainian-refugees-as-arrivals-are-increasing-hungary-prepared-to-welcome-more-ukrainians-while-abusing-refugee/> (accessed 3 May 2023).

⁶⁰ Klenner Z., *A modern menekültügyi rendszer létrehozása és fejlődése a rendszerváltoztatás időszakában Magyarországon.* (The establishment and development of the modern asylum system in Hungary in the era of political changes), in *Magyar Rendészet*, 2017, vol. 3, 47-60.

– both at the level of EU law and national law – may ease the suffering that people fleeing from Ukraine are going through and can help them to put faith in a brighter future.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Ireland. Dáire McCormack-George*

1. General framework. 2. Scope of application of support measures. 2.1. Overview. 2.2. Personal scope of application. 2.2.1. Displaced persons. 2.2.1.1. Overview. 2.2.1.2. Displaced persons of the Russo-Ukrainian war. 2.2.2. Temporary protection. 2.3. Temporal scope of application. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 3.1. Overview. 3.2. Social welfare. 3.3. Housing. 3.4. Healthcare. 3.5. Education. 4. Social policy measures for Ukrainians: supporting professional activity. 4.1. Overview. 4.2. The numbers. 4.3. The Irish approach. 5. Final considerations.

1. General framework.

By the middle of May 2022, 33,151 Personal Public Service Numbers (Irish social security numbers) were issued to individuals coming from Ukraine to Ireland under the Temporary Protection Directive.¹ Six months later, that number had almost doubled to 62,425.² Ukrainians now constitute one of the largest populations of non-Irish nationals resident in Ireland, third only to nationals of Poland and the United Kingdom.³ Notwithstanding some limited dissent within the Government of Ireland, Irish politicians have claimed that there is

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I would like to thank the staff of the Department of Justice in Ireland for clarifying several matters addressed in this paper. The views stated here are my own and do not represent those of my employer. Any errors or omissions are my own.

¹ Central Statistics Office, *Arrivals from Ukraine in Ireland Series 1*, 27 May 2022, available at <https://www.cso.ie/en/releasesandpublications/FP/P-AUI/arrivalsfromukraineinirelandseries1/>, (accessed 30 November 2022). 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

² Central Statistics Office, *Arrivals from Ukraine in Ireland Series 7*, 14 November 2022, available at <https://www.cso.ie/en/releasesandpublications/FP/P-AUI/arrivalsfromukraineinirelandseries7/>, (accessed 30 November 2022). The most recent statistical release from the Central Statistics Office indicates that there are now over 84,000 Ukrainians in Ireland: see Central Statistics Office, *Arrivals from Ukraine in Ireland: Series 10*, (13 June 2023), available at: <https://www.cso.ie/en/releasesandpublications/FP/P-AUI/arrivalsfromukraineinirelandseries10/>, (accessed 12 August 2023).

³ Based on the 2016 census: see Central Statistics Office, *Census of Population 2016 - Profile 8 Migration and Diversity*, available at <https://www.cso.ie/en/releasesandpublications/EP/P-CP7MD/P7MD/>, (accessed 21 January 2023).

‘no cap’ on the number of Ukrainians who are welcome and will be welcomed to Ireland.⁴ The situation on the ground, however, does not quite match the political rhetoric. While an overwhelming majority of voters believe that Ireland should continue to support Ukraine and the Ukrainian people’s defence of their territory, 61% of people polled in October 2022 believed that there were ‘too many’ refugees coming to Ireland.⁵ This may be due to a fear that Ireland is unable to adequately cater for their needs. There have been reports, for example, of some Ukrainian war-migrants being left with no option but to sleep on the streets⁶ and many have been temporarily housed in tents on military bases.⁷ Indeed, Ireland is known internationally for its very limited assistance of asylum seekers through the so-called ‘direct provision’ scheme.⁸ While the same may not strictly be true of refugees or other beneficiaries of international protection, it is nonetheless imperative to closely monitor and analyse Ireland’s response to the Ukrainian war-migrants crisis to assess how ‘well’ it is doing relative to its European peers.

From a legal standpoint, it is important to recall that, by virtue of Protocol No. 21 of the Treaty on the Functioning of the European Union (TFEU), Ireland must positively ‘opt-in’ to measures adopted by the EU pursuant to Title V of Part Three TFEU on the area of freedom, security and justice.⁹ While Ireland did support the adoption of Directive 2001/55, it did not opt-in at the time of its making. It was not until 2 October 2003 that Ireland sought to be bound by the provisions of the Directive 2001/55.¹⁰ Although Ireland was obligated to introduce laws, regulations and administrative provisions transposing the Directive 2001/55 into Irish law by 31 December 2003, no such specific measures were introduced in Irish law until 2015. The reason offered for this ‘failure’ by the Minister of Justice, Equality and Law Reform at the time was that existing domestic legislation provided a sufficient legislative framework for implementing the Directive 2001/55.¹¹ Section 24 of the Refugee Act 1996, an Act of the Oireachtas (the National Parliament) and consequently a form of

⁴ RTÉ News, *Minister says ‘no cap’ on number of Ukrainian refugees*, 30 November 2022, available at <https://www.rte.ie/news/politics/2022/1130/1339187-refugee-cap/>, (accessed 30 November 2022).

⁵ Leahy P., *Irish Times/Ipsos poll: Strong support for Ukraine, but worries over refugee numbers*, in *The Irish Times*, 28 October 2022, available at <https://www.irishtimes.com/politics/2022/10/28/irish-timesipsos-poll-strong-support-for-ukraine-but-worries-over-refugee-numbers/>, (accessed 1 December 2022).

⁶ McQuinn C., Holland K., *‘Not acceptable’: 43 Ukrainian refugees left without accommodation and helped by homelessness services*, in *The Irish Times*, 23 October 2022, available at <https://www.irishtimes.com/politics/2022/10/23/not-acceptable-43-ukrainian-refugees-left-without-accommodation-and-helped-by-homelessness-services/>, (accessed 1 December 2022).

⁷ McConnell D., *Government is looking at using tents to shelter Ukrainian refugees this winter*, in *The Irish Examiner*, 23 October 2022, available <https://www.irishexaminer.com/news/arid-40990154.html>, (accessed 1 December 2022).

⁸ See Breen C., *The Policy of Direct Provision in Ireland: A Violation of Asylum Seekers’ Right to an Adequate Standard of Housing*, in *International Journal of Refugee Law*, 2008, 20, 4, 611; O’Reilly Z., *‘Living Liminality’: Everyday Experiences of Asylum Seekers in the ‘Direct Provision’ System in Ireland*, in *Gender, Place & Culture*, 2018, 25, 6, 821.

⁹ The nature of this requirement has recently been clarified by the CJEU in Case C-479/21 PPU, *SN, SD and Governor of Cloverhill Prison and Others*, 16 November 2021, (45).

¹⁰ Commission Decision 2003/690/EC on the request by Ireland to accept Council Directive 2001/55/EC 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, Official Journal of the European Communities, L 251/23.

¹¹ *Iris Oifigiúil*, 1 October 2004:

<https://www.irisofigiuil.ie/archive/2004/october/2004%2010%2001%2010%20Issue.pdf>.

primary legislation, provided limited protections for so-called ‘programme refugees’. This measure was subsequently repealed and replaced by the International Protection Act 2015 (the 2015 Act).

Section 60 of the 2015 Act now provides the legal basis for temporary protection in Irish law and is specifically designed to implement the Directive 2001/55. Section 60 of the 2015 Act was commenced on 31 December 2016 and therefore applies from that date.¹² While it is important to note that sec. 59 of the 2015 Act continues to provide protections for ‘programme refugees’ on a separate basis,¹³ sec. 60 of the 2015 Act will be the primary focus of this essay. Finally, certain parts of the Civil Law (Miscellaneous Provisions) Act 2022 were also introduced to put meat on the bones of sec. 60 of the 2015 Act. These too shall be assessed. In addition to these primary legislations, a number of secondary legislations have been adopted and promulgated since the outset of the Ukrainian war-migrants crisis in 2022 concerning financial incentives for people resident in Ireland to assist Ukrainian war-migrants,¹⁴ certain forms of social welfare which may be claimed by Ukrainians¹⁵ and the provision of emergency accommodation for Ukrainians.¹⁶

2. Scope of application of support measures.

2.1. Overview.

It is now possible and necessary to describe, in some detail, the manner in which sec. 60 of the 2015 Act operates in practice to implement the Directive 2001/55. The present section of this essay proceeds in two parts. The first part addresses the personal scope of application of national measures designed to implement the Directive 2001/55. It shall consider the terms and definitions created by sec. 60 of the 2015 Act and their relationship with the Directive 2001/55 and Council Implementing Decision.¹⁷ The second and much shorter part of this section concerns the temporal scope of application of the national measures adopted to implement the Directive 2001/55 and the 2022/382.

¹² International Protection Act 2015 (Commencement) (No. 3) Order 2016, art 4.

¹³ For further details on the current regulation of ‘programme refugees’ in Irish law, see Stanley J., *Immigration and Citizenship Law*, Round Hall, 2017, 264-265.

¹⁴ Civil Law (Miscellaneous Provisions) Act 2022 (Part 2) (Eligible Dwelling Standards) Regulations 2022; Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 11) (Income Disregard) Regulations 2022; and Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 4) (Calculation of Means) Regulations 2022.

¹⁵ Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 8) (One-Parent Family Payment) Regulations 2022.

¹⁶ European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.

¹⁷ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

2.2. Personal scope of application.

2.2.1. Displaced persons.

2.2.1.1. Overview.

Section 60 of the 2015 Act applies to ‘displaced persons’, which has precisely the same meaning as that provided in the Directive 2001/55 itself and is described as such, who have sought and obtained permission to enter and remain in the State for temporary protection as part of a group of persons.

Before proceeding further, there are two key general features of Irish immigration and asylum law that readers need to be aware of: (1) the requirement for (most) non-nationals to seek permission to enter the State for a lawful reason; and (2) the requirement for (most) non-nationals to subsequently register as a non-national who has been granted permission to be in the State.¹⁸ Section 60 of the 2015 Act is no different from Irish immigration and asylum law in general in this respect. It provides, first, that a displaced person must obtain permission to enter and remain in the State for the purpose of being assessed as a beneficiary of temporary protection and, second, that the Minister for Justice establish and maintain a register of displaced persons. Accordingly, on arrival in the State, a displaced person must, first, present themselves to an immigration officer requesting permission to enter and remain in the State for the purpose of being considered or assessed for temporary protection and, second, if such permission is granted, to then register their permission and personal data with a registration officer.

Admittedly, this is a somewhat artificial account at present given that Ukrainian nationals are currently being covered by temporary protection immediately on arrival and the registration of their permission to remain is not yet being processed efficiently.¹⁹ Once a person has been confirmed as a displaced person, they will be provided with either an Irish visa or transit visa free of charge²⁰ or a permission to remain in the State and information setting out the provisions of sec. 60 of the 2015 Act.²¹ The Department of Justice has advised that beneficiaries of temporary protection will be provided with an official letter of confirmation of their status as a displaced person which, generally speaking, is on arrival in Ireland. An information note will also be provided to such beneficiaries setting out the services available to them.²² These processes appear to cohere with the obligations imposed on Ireland under arts 8, 9 and 10 of the Directive 2001/55 to provide displaced persons benefitting from temporary protection with a residence permit, visas, information

¹⁸ See ss. 4 and 9 of the Immigration Act 2004 (as amended).

¹⁹ Department of Justice, *FAQs for Ukraine Nationals and Residents of Ukraine*, FAQs 14 & 21, available at <https://www.irishimmigration.ie/faqs-for-ukraine-nationals-and-residents-of-ukraine/>, (accessed 6 January 2023).

²⁰ Since 25 February 2022, Ukrainian nationals no longer need a visa: see Immigration Act 2004 (Visas) (Amendment) Order 2022 (SI 66/2022).

²¹ International Protection Act 2015, sec. 60(6).

²² Department of Justice, *FAQs for Ukraine Nationals and Residents of Ukraine*, FAQs 10 & 14, available at <https://www.irishimmigration.ie/faqs-for-ukraine-nationals-and-residents-of-ukraine/>, (accessed 6 January 2023).

concerning their entitlements while benefitting from temporary protection and registering personal data.

Section 60(8) of the 2015 Act provides that a permission to remain in the State may be revoked in any one of the following three situations: (a) when temporary protection has ended in accordance with the Council Implementing Decision 2022/382; (b) upon the transfer of residence of the holder of the permission to another member state; and (c) where the Minister for Justice decides that the holder should have been excluded from temporary protection. This begs the question; in what circumstances may a displaced person be excluded from temporary protection?

The Minister for Justice may exclude a displaced person from temporary protection on any of four different grounds.²³ First, if there are serious reasons for considering that s/he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes or has been guilty of acts contrary to the purposes and principles of the United Nations, then the Minister may exclude that person from temporary protection. Second, the existence of reasonable grounds for regarding him or her as a danger to the security of the State justify the exclusion of a displaced person from temporary protection. Third, if the Minister is of the opinion that s/he constitutes a danger to the community of the State because s/he was convicted by a final judgment of a particularly serious crime, whether in the State or elsewhere, then the Minister may exclude that person from temporary protection. Fourth and finally, the existence of serious reasons for considering that s/he has committed a serious non-political crime outside the State prior to his or her entry into the State justifies the exclusion of the displaced person from temporary protection. As the attentive reader will note, these grounds for the exclusion of displaced persons from temporary protection are materially equivalent in all respects to those provided in art 28 of Directive 2001/55.

2.2.1.2. Displaced persons of the Russo-Ukrainian war.

It is important to note that, while regulated by legislation in part, the control of immigration is ultimately an executive power in Irish law.²⁴ Accordingly, in implementing the Decision 2022/382, the Government of Ireland have confirmed that the following are eligible to be considered as displaced persons:

- (a) Ukrainian nationals resident in Ukraine before 24 February 2022;
- (b) Nationals of a third-country or a stateless person who would have benefitted from international protection or an equivalent national protection status in Ukraine and were residing there before 24 February 2022;
- (c) Family members of persons covered by (a) and (b) where their family already existed in Ukraine prior to 24 February 2022. Family members include a spouse or partner,

²³ International Protection Act 2015, sec. 60(3).

²⁴ See Casey C., *Under-Explored Corners: Inherent Executive Power in the Irish Constitutional Order*, in *Dublin University Law Journal*, 2017, 40, 1, 1.

- unmarried minor children of either of them and their close dependent family relatives who have been living with them as part of the family unity before 24 February 2022;
- (d) Nationals of a third-country and stateless people who were residing in Ukraine before 24 February 2022 with a permanent Ukrainian residence permit who cannot safely return to their country of origin; and
 - (e) Ukrainian national who are currently in Ireland on short-stay ‘C’ type visas who arrived before 24 February 2022.²⁵

As will be evident to the informed reader, this means that, with the exception of nationals of a third-country and stateless people who were residing legally in Ukraine with a temporary or short-term residence permit, all categories of person outlined in art 15 of the Directive 2001/55 and art 2 of the Decision 2022/382 are eligible for temporary protection in Ireland. The position of nationals of a third-country and stateless people who were residing legally in Ukraine with a temporary or short-term residence permit is somewhat uncertain. If it is safe for them to be returned to their country of origin, then they will be assisted in so doing; but if it is not safe to do so, then it is unclear whether they are eligible for temporary protection. This may raise a rule of law concern for observers of the Irish response to the latest migration crisis.²⁶

2.2.2. Temporary protection.

The definition of ‘temporary protection’ in s 60 of the 2015 Act is slightly more open-ended than that provided in art 2(a) of the Directive 2001/55, stating that it entails an exceptional procedure to provide immediate and temporary protection in the event of a mass influx of displaced persons who are unable to return to their country of origin. The concern expressed in the equivalent definition in the Directive 2001/55 regarding a risk to the integrity of the asylum system is not recounted in sec. 60 of the 2015 Act. It is not clear from the legislative debates preceding the adoption of sec. 60 of the 2015 Act why this is the case.

2.3. Temporal scope of application.

A permission given to a displaced person to reside in the State under sec. 60 of the 2015 Act is valid for one year and may be renewed. This position may be contrasted with that provided for under art 4(1) of the Directive 2001/55, which states that such permission may be automatically extended in periods of 6 months for a maximum of one year or a further year, if the Council so decides. It is unclear at present what precise implications this may

²⁵ This list is current as of 6 January 2023: see Department of Justice, *FAQs for Ukraine Nationals and Residents of Ukraine*, available at <https://www.irishimmigration.ie/faqs-for-ukraine-nationals-and-residents-of-ukraine/>, (accessed 6 January 2023).

²⁶ Similar concerns were raised in respect of the Irish state’s response to the COVID-19 pandemic: see Casey C. Doyle O., Kenny D., Lyons D., *Ireland’s Emergency Powers during the COVID-19 Pandemic*, Irish Human Rights and Equality Commission, 2021.

have other than extending the time period during which displaced persons may benefit from temporary protection beyond the minimum period laid down in the Directive 2001/55.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

3.1. Overview.

Section 60(10)(b) of the 2015 Act provides that a displaced person benefitting from temporary protection shall be entitled to receive upon and subject to the same conditions applicable to Irish citizens the same medical care and the same social welfare benefits as those which Irish citizens are entitled and to access education and training in the State in the like manner and to the like extent in all respects as an Irish citizen. I now proceed to address each in turn and note the extent of and way Irish law complies with arts 13 and 14 of the Directive 2001/55. I do so on the basis of an ordinary reading of the Directive 2001/55 and an interpretation thereof which has been developed by the academy.²⁷

3.2. Social welfare.

As noted above, s 60(10)(b) of the 2015 Act provides that a displaced person benefitting from temporary protection shall be entitled to avail of the same social welfare entitlements as Irish citizens in accordance with the same criteria as Irish nationals. To be clear, this means that displaced persons benefitting from temporary protection are entitled to any payment provided by the Department of Social Protection in Ireland on the same basis as Irish nationals. In terms of social welfare proper, there are a wide range of payments available. Payments are available for unemployed persons, families, widows, widowers and surviving civil partners, guardians or orphans, older and retired people and people with disabilities and their carers. I now proceed to briefly outline some relevant payments within each of these categories. Each payment has their own eligibility criteria and procedures for application, so it is not possible to exhaustively describe each in full in a short paper such as this. I merely hope to outline each relevant payment and its purpose or function.

In respect of un- and under-employed persons, the primary payment available is jobseeker's allowance, a means- and habitual residence-tested payment to people who are unemployed.²⁸ There is also a jobseeker's transitional weekly payment available to single parents whose youngest child is aged between 7 and 13 years. Its purpose is to support lone parents entering the workforce while they have young children.²⁹ A working family payment

²⁷ See Skordas A., *Temporary Protection Directive 2001/55/EC*, in Thym D., Hailbronner K. (eds.), *EU Immigration and Asylum Law: Article-by-Article Commentary*, 3rd edn, Hart/Beck/Nomos, 2022, ch 19.

²⁸ Citizens Information, *Jobseeker's Allowance*, available at : https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/jobseekers_allowance.html, (accessed 7 January 2023).

²⁹ Citizens Information, *Jobseeker's Transitional payment*, available at:

is also available which is a weekly tax-free payment for employees with dependent children that supports people who are on low pay.³⁰

A major category of payments concerns families. Child benefit is a monthly payment to the parents or guardians of children under 16 years of age or children aged 16 and 17 if they are in full-time education and/or training or have a disability and cannot support themselves.³¹ A Back to School Clothing and Footwear Allowance is available to help parents meet the cost of uniforms and footwear for children going to school.³² A one-parent family payment is a means-and habitual residence-tested payment available to men and women who are bringing children up without the support of a partner.³³ Most other family payments are dependent on having made a certain minimum number of social insurance payments while working and are therefore less likely to be immediately accessible to displaced persons benefitting from temporary protection.

Widow's, widower's and surviving civil partner's may avail of a means- and habitual residence-tested non-contributory payment if they are widowed or survive their civil partner without dependent children and do not qualify for a contributory payment.³⁴ Guardians and orphans may also receive a social welfare benefit, whether means-tested or based on social insurance contributions.³⁵ This may be particularly relevant for Ukrainians arriving in Ireland who are guardians of Ukrainian children or Irish nationals who are now guardians to Ukrainian children who arrived in the jurisdiction without a parent.³⁶ People aged 66 and over may be able to avail of a means-tested non-contributory state pension.³⁷ Anyone over 16 and under 66 years of age with a disability may receive a means-tested weekly allowance.³⁸

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/jobseekers_allowance_transition.html, (accessed 7 January 2023).

³⁰ Citizens Information, *Working Family Payment*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/family_income_supplement.html, (accessed 7 January 2023).

³¹ Citizens Information, *Child Benefit*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/child_benefit.html, (accessed 7 January 2023).

³² Citizens Information, *Back to School Clothing and Footwear Allowance*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/back_to_school_clothing_and_footwear_allowance.html, (accessed 7 January 2023).

³³ Citizens Information, *One-Parent Family Payment*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/one_parent_family_payment.html, (accessed 7 January 2023).

³⁴ Citizens Information, *Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/death_related_benefits/widows_non_contrib_pen.html, (accessed 7 January 2023).

³⁵ Citizens Information, *Guardian's and Orphan's Payments*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/death_related_benefits/guardians_payments.html, (accessed 7 January 2023).

³⁶ See McNulty F., 'We did nothing wrong' - Charity that brought Ukrainian children to Ireland, *RTE News*, 20 May 2022, available at <https://www.rte.ie/news/primetime/2022/0519/1300048-charity-ukrainian-children-defends-itself/>, (accessed 7 January 2023).

³⁷ Citizens Information, *State Pension (Non-Contributory)*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/older_and_retired_people/state_pension_non_contributory.html, (accessed 7 January 2023).

³⁸ Citizens Information, *Disability Allowance*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disability_allowance.html, (accessed 7 January 2023).

A means-tested weekly payment is also available to carers who are looking after a person who needs support because of their age, disability or illness.³⁹

These and other means-tested payments are available in principle to displaced persons benefitting from temporary protection. No new laws have been introduced to facilitate same; sec. 60 of the 2015 Act suffices in this respect. The Department of Social Protection has, however, adopted a fast-track approach in processing these supports which includes a simplified decision-making process and quick processing of social security numbers to allow access to public services.⁴⁰ In terms of their impact to date, there is no official data stating how many Ukrainians have availed of these and other financial supports nor is there disaggregated data available concerning the amount of social welfare assistance which has been claimed. The Department of Children, Equality, Disability, Integration and Youth advised the National Parliament in October 2022 that the estimated total cost of facilitating the temporary protection of displaced persons for the year 2022 was €1.041.000.000.⁴¹ One Ukrainian mother who came to Ireland claimed that the social welfare she received was ‘too generous’!⁴²

While space precludes a full exploration of this issue, it is nonetheless likely that the aforementioned measures and efforts, while designed to cater for domestic needs, should satisfy the requirement under art 13(2) the Directive 2001/55 to provide “necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources”. Although there are no particular forms of social welfare designed specifically for displaced persons benefitting from temporary protection, affording them equal treatment with Irish nationals in respect of social welfare appears to be an appropriate minimum standard.

3.3. Housing.

Strictly speaking, there is no specific reference to housing in sec. 60 of the 2015 Act and so it might be thought that displaced persons benefitting from temporary protection in Ireland are not entitled to any housing benefits or assistance at all. There are, however, some limited forms of financial assistance available, such as the rent supplement, a means-tested payment for certain people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources.⁴³ As this is a form of social

³⁹ Citizens Information, *Carer's Allowance*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/carers/carers_allowance.html, (accessed 7 January 2023).

⁴⁰ Minister for Social Protection TD, *Social Welfare Payments, Dáil Éireann Debate*, 26 July 2022, available at <https://www.oireachtas.ie/en/debates/question/2022-07-26/1307/>, (accessed 7 January 2023).

⁴¹ Brennan C., *Total cost of accommodating Ukrainian refugees to hit €1bn*, in *The Irish Examiner*, 27 October 2022, available at <https://www.irishexaminer.com/news/arid-40993247.html>, (accessed 7 January 2023).

⁴² Whyte B., *Social welfare is 'too generous to refugees' - Ukrainian mother*, in *NewsTalk*, 25 October 2022, available at <https://www.newstalk.com/news/social-welfare-is-too-generous-to-refugees-ukrainian-mother-1395919>, (accessed 7 January 2023).

⁴³ Citizens Information, *Rent Supplement*, available at:

https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/rent_supplement.html, (accessed 7 January 2023).

welfare, displaced persons benefitting from temporary protection are entitled to access it on the same basis as Irish nationals.

To say that there is currently a housing ‘crisis’ in Ireland is publicly indisputable.⁴⁴ Given that fact, it should come as no surprise that, in October 2022, the Taoiseach (Prime Minister of Ireland) publicly stated that there was a serious risk that it would not be possible to accommodate displaced persons seeking temporary protection, even on a temporary basis.⁴⁵ One of the main charities involved in the Irish response to the reception of Ukrainians has stated that, “[i]f you come to Ireland and the Government is not in a position to provide you with temporary accommodation, you will likely become street homeless for a period of time”.⁴⁶ By late January 2023, some accommodation services being offered to displaced persons benefitting from temporary protection had been suspended.⁴⁷ Unsurprisingly, then, the Irish response to housing Ukrainians has necessitated a combined public and private effort, which to date has involved the construction of temporary housing on an emergency basis,⁴⁸ requesting Irish property owners offering their holiday homes to Ukrainians,⁴⁹ paying homeowners to host Ukrainians in their own homes⁵⁰ and using public and quasi-public facilities to temporarily house Ukrainians, such as military bases,⁵¹ football stadia,⁵² hotels⁵³ and unoccupied properties.⁵⁴

While space precludes a full and proper analysis of this issue, it is likely that this situation involves a violation of art 13(1) of the Directive 2001/55, which requires member states to ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing. If the Irish state cannot ensure that displaced persons will be able to avail of accommodation even on a temporary basis, then a

⁴⁴ See Hogan H., Keyes F., *The Housing Crisis and the Constitution*, in *Irish Jurist*, 2021, 65, 87.

⁴⁵ Connolly T., *Govt ‘will do everything’ to avoid refugees on streets - Taoiseach*, in *RTÉ News*, 21 October 2022, available at <https://www.rte.ie/news/ireland/2022/10/21/1330503-ireland-refugees/>, (accessed 7 January 2023).

⁴⁶ Irish Refugee Council, *Housing/Житло, Important/важливо risk of homelessness*, available at <https://www.irishrefugeecouncil.ie/housingukraine>, (accessed 7 January 2023).

⁴⁷ Fletcher L., *Asylum seekers will sleep rough in Dublin tonight*, *RTÉ News*, 25 January 2023, available at <https://www.rte.ie/news/ireland/2023/01/25/1350518-citywest-transit-hub/>, (accessed 27 January 2023).

⁴⁸ Gov.ie, *Rapid Build Housing, Department of the Taoiseach*, 4 November 2022, available at <https://www.gov.ie/en/publication/ef882-rapid-build-housing/#:~:text=As%20part%20of%20the%20State's,at%20several%20sites%20across%20Ireland>, (accessed 27 January 2023).

⁴⁹ McGee H., Marlowe L., *Some 20,000 holiday homes sought in latest drive to house Ukrainian refugees*, in *The Irish Times*, 25 November 2022, available at <https://www.irishtimes.com/ireland/social-affairs/2022/11/25/government-targets-20000-holiday-homes-in-new-appeal-to-house-ukrainian-refugees/>, (accessed 7 January 2023).

⁵⁰ Citizens Information, *Accommodation Recognition Payment for hosting refugees from Ukraine*, available at https://www.citizensinformation.ie/en/moving_country/ukrainian_refugees_in_ireland/accommodation_recognition_payment.html, (accessed 7 January 2023).

⁵¹ Lehane M., *Army barracks’ places considered for Ukrainian refugees*, in *RTÉ News*, 26 October 2022, available at <https://www.rte.ie/news/ireland/2022/10/26/1331449-ukraine-ireland/>, (accessed 7 January 2023).

⁵² Maguire M., *Croke Park to house Ukrainian refugees for next two weeks*, in *NewsTalk*, 7 January 2023, available at <https://www.newstalk.com/news/croke-park-to-house-ukrainian-refugees-for-next-two-weeks-1417224>, (accessed 7 January 2023).

⁵³ Horgan-Jones J., *More than 40% of Ukrainian refugees housed in just three counties*, in *The Irish Times*, 7 October 2022, available at <https://www.irishtimes.com/ireland/housing-planning/2022/10/07/more-than-40-of-ukrainians-housed-in-just-three-counties/>, (accessed 7 January 2023).

⁵⁴ Donohue H., *870 unoccupied properties offered to Ukrainian refugees*, in *RTÉ News*, 6 January 2023, available at <https://www.rte.ie/news/ireland/2023/01/06/1345226-ireland-ukraine/>, (accessed 7 January 2023).

serious question must be raised as to Ireland's ability to comply with its obligations under art 13(1) of the Directive 2001/55. It is clear, however, that the efforts being made by the Irish state and its people exceed those which are being made to resolve the more general housing crisis in Ireland. Displaced persons benefitting from temporary protection are not simply being afforded equal treatment with Irish nationals but are effectively being given priority.

3.4. Healthcare.

As with social welfare, sec. 60(10)(b) of the 2015 Act provides that a displaced person benefitting from temporary protection shall be entitled to avail of the same medical care entitlements as Irish citizens in accordance with the same criteria as Irish nationals. In practice, displaced persons are being granted preferential treatment. One instance of such preferential treatment is the possibility of obtaining a medical card, which is a means of accessing certain healthcare services free of charge in Ireland. Medical cards are generally means-tested but according to the Health Service Executive (the national health service), displaced persons automatically qualify for a medical card.⁵⁵ This means that displaced persons can avail of access to family doctors, nurses, community care services, emergency services, children's health services, mental health services, disability services, pregnancy services and services for older people free of charge.

On paper, this would seem to accord with the obligations of the State under art 13(2) and (4) of the Directive 2001/55 which require that displaced persons receive 'necessary assistance' in terms of medical care and 'necessary medical or other assistance' for those displaced persons who have special needs, such as unaccompanied minors or those persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence. Whether it does in practice satisfy the State's obligations is somewhat unclear: while many of the responses to these problems should be available from the national health service, some may only be available from charities and other NGOs. Moreover, waiting lists for such services can be long, rendering them practically inaccessible. However, no publicly available studies have been conducted on this point nor have any issues been raised in local or national media in respect of displaced persons benefitting from temporary protection specifically.

3.5. Education.

Again, as with social welfare and healthcare, sec. 60(10)(b) of the 2015 Act expressly provides that displaced persons are entitled to access education and training in the State in the like manner and to the like extent in all respects as Irish nationals. This means that, in principle, Irish law exceeds the minimum requirements provided for in art 14 of the Directive 2001/55 which merely require that displaced persons under 18 years of age enjoy access to

⁵⁵ Health Service Executive, *Healthcare services for Ukrainian nationals in Ireland*, available at: <https://www2.hse.ie/services/healthcare-in-ireland/ukrainian-refugees.html>, (accessed 21 January 2023).

the education system under the same conditions as nationals of the host member state and which permits the host member state to restrict adult displaced persons' access to the education system.

The terse language of sec. 60(10) of the 2015 Act does not, however, fully disclose the generosity of the Irish education system for displaced persons. Pre-school is free, childcare is subsidised, primary and secondary school is free or subsidised and school transport is free.⁵⁶ The Department of Further and Higher Education, Research, Innovation and Science have made available funds to displaced persons to cover tuition fees and living expenses while in third-level education.⁵⁷ Specifically, funds are available to cover tuition fees for an approved undergraduate or postgraduate course at a third-level education institution in Ireland, post-Leaving Certificate courses (vocational and technological courses) and other courses for people who are unemployed and are looking to return to the workforce as well as living expenses while undertaking such courses. Free English language skills courses are also available for adults at centres across the country.

While nearly 14.800 children had been accommodated into the Irish education system by the middle of February 2023,⁵⁸ the capacity of schools to absorb the mass influx of Ukrainian children had almost been exhausted by the middle of January 2023.⁵⁹ In addition, there were 12.622 displaced persons enrolled in further education and training courses on 1 February 2023⁶⁰ and, for reasons to be explored further below, the number is likely to be remain high going forward.

4. Social policy measures for Ukrainians: supporting professional activity.

4.1. Overview.

The present section shall consider how and to what extent Ireland and Irish law complies with art 12 of the Directive 2001/55. It is helpful to recall, at this stage, the obligations that article imposes on member states. First, displaced persons enjoying temporary protection must be permitted to engage in employed or self-employed activities subject to any

⁵⁶ Gov.ie, *Employment, childcare and education*, Department of the Taoiseach, 10 March 2022, available at <https://www.gov.ie/en/publication/320e9-employment-and-education/>, (accessed 21 January 2023).

⁵⁷ Gov.ie, *Minister Harris announces new measures to provide access to further and higher education for displaced Ukrainian students*, Department of Further and Higher Education, Research, Innovation and Science, 21 June 2022, available at <https://www.gov.ie/en/press-release/a0741-minister-harris-announces-new-measures-to-provide-access-to-further-and-higher-education-for-displaced-ukrainian-students/>, (accessed 21 January 2023); and O'Brien C., *Ukrainian college students to get grants and free tuition*, *The Irish Times*, 13 May 2022, available at <https://www.irishtimes.com/news/education/ukrainian-college-students-to-get-grants-and-free-tuition-1.4877630>, (accessed 21 January 2023).

⁵⁸ Central Statistics Office, *Arrivals from Ukraine in Ireland: Series 9*, 24 February 2023, available at <https://www.cso.ie/en/releasesandpublications/fp/p-ai/arrivalsfromukraineinirelandseries9/>, (accessed 25 March 2023).

⁵⁹ Hannon M., *Govt warned over school capacity for Ukrainian pupils*, in *RTE News*, 20 January 2023, available at <https://www.rte.ie/news/ireland/2023/0120/1349781-ukraine-ireland/>, (accessed 21 January 2023).

⁶⁰ Central Statistics Office, *Arrivals from Ukraine in Ireland: Series 9*, 24 February 2023, available at <https://www.cso.ie/en/releasesandpublications/fp/p-ai/arrivalsfromukraineinirelandseries9/>, (accessed 25 March 2023).

professional regulation thereof. They must also be permitted to engage in vocational and educational training. This latter requirement has been dealt with at section 3.5 above. Second, however, member states may give priority to EU citizens, EEA citizens and third-country nationals in receipt of unemployment benefit for reasons of labour market policies. Otherwise, the general law in force in the member states concerning remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment applies.

4.2. The numbers.

It may be helpful, at the outset, to review the admittedly limited data currently available concerning displaced persons' access to and participation in the labour market. The latest official data available from the Central Statistics Office is helpful in this respect.⁶¹ It notes that of all displaced persons who had arrived by the middle of February 2023 and attended an Intreo (the public employment service in Ireland) event, 14,890 had a recorded history of working. There were 10,351 people with earnings from employment in Ireland by the middle of February 2023, an increase of more than half since May 2022, when a mere 4,326 persons were in employment. A majority of those with a prior history of work had therefore gained employment since arriving in Ireland. The major occupational sector in which displaced persons had obtained work since arriving in Ireland was 'wholesale, transport and accommodation'. By contrast, most people who had previously worked in Ukraine had been 'professionals', 'service and sales workers', 'managers' or technical and associate professionals'. Since April 2022, Intreo has been arranging employment support events for displaced persons benefitting from temporary protection. By the middle of February 2023, 28,774 people had attended those events. The vast majority of people who attended those events recorded that their proficiency in the English language was a barrier to gaining employment, a matter which has received the coverage of the national press.⁶² More than half of the same number of people had a qualification equivalent to the Irish national framework of qualifications levels 7-10, which include an ordinary bachelor degree, honours bachelor degree, higher diploma, masters degree, postgraduate diploma, doctoral degree or higher doctorate. There have been numerous reports, however, of people with such qualifications having difficulty obtaining the recognition of their qualifications for the purposes of permitting them access to and practise of their profession.⁶³

⁶¹ *Ibidem*.

⁶² See Griffin N., *Language a barrier for more than 200 doctors from Ukraine hoping to work in Ireland*, in *The Irish Examiner*, 15 August 2022, available at <https://www.irishexaminer.com/news/arid-40940807.html>, (accessed 21 January 2023).

⁶³ See Hunt J., *Why highly skilled Ukrainians are struggling to find work in Ireland*, in *The Irish Times*, 7 May 2022, available at <https://www.irishtimes.com/life-and-style/why-highly-skilled-ukrainians-are-struggling-to-find-work-in-ireland-1.4869375>, (accessed 21 January 2023); and Carswell S., *'It feels like I lost part of myself': Ukrainian professionals struggle to find work*, in *The Irish Times*, 17 October 2022, available at <https://www.irishtimes.com/ireland/2022/10/17/it-feels-like-i-lost-part-of-myself-ukrainian-professionals-struggle-to-find-work/>, (accessed 21 January 2023).

4.3. The Irish approach.

As with the other social policy measures outlined in section 3 of this essay, sec. 60(10)(a) of the 2015 Act provides that displaced persons benefitting from temporary protection are entitled to seek and enter employment and engage in any business, trade or profession in the like manner and to the like extent in all respects as an Irish citizen. To be clear, this entails that displaced persons benefitting from temporary protection are entitled to equal treatment with member state nationals in all material respects of employment law as well as related areas of law, such as those governing regulated professions and the establishment of businesses.

It may be helpful at this stage to unpack the Irish approach to the labour market integration of displaced persons benefitting from temporary protection. The first piece of the puzzle is the granting of the right to work in the sense of the right to sell or offer one's **skills** for the purposes of obtaining the means of survival. This is the obvious immediate effect of s 60(10)(a) of the 2015 Act. By granting displaced persons benefitting from temporary protection the right to work, the gateway is open for them to sell their skills. The second step in obtaining work generally involves a person having their skills — whether in the formal expression of a professional qualification, years of experience or otherwise — recognised by another — whether an employer, public authority or education and training provider — for the purposes of a particular job, be it a contract of employment, a contract for services or some other contractual arrangement or access to education and training.

This second stage of this process will be inherently difficult for displaced persons benefitting from temporary protection because their skills will not necessarily be materially equivalent to those held by people already working in Ireland. It may simply be the case that they do not speak English or that, while they do have extensive professional experience in Ukraine, that experience or their qualifications are not materially equivalent to those required to work in Ireland. Such persons therefore experience a form of permitted direct discrimination on the basis of their skills, permitted indirect discrimination on the basis of their legal status and impermissible but justifiable indirect discrimination on the basis of their nationality.

The third stage in the process is then the outcome of this recognition process. It may involve the total rejection of that person's **qualifications or experience or the partial** recognition of their qualifications or experience. Partial recognition may involve, for example, the supervision of the person while working or the completion of additional training. In the context of the Russo-Ukrainian War, the European Commission issued a **recommendation on the recognition of qualifications for people fleeing Russia's invasion of Ukraine** on 5 April 2022 which strongly recommended that member states expedite, simplify and even relax or adapt qualification recognition procedures and processes to ensure that displaced persons benefitting from temporary protection obtain employment in roles equivalent to those which they had in Ukraine.⁶⁴

⁶⁴ Official Journal of the European Union, 2022, L 107/1.

As the numbers outlined in section 4.2 above suggest, this has not occurred in Ireland. Rather, attempts have been made by state agencies, such as the Workplace Relations Commission and Quality and Qualifications Ireland, and education and training institutions, such as the City of Dublin Education and Training Board, to launch information campaigns on the employment rights of displaced persons benefitting from temporary protection in the Ukrainian and Russian languages,⁶⁵ providing outline qualification comparisons for use by qualification recognition authorities (employers, regulatory authorities and education and training institutions) to speed up these processes⁶⁶ and offering free English language classes. In addition, as noted at section 3.5 above, the Irish education system is very much open to displaced persons benefitting from temporary protection such that re-skilling and up-skilling are viable options.

So much for the general measures in place in respect of displaced persons benefitting from temporary protection to gain access to the Irish labour market; what of some particular employment and labour law issues which might be considered pertinent? Persons benefitting from temporary protection are of course covered by all basic employment rights, such as the full suite of statutory and common law implied terms in the contract of employment, working time regulation, the minimum wage, statutory guarantees against unfair dismissal, anti-discrimination norms and so forth.

One lingering issue, however, concerns the migration aspects of the regulation of the employment relationship. For example, could a displaced person benefitting from temporary protection be sent abroad as a posted worker? Displaced persons benefitting from temporary protection do not require an employment permit to work in Ireland and are entitled to equal treatment in respect of employment and occupations with Irish nationals. However, they are subject to the strictures of Irish immigration and asylum law which may, at times, intersect with Irish employment and labour law. Importantly, s 60(10) of the 2015 Act only grants a displaced person benefitting from temporary protection equal treatment with Irish nationals in respect of access to employment within the state; it says nothing about employment outside the state.

Section 60(9) of the 2015 Act provides that during the validity of a permission to reside in the state, a displaced person benefitting from temporary protection who (i) seeks to enter another member state or (ii) has entered another member state without authorisation shall be returned to the state on the basis of co-operation between the Minister for Justice and the competent authority of the other member state. This implies that there are circumstances in which an authorisation could be granted to displaced persons benefitting from temporary protection to enter another member state. However, there does not appear to be a statutory basis for the granting of such permission. Rather, as John Stanley notes, “[w]here there is no

⁶⁵ These are available from Gov.ie, *Employment rights in Ireland: Information for Ukrainian nationals*, Department of Enterprise, Trade and Employment, 22 April 2022, available at <https://www.gov.ie/en/publication/c1bb7-employment-rights-in-ireland-information-for-ukrainian-nationals/>, (accessed 21 January 2023).

⁶⁶ QQI, *Rough Guide to Ukrainian qualifications in the context of the Irish National Framework of Qualifications*, Version 4.1, available at: <https://www.qqi.ie/sites/default/files/2022-09/Ukraine%20Qualifications%20Rough%20Guide%20Version%204.1.pdf>, (accessed 21 January 2023).

statutory authority, it would seem that the Executive can implement policies and confer benefits, provided that in doing so it does not reduce personal rights”.⁶⁷

Accordingly, whether displaced persons benefitting from temporary protection can work abroad as posted workers depends on the Government of Ireland’s policy on the issue, which has not been entirely forthcoming.⁶⁸ In written correspondence with the author, the Department of Justice has stated that displaced persons benefitting from temporary protection who are in receipt of any form of social welfare and intends to leave the State should inform the Department of Social Protection of their intention. In addition, while displaced persons benefitting from temporary protection are entitled to leave the State for short periods, these would usually amount to no longer than three months in a calendar year.⁶⁹ Unfortunately, this leaves open the question of whether displaced persons benefitting from temporary protection are entitled to be go abroad as posted workers. As of the time of writing, the matter remains unresolved. This may also raise a rule of law concern in respect of the certainty with which displaced persons benefitting from temporary protection can ascertain and learn about their employment and labour rights.

5. Final considerations.

Commenting on the emerging pattern of inward migration to Ireland since the early 2000s, one judge of the Supreme Court of Ireland very aptly cited the Biblical imperative to welcome and be good to strangers.⁷⁰ Elsewhere I have suggested that the basis of or ground for such action is not justice but charity. That is not to diminish the importance or weight of such obligations for, in such circumstances, the demands of our humanitarian duties might even outweigh our duties of justice.⁷¹ It should be clear from the tenor of this chapter that this is the case in respect of displaced persons of the Russo-Ukrainian War benefitting from temporary protection. That is, displaced Ukrainians should be given priority or preferential treatment in access to and benefit from social welfare, housing, healthcare and education and even the labour market.

Perhaps unsurprisingly, there has not yet been any comprehensive (or even partial) empirical study concerning the impact of the Directive 2001/55 and its domestic law implementation via sec. 60 of the 2015 Act on displaced persons in Ireland. In respect of much of what I have outlined earlier in this essay, it has only been possible to tentatively suggest that the legal and policy measures adopted comply with Ireland’s **obligations under**

⁶⁷ See nt. (13), 191-192.

⁶⁸ A number of unsuccessful requests have been made to the Department of Justice and Department of Enterprise, Trade and Employment for any such policy documents.

⁶⁹ The Private Secretary to the Minister for Justice has outlined this position in written correspondence with the author (on file).

⁷⁰ *AO and DL v Minister for Justice* [2003] 1 IR 1, 172 (Fennelly J) quoting Exodus 22:21.

⁷¹ McCormack-George D., *Well-Being, Skills and Work in a Neorepublican EU: The Case of Third-Country Nationals*, Trinity College Dublin PhD Thesis, 2020, 64, 207-208, 216-217; and McCormack-George D., Philip Pettit’s Republicanism and Labour Law: A Defence, *International Journal of Comparative Labour Law and Industrial Relations*, 37, 4, 2021, 417, 432.

EU law. It is not clear, however, that this is universally the case. Questions might be raised at the meagre provision of housing and accommodation for displaced persons. The Irish state continues to struggle to even provide accommodation on a temporary basis to displaced persons. This is and ought to be a serious cause for concern. But it is symptomatic not of Ireland's failure to comply with its obligations under EU law but a more general failure to properly regulate the housing market in Ireland, about which much ink has been spilled elsewhere. There may also be some minor or residual rule of law concerns arising from the lack of clarity of the legal rights and entitlements of displaced persons benefitting from temporary protection, such as in respect of the scope of application or coverage of temporary protection and the international labour rights of such persons, such as their entitlement to be posted abroad as posted workers.

16

Mass influx of people from Ukraine: social entitlements and access to the labour market: Italy.

Venera Protopapa*

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

Italy transposed Directive 2001/55/EC¹ through Legislative Decree no. 85 of 7 April 2003 (hereafter L.D. no. 85/2003), adopting a general framework for temporary protection in the event of a mass influx of displaced persons.

According to Article 3 of the implementing decree, following a Decision of the Council of the European Union on the existence of a mass influx of persons for the purposes of Directive 2001/55/EC,² temporary protection measures should be defined by means of a Decree of the President of the Council of Ministers (DPCM), which is an implementing regulation.

Article 4 L.D. no. 85/2003 outlines the content of the DPCM specifying it should establish, among others: the relevant time frame; the personal scope of temporary protection; reception measures; procedures on visa issuing, when necessary; procedures on residency permits that allow access to work and education, family reunification, assistance measures including support to housing, social assistance, healthcare, education for children, access to professional education and job placement.

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

Pending the adoption of the DPCM, the Italian authorities have taken urgent measures to assist the Ukrainian population that had already reached Italy due to the ongoing war.

On 28 February 2022, the Council of Ministers declared a state of emergency of national importance, at first until 31 December 2022, entrusting the Civil Protection Department with the organization and implementation of urgent relief and assistance measures, in derogation of any provisions in force and in compliance with the general principles of the legal system. Law Decree no. 16/2022, Law Decree no. 21/2022, Order no. 872 of 4 March 2022 and no. 881 of 29 March 2022 of the Head of the Civil Protection Department (OCPD) addressed accommodation needs providing for the possibility for those who had left Ukraine due to the invasion to access all reception services dedicated to applicants and beneficiaries of international protection, as well as setting up “emergency” reception services.

The DPCM referred to under Article 3 L.D. no. 85/2003 was adopted on 28 March 2022. It regulates in detail the duration of temporary protection and categories of beneficiaries (Article 1); procedures for the issuing of residence permits and associated rights (Article 2); the relation between temporary protection and international protection (Article 3); cases of exclusion of temporary protection (Article 4); assistance measures (Article 5).

According to the latest updates by the Ministry of the Interior, before 13 January 2023, the number of people fleeing Ukraine who crossed the Italian borders was 173.645, of which 124.201 adults (92.253 women and 31.848 men) and 49.444 children.³

In line with Decision 2022/382, the DPCM of 28 March 2022 grants the right to temporary protection to all those displaced from Ukraine as of 24 February 2022. Before 17 March 2023, 173.213 requests for temporary protection were submitted (107.055 for adults, of which 123.600 women and 49.613 men, and 61.991 for children).⁴

2. Personal scope of applicable support measures.

Article 1 DPCM of 28 March 2022 identifies the categories of persons that benefit from temporary protection. These include Ukrainian nationals residing in Ukraine before 24 February 2022 (a); stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022 (b); family members of the persons referred to in points (a) and (b).

The DPCM extends to stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 based on a valid permanent residence permit issued in accordance with Ukrainian law, the protection provided under Decision 2022/382 rather than refer to other forms of protection established at the domestic level. At the same time, in accordance with Article 2(2) Decision

³ Dipartimento della Protezione Civile, *Emergenza Ucraina. Dashboard ingressi alle frontiere*, available at <https://mappe.protezionecivile.gov.it/it/mappe-e-dashboards-emergenze/mappe-e-dashboards-ucraina/ingressi-alle-frontiere> (accessed 17 April 2023).

⁴ Dipartimento della Protezione Civile, *Emergenza Ucraina. Dashboard richieste di protezione temporanea*, available at <https://mappe.protezionecivile.gov.it/it/mappe-e-dashboards-emergenze/mappe-e-dashboards-ucraina/richieste-di-protezione-temporanea> (accessed 17 April 2023).

2022/382, it limits protection for this category of persons to cases in which they can prove to be unable to return in safe and durable conditions to their country or region of origin.

The DPCM is silent regarding the other categories of persons referred to in Article 2 (3) Decision 2022/382 and Article 7 of the Directive 2001/55. Though such a possibility is explicitly mentioned, there is no provision for the application of temporary protection in favour of third-country nationals lawfully residing in Ukraine based on a non-permanent residence permit, applicants for international protection and persons with undocumented status.⁵ Likewise, the DPCM does not grant any protection to people who left Ukraine before 24 February 2022.

For the purposes of identifying family members that benefit from temporary protection, the DPCM refers to: the spouse or the unmarried partner in a stable relationship; the underaged unmarried children of the person benefiting from temporary protection or of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted.

As far as other family members are concerned, rather than referring to the broad definition of close relatives that lived together as part of the family and were wholly or mainly dependent on the person benefiting from temporary protection, the DPCM specifically identifies the categories of relatives that fall within the scope of temporary protection, mirroring national rules on family reunification. These categories include: the adult dependent progenies in case they cannot provide for their essential needs on account of their state of health resulting in total disability; dependent parents, if they have no other children, or parents aged over 65, if their other children are unable to support them for documented, serious health reasons. In line with Article 6 L.D. no. 85/2003, the DPCM further specifies that family reunification in these cases is admitted only if the family members reside outside the territory of a Member State.⁶ In doing so, Italy has not exercised the option to allow reunification with these family members also in cases when they enjoy temporary protection in another Member State based on an *ad hoc* assessment of extreme difficulties they would face if reunification did not take place (Article 15 (2) Directive 2001/55).

Temporary protection is excluded in cases contemplated in Article 28 Directive 2001/55 (see Article 5 L.D. no. 85/2003 and Article 4 DPCM of 28 March 2022). Refusal of temporary protection does not preclude the possibility of applying for international

⁵ For an estimate of the impact of the exclusion of these groups from protection measures see International Organization for Migration – IOM, *Irregular Migrants in Ukraine*, 13 April 2021, available at <https://ukraine.iom.int/resources/irregular-migrants-ukraine> (accessed 17 April 2023); United Nation High Commission for Refugees – UNHCR, *Refugees and Asylum-seekers in Ukraine*, 2021, available at <https://www.unhcr.org/ua/en/refugees-asylum-seekers> (accessed 17 April 2023).

For a first critical assessment, see Scissa C., *La protezione temporanea per le persone in fuga dall'Ucraina in UE e in Italia: alcuni profili critici*, in *Questione Giustizia*, 31 March 2022, available at: <https://www.questionegiustizia.it/articolo/la-protezione-temporanea-per-le-persone-in-fuga-dall-ucraina-alcuni-profilo-critici> (accessed 17 April 2023).

⁶ De Pascale F., *L'attuazione della protezione temporanea a favore degli sfollati dell'Ucraina*, in *Diritto, immigrazione e Cittadinanza*, 2023, 1, 47. See also ASGI, *La protezione temporanea per le persone in fuga dall'Ucraina*, 2022, available at https://www.asgi.it/wp-content/uploads/2022/05/2022_Scheda_ASGI_Protezione_temporanea_Ucraina_maggio_.pdf (accessed 17 April 2023).

protection.⁷ As to cases in which the two applications overlap, the DPCM contains a rule that might conflict with the Directive 2001/55 to the extent to which it establishes that the processing of the application for international protection is postponed until the termination of temporary protection.⁸

The request for recognition of temporary protection is forwarded to the local police headquarters (Questura), which verifies the existence of the conditions set out in Article 1 DPCM of 28 March 2022 and proceeds to fingerprinting.

Based on guidelines published by the Ministry of Interior, applicants are identified through a passport or other identity document. If they do not have an identity document, a provisional identity certificate can be obtained from the Ukrainian consular authorities.⁹ Finally, the identification of beneficiaries has been facilitated through the extension of the validity of passports and the possibility of entering the personal details of children under 16 **in parents' passports**. The Ministry of Interior has disseminated information in this regard by incorporating the relevant communication issued from the Ukrainian embassy in an administrative circular.¹⁰

Regarding the date on which the person left Ukraine, in case a passport stamp is missing applicants are invited to submit a declaration of presence to the Questura, within eight days from their arrival (Article 1 Law no. 67 of 28 May 2007).

The DPCM of 28 March 2022 requires stateless persons and nationals of third countries other than Ukraine to prove that they resided in Ukraine based on a valid permanent residence permit and that they are unable to return in safe and durable conditions to their country or region of origin. Directive 2001/55 and L.D. no. 85/2003 refer for this purpose to situations that may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments that offer international protection, in particular in cases in which applicants have fled areas of armed conflict or endemic violence or are at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights. Needless to say, this considerably diminishes the relevance of temporary protection for this group of people, despite the fact they have left Ukraine for the very same reasons that justify the recognition of automatic protection to Ukrainian citizens.

Finally, as far as family ties are concerned the DPCM clarifies that relevant documentation should be validated, when possible, by the competent foreign consular authorities, but applicants are not required to comply with rules that normally regulate the use on national territory of certificates issued abroad.

⁷ In any case, a person may not be expelled if there is a risk of persecution on the grounds of race, sex, sexual orientation, gender identity, language, nationality, religion, political opinion, personal political opinions, personal or social conditions or being subjected to torture or inhuman or degrading treatment (Article 19 Legislative decree no. 286/1998).

⁸ De Pascale F., nt. (6), 60.

⁹ Guidelines are available at:

https://emergenze.protezionecivile.gov.it/static/96d8a2c6556508cf2ca1b3d6bc602ec5/benvenuto-ita_4.pdf (accessed 17 April 2023).

¹⁰ Circolare del Ministero dell'Interno no. 23 of 10 March 2022, available at <https://dait.interno.gov.it/servizi-demografici/circolari/circolare-dait-n23-del-10-marzo-2022> (accessed 17 April 2023).

After verifying the conditions for temporary protection, the Questura issues a residence permit valid for one year that may be extended automatically by six months, for a maximum period of one year. In March 2023 the Government established that residence permits issued for temporary protection shall remain valid until 31 December 2023 (Article 2 Law Decree no. 16/2023). Regardless of their expiry date, Article 2 DPCM of 28 March 2022 establishes that residency permits issued for temporary protection lose their validity in case of a decision by the Council of the European Union to terminate temporary protection.

The application is free of charge. Following its submission, the Questura issues a receipt, which allows the applicant to exercise all rights related to temporary protection.

Decisions denying temporary protection and those concerning family reunification are subject to judicial review based on Art. 9 L.D no. 85/2003.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

As previously mentioned, the influx of people fleeing Ukraine following the Russian invasion was approached by the Council of Ministers as a national emergency. The organization of reception and assistance services was entrusted to the Civil Protection Department.

To standardize the response to the emergency on the national territory, the Civil Protection Department has drafted a Plan that outlines the role of the different actors involved and attempts to ensure a degree of coherence between the different measures adopted to meet the needs of the population.¹¹

The plan contemplates three forms of housing support that complement each other: the SAI/CAS network; “emergency” widespread reception services; and autonomous accommodation.

According to the Plan, beneficiaries of temporary protection can be accommodated through the SAI (Reception and Integration System) and the CAS (Extraordinary Reception Centres) network. This network represents the “standard” reception services for beneficiaries of international protection, as well as other categories of humanitarian migrants protected under domestic legislation.¹² This standard reception is articulated around two different facilities.¹³ The SAI centres represent the ordinary model. They are considered as a good example of integration policy managed by Municipalities that decide to join the SAI in collaboration with organizations of the Third Sector. These centres reflect a model of widespread reception and offer social and psychological assistance services, linguistic-cultural mediation, Italian language courses, legal and territorial orientation, as well as services aimed at integration into the labour market. Due to structural shortages of places in the SAI

¹¹ Dipartimento della Protezione Civile, *Piano nazionale per l'accoglienza e l'assistenza alla popolazione proveniente dall'Ucraina*, available at <https://emergenze.protezionecivile.gov.it/it/pagina-base/il-sistema-di-accoglienza-e-assistenza-alla-popolazione-ucraina> (accessed 17 April 2023).

¹² Law decree no. 20/2023 excluded applicants of international protection from access to the network.

¹³ Artt. 9 and 11, Legislative decree no. 142/2015.

network, the law provides that those entitled to accommodation services can be hosted also by the CAS centres that are meant to respond to emergency situations and mostly lack socio-integration services.¹⁴

According to Law Decree n. 16/2022 these centres can now also host beneficiaries of temporary protection. To cope with the challenges of the mass influx of people the same Law Decree enhanced the capacity of the SAI network by 8000 additional places (see also Order no. 872 of 4 March 2022 of the Head of the Civil Protection Department), but in the meantime people had to be temporarily accommodated in facilities, including hotels.¹⁵

To overcome this scenario, the subsequent Law Decree no. 21/2022 has introduced an **additional layer of “emergency” widespread reception services** to be implemented by municipalities and organizations of the Third Sector. The aim was to develop co-housing solutions with other families and select other adequate facilities that could accommodate up to 15.000 persons. Law Decree No. 50 of 17 May 2022 increased the availability for an additional 15.000.

Finally, Law Decree n. 21/2022 also authorized the Civil Protection Department to identify additional forms of support for the assistance of persons enjoying temporary protection who have found independent accommodation. Order n. 881 of 29 March 2022 of the Head of the Civil Protection Department grants to those who have found accommodation independently the right to receive a monthly monetary allowance of 300 euros per person and an additional amount of 150 euros for each child under the age of 18. The allowance is granted for up to three months from the date of entry, conventionally identified as the date of submission of the application for temporary protection if not otherwise determinable. If the beneficiary finds a job in Italy, he or she can receive the allowance for a maximum period of two months. According to the data published by the Civil Protection Department, the number of approved applications before 23 February 2023 is 131.058.¹⁶

Regarding healthcare, Article 5 DPCM of 28 March 2022 establishes that persons falling within the scope of temporary protection are granted access to the National healthcare services system under equal conditions with Italian citizens as soon as they apply for a residency permit and after registration with the local health authority. For this purpose, as specified by Order n. 881 of 29 March 2022 of the Head of the Civil Protection Department, the Questura issues a tax code that identifies the applicant as a recipient of healthcare services under the National healthcare services system.

¹⁴ Calvellini, G., *I richiedenti asilo nel diritto del lavoro italiano*, in *Lavoro e Diritto*, 4, 2019, 427 ff.; Giovannetti, M., *L'accoglienza dei richiedenti asilo e rifugiati in Italia, Vent'anni di politiche, pratiche, e dinamiche di bilanciamento del diritto alla protezione*, in Zorzella N., Giovannetti M. (eds.), *Ius Migrandi: Trent'anni di politiche e legislazione sull'immigrazione in Italia*, Franco Angeli, Milan, 2020.

¹⁵ Dipartimento della Protezione Civile, *Prime indicazioni operative per l'accoglienza e l'assistenza alla popolazione proveniente dall'Ucraina*, 21 March 2022, available at: <https://emergenze.protezionecivile.gov.it/static/f9b01e2938be5fdab1f730abb8a034bf/crisi-ucraina-prime-indicazionioperative-21-marzo-2022.pdf> (accessed 17 April 2023).

¹⁶ Dipartimento della Protezione Civile, *Emergenza Ucraina. Dashboard contributi di sostentamento*, <https://mappe.protezionecivile.gov.it/it/mappe-e-dashboards-emergenze/mappe-e-dashboards-ucraina/contributi-di-sostentamento> (accessed 17 April 2023).

Based on Order n. 895 of 24 May 2022 of the Head of the Civil Protection Department, beneficiaries of temporary protection are exempt from participation in healthcare costs in case they do not perform any work activity.

Regardless of the application for a residence permit, access to emergency treatment is guaranteed under Article 35 of Legislative Decree no. 286/1998, by means of registration through the STP code (temporarily present foreigner).

Article 2 DPCM of 28 March 2022 specifies that the residency permit for temporary protection implies access to education. This is without prejudice to the more favourable condition provided under Article 38 of the Legislative Decree no. 286/1998 (access to education for foreigners), Article 21 of Legislative Decree no. 142/2015 (education for minor applicants for international protection), as well as Article 14 Law no. 47/2017 (education for unaccompanied minor applicants for international protection). Therefore, it grants the holder of temporary protection access to all levels of education, including tertiary education, and professional training. Minors are subject to mandatory schooling and enjoy a right to education under equal conditions with Italian citizens. To enable children and young people fleeing the war to continue their schooling and education, the Ministry of Education has adopted an administrative circular on school placement, psychological and language support, and relevant resources.¹⁷

Although the “Italian response” must be appreciated in many respects,¹⁸ it is important to take stock of the results it has produced, especially regarding housing. According to the analysis of the Centro Studi e Ricerche IDOS in collaboration with Centro Studi Confronti and Istituto di Studi Politici “S. Pio V”, while people fleeing Ukraine have benefited from regulations that have never been implemented for refugees in Italy, most of them have been hosted by co-nationals living the country.¹⁹

The data released by the Department of Civil Protection show that by September 2022, 81% of the displaced had received some form of public assistance (consider in this regard the data concerning the monetary allowance: 124.000 by September 2022). However, to grasp the weight of the assistance provided, it is necessary to disaggregate this figure. Out of 154.000 that had reached Italy at the same time, less than 14.000 were hosted by the CAS/SAI network. Slow bureaucratic procedures have hindered the “emergency” widespread reception project. By September 2022 only 287 persons were accommodated in related facilities. In addition, in nine out of ten cases, the monetary allowance was paid too late.²⁰ Finally, it is also important to note that besides the implementation issues being raised,

¹⁷ Ministero dell’Istruzione, *Indicazioni operative in merito all’accoglienza scolastica per gli studenti ucraini*, available at https://www.miur.gov.it/documents/20182/6740601/m_pi.AOODPIT.REGISTRO+UFFICIALE%28U%29.0000381.04-03-2022.pdf/7e8cc387-b753-1ca7-f466-2d3f15ede33b?version=1.0&t=1646642414348 (accessed 17 April 2023).

¹⁸ Ambrosini M., *L’accoglienza dei rifugiati ucraini: eccezione o premessa di una nuova politica dell’asilo?*, in Centro Studi e Ricerche IDOS, *Dossier statistico immigrazione 2022*, Edizioni IDOS, Rome, 131 ff.

¹⁹ Centro Studi e Ricerche IDOS, *Cosa è andato storto nell’accoglienza degli ucraini*, 5 October 2022, available at <https://www.dossierimmigrazione.it/cosa-e-andato-storto-nellaccoglienza-degli-ucraini/> (accessed 17 April 2023).

²⁰ All the data are provided in Schiavone G., *L’esperienza italiana dell’accoglienza per gli sfollati dell’Ucraina: un approccio utile a una riforma del sistema di accoglienza?*, in Centro Studi e Ricerche IDOS, *Dossier statistico immigrazione 2022*, Edizioni IDOS, Rome, 2022, 139.

the time-limited nature of the allowance raises serious doubts on whether it is sufficient to comply with obligations under Article 13 Directive 2001/55.²¹

4. Social policy measures for Ukrainians: supporting professional activity.

Article 2 DPCM of 28 March 2022 states that the residency permit for temporary protection entails the right to work, either employed or self-employed. This right can be exercised as soon as the application for a residence permit for temporary protection is submitted.

In this regard, it is important to outline the general framework of rules regulating migration, access to employment and equality of treatment at the domestic level.

Article 2(3) Legislative Decree no. 286/1998 establishes a general principle of equal treatment in favour of migrant workers legally residing in Italy. The Italian Republic – states the provision – in accordance with ILO Convention no. 143/1975 guarantees to all foreign workers regularly residing in its territory, and their families, equal treatment and full equality of rights compared to national workers.²² While the State can lawfully determine who has access to the labour market,²³ though such possibility is subject to limits arising, to start with, from regulations on international protection and the protection of the right to work at the supranational level, the authorization to work triggers the right to equal treatment.

Article 43 Legislative Decree no. 286/1998 reinforces the provision under Article 2(3) by qualifying as discriminatory any conduct, that directly or indirectly, involves a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, beliefs and religious practices, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural life and in every other field of public life. Its second paragraph clarifies that the prohibition applies also to differences of treatment based on nationality covering among other areas: relations with the public administration, employment and self-employment, housing, education, training, social services, and social protection.

It follows that the holder of a residence permit for temporary protection is entitled to all educational opportunities and employment services and to equal treatment in access to employment (with the only exception of posts implying direct or indirect exercise of public

²¹ Schiavone G., *ibidem*.

²² On the scope of the principle of equality under Article 2(3) Legislative Decree no. 286/1998 see Constitutional Court no. 454/1998. The Court has clearly acknowledged that Art. 2(3), in accordance with the ILO Convention no. 143/1975, provides a general principle of equal treatment of migrant workers that have been authorized to employment, as regards working conditions and access to employment. The case concerned the constitutional conformity of the lack of a legislative provision allowing migrant workers to benefit from disability hiring quotas. Provided that Article 2(3) Legislative Decree no. 286/1998 grants foreign workers equal rights with nationals, observes the Court, there is no need for a provision specifically extending migrant workers the possibility to access employment through hiring quotas.

²³ Chiaromonte W., Federico V., *The Labour Market Needs Them, But We Don't Want Them to Stay for Good: The Conundrum of Migrants, Refugees and Asylum Seekers' Integration in Italy*, in Federico V., Baglioni S. (eds.), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets: A Comparative Approach on Legal Barriers and Enablers*, Springer, Cham, 2021, 193.

authority or pertaining to the national interest) and working conditions, including the areas mentioned in Article 12 of the Directive 2001/55.

Regarding access to educational opportunities, Article 38(5) Legislative Decree no. 286/1998 provides:

The educational institutions, as part of a territorial planning of interventions, (...), promote the reception of regularly residing adult foreigners through the activation of literacy courses in primary and secondary schools; the creation of a valid cultural offer for regularly residing adult foreigners who intend to obtain a compulsory school qualification; the preparation of complementary courses to the studies carried out in the country of origin in order to obtain a compulsory school qualification or upper secondary school diploma; the creation and implementation of Italian language courses; the creation of training courses, also within the framework of international cooperation agreements in force for Italy.

Applicants and holders of a residency permit for temporary protection can therefore access all courses organised by the Provincial Centres for Adult Education (CPIA), which are aimed at Italian and foreign citizens aged over 16. These include Italian language and culture courses; courses to obtain a secondary school diploma; guidance programmes for higher education and vocational training, as well as any other opportunity available for professional training offered either by public institutions or through public-private partnerships.

As previously mentioned, persons accommodated through the SAI network are granted also access to services on professional training as well as job orientation and placement dedicated to beneficiaries of international protection and other categories of humanitarian migrants, except for applicants for international protection.

The same service should be guaranteed to those who benefit from the “emergency” widespread reception referred to in Law Decree No. 21/2022. The Public Call issued by the Department of Civil Protection includes job orientation and placement as well as guidance to vocational training and retraining, with particular attention to the strengthening of skills useful to the beneficiary in view of his or her return to Ukraine, among the services that must be delivered to its beneficiaries.²⁴

In addition, displaced persons were included within the personal scope of projects focusing on the integration of migrants and prevention of labour exploitation and gangmastering financed by AMIF and ESF funds.²⁵

In any case, the beneficiaries of temporary protection have access under equal conditions to services offered by Job Centres (Centri *per l'impiego*). In this regard, it is important to highlight the fact that the Italian approach to public employment services, except for the services offered by the SAI network, is qualified as neutral meaning that it does not provide

²⁴ The call is available at:

<https://www.protezionecivile.gov.it/static/ee0cfcad7bd9ace1acdad05e432463c7/avviso-manifestazione-interesse-accoglienza-11042022-signed.pdf> (accessed 17 April 2023).

²⁵ See, in this regard, the Communication of the Autorità Delegata available at:

<https://www.lavoro.gov.it/Amministrazione-Trasparente/Bandi-gara-e-contratti/Documents/DD-35-del-26052022-Avviso-1-2019-LOTTO-FAMI.pdf> (accessed 17 April 2023).

targeted services for humanitarian migrants, mainstreaming applicants and beneficiaries of international protection into labour market support measures meant for the general population of jobseekers.²⁶ Furthermore, public employment services have an overall low degree of effectiveness in terms of intermediation. The most recent data on employment services confirm that public services play a residual role in this regard.²⁷ Recourse to the CPI is considered as the main channel for finding a job by only 1.4% of the employed who have found a job in the last 12 months, with better results among Italian citizens: 2% compared to 1.2% among migrants.²⁸ By contrast in 2020, personal networks are considered as the most fruitful search channel by 36.5% of respondents (it was 38.2% in 2019); this share rises to 43.0% among migrants.

In light of these data, the presence of an established community of Ukrainians could favour the integration of workers with residence permits for temporary protection into the labour market more than public employment services can do. Resort to personal networks at the same time risks reinforcing the phenomena of labour market segmentation and ethnic segregation. There were 223.489 Ukrainians legally residing in Italy as of 1 January 2021, a figure that places the community in fourth position in terms of numbers among the main communities of non-EU citizenship, with a strong prevalence of women (78,9%) engaging predominately in domestic work.²⁹ According to INPS, 15% of all regular domestic workers are Ukrainian (92.160): 59.000 work as caretakers and almost 33.000 as domestic helpers.³⁰

There are no comprehensive data on the participation of displaced persons in the labour market in Italy. As confirmed by the Ministry of Labour and Social Policy, a change in the information system of the compulsory communications that employers transmit at the time of recruitment is currently being implemented for better monitoring.³¹

Beyond its outcomes, some innovative developments to the standard approach to the integration of migrants in the labour market are worth mentioning.

In the guide produced by the Ministry of Labour and Social Policy on temporary protection, reference is made to the possibility of using the EU SkillsProfile tool for a

²⁶ Konle-Seidl R., *Public employment services (PES) initiatives around skills, competencies and qualifications of refugees and asylum seekers*, Publication Office of the European Union, Luxembourg, 2017; Martín I. et al., *From Refugees to Workers Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States*, Gütersloh, Bertelsmann Stiftung, 2016.

²⁷ ISTAT, *Audizione dell'Istituto Nazionale di Statistica, XI Commissione (Lavoro pubblico e privato) Camera dei deputati*, 17 November 2021.

²⁸ See also De Sario B., *Migration at the crossroads. The inclusion of asylum seekers and refugees in the labour market in Italy*, in Galgóczi B. (ed.), *Between and Between: Integrating Refugees into the EU Labour Market*, ETUI, Brussels, 2021, 191.

²⁹ Ministero del Lavoro e delle Politiche Sociali, *La comunità Ucraina in Italia*, available at <https://www.lavoro.gov.it/documenti-e-norme/studi-e-statistiche/Documents/Rapporti%20annuali%20sulle%20comunit%C3%A0%20migranti%20in%20Italia%20-%20anno%202021/Ucraina-rapporto-2021.pdf> (accessed 17 April 2023).

³⁰ Coordinamento Generale Statistico Attuariale, *Statistiche in breve*, June 2023: <https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013#:~:text=Nell'anno%202020%20i%20lavoratori,costantemente%20decescente%20iniziato%20nel%202013> (accessed 17 April 2023).

³¹ Ministero del Lavoro e delle Politiche Sociali, *Programmazione integrata pluriennale in tema di lavoro, integrazione e inclusione*, available at <https://www.integrazionemigranti.gov.it/AnteprimaPDF.aspx?id=5756> (accessed 17 April 2023).

preliminary profiling of jobseekers.³² In addition, and most importantly, Article 34 Law Decree no. 21/2022 provides for a derogation from the regulations on the recognition of health professional qualifications for Ukrainian doctors, nurses and healthcare assistants who were resident in Ukraine before 24 February and are holders of a European Refugee Qualifications Passport. According to this derogation, it will be possible for public or private healthcare or socio-medical facilities to employ these workers on fixed-term contracts or establish other forms of autonomous collaborations.

Moreover, as far as recognition of professional and educational qualifications is concerned, CIMEA (that has the mandate according to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region signed in Lisbon in 1997 to provide information and advice on the recognition of qualifications acquired abroad) has organised training activities and produced several documents to assist in the recognition of Ukrainian qualifications.³³

Finally, as of 24 January 2022, the agreement on mutual recognition of Ukrainian and Italian driving licenses is in force. Ukrainian citizens in Italy can apply to convert their Ukrainian driving licenses with no need to take additional examinations.

These considered, there is one important critical aspect of the current legislation that needs to be highlighted because of its implications for labour market integration. It concerns the limited duration of the residence permit and the uncertainty surrounding its validity. If in many cases the displaced persons have the prospect of returning to Ukraine as soon as possible, it is equally true, as has already been pointed out by research that investigates the interaction between migrant status and working conditions, that the precariousness of residency permit risks pushing beneficiaries of temporary protection towards precarious and underpaid work.³⁴

While neither European Union law nor national law provides anything about the possibility of converting a residence permit for temporary protection into a residence permit for employment, it would be important to introduce this option in order not to preclude stable integration paths, when people have such an aspiration, especially in view of the fact that at present we can hardly make reliable predictions about the end of the conflict.³⁵

³² The guide is available at:

<https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/2487/Protezione-temporanea-e-lavoro-risposte-alle-domande-piu-frequenti> (accessed 17 April 2023).

³³ All initiatives are described at <https://www.cimea.it/pagina-focus-ucraina> (accessed 17 April 2023).

³⁴ See, in particular, Costello C., *Migrants and Forced Labour: A Labour Response*, in Bogg A., et al. (eds.), *The Autonomy of Labour Law*, Hart Publishing, Oxford, 2015, 189 ff.; Anderson, B., *Migration, immigration controls and the fashioning of precarious workers*, in *Work, employment and society*, 24, 2, 2010, 300 ff.; Fudge, J., *Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers*, in *Comparative Labour Law & Policy Journal*, 34, 1, 2012, 95 ff. More recently, on migrant status and labour exploitation, Calafà L., *Per un approccio multidimensionale allo sfruttamento lavorativo*, in *Lavoro e Diritto*, 2, 2021, 193 ff.

³⁵ Comes to the same conclusion, De Pascale F., nt. (6), 71.

5. Final considerations.

The response of the European Union to the needs of people fleeing Ukraine following the Russian invasion has made the unthinkable become a possibility: people can freely decide where to ask for protection, based on their personal ties, their knowledge of a particular country and its language or the opportunities its labour market offers. They are relieved of the burden of having to prove that they are “genuine refugees”. They are immediately granted access to reception services, employment, and educational opportunities.

Similarly, the response at the national level has been innovative in many respects, starting from the widespread reception services borrowed in fact from the SAI model (but never really developed to its full potential), to the possibility of supporting independent accommodation arrangements, to targeted measures on skills and qualifications in view to labour market integration.

At the same time, its shortcomings might hold valuable lessons as well. The delays in adjusting the SAI to the influx of displaced persons from Ukraine bring attention to the persistent inadequacy of planning.³⁶ The need to create an additional “emergency” service indirectly proves the inadequacy of the CAS system. The limited role of public employment services in supporting labour market integration stresses the need to adapt employment services and develop targeted measures for displaced persons.³⁷

Awareness of the ideological underpinning of these structural shortcomings³⁸ evokes the spectre of an inevitable question: what will happen if the attitude of openness of the public opinion towards people fleeing the war in Ukraine changes as recent history has shown us?³⁹

To get out of the dead end in which this question forces the argument requires a change of frame, beyond legal obligations and humanitarian reasons, opening space to implement changes that are needed to transform the solidaristic impetus into effective rights so that displaced persons can fully participate through their life experiences, their culture, their skills and qualifications to the progress and economic growth of their host societies.

In the Italian context much will depend on the ability to strengthen the ordinary reception system, drawing maximum benefit from the synergies it has been able to activate between public institutions and civil society, as well as the good practices that have emerged, including those concerning labour market integration. In other words, to ensure the resilience of the reception system over time, it will be necessary to overcome the emergency approach to migration, on this occasion articulated as a “selective variant”, in which Italy has been trapped for a quarter of a century. Should this be the case, one could reasonably think of the Ukrainian war migrants’ reception experience as a model for a general reform of policies on international protection, at the national level and beyond.

³⁶ Schiavone G., nt. (20), 139.

³⁷ See, Bonardi O., et al. (eds.), *Lavoro sfruttato e caporalato. Una roadmap per la prevenzione*, Il Mulino, Bologna, 2023.

³⁸ Calafà L., *Migrazione economica e contratto di lavoro degli stranieri*, Il Mulino, Bologna, 2012; Chiaromonte W., *Ideologia e tecnica della disciplina sovranista dell’immigrazione*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 2, 2019, 321 ff.

³⁹ Ambrosini M., nt. (18), 132.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Latvia.

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1. Preliminary remarks.

Latvia, together with other two Baltic countries, Lithuania and Estonia, is among the top five European countries in terms of the number of Ukrainian war migrants it has admitted per thousand inhabitants.¹ Although Latvia does not have a direct border with Ukraine, the two countries have a somewhat similar Soviet past and there is a historically entrenched Ukrainian community in Latvia (Ukrainians constitute about 2.5 per cent of the Latvian population), together with relatively broadly available educational and labour market opportunities in the Russian language. According to United Nations High Commissioner for Refugees data, on 11 April 2023, 47 080 people from Ukraine were registered for temporary protection or a similar national protection scheme in Latvia, along with 32 380 displaced persons.² For a nation of fewer than 2 million inhabitants, these are significant numbers.

In terms of destination country profiles, Latvia presents a multifaceted picture. As I show below, the monetary support for Ukrainian war migrants cannot be considered generous. At the same time, other characteristics of the country – the overall support for the Ukrainian cause within the Latvian population, the resolute opposition to the Russian military

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All views expressed in this publication are personal.

¹ Statista, *Number of Ukrainian refugees by country per capita*, 2022, available at: <https://www.statista.com/statistics/1342702/ukrainian-refugees-per-thousand-inhabitants-by-country/> (accessed 2 May 2023).

² Operational Data Portal, *Ukraine Refugee Situation on 11 April 2023*: <https://data.unhcr.org/en/situations/ukraine> (accessed 2 May 2023).

aggression, the pre-existing support structures for Ukrainians,³ together with the easy accessibility of public services in Russian and also English and relatively barrier-free access to the labour market – make it a relatively desirable destination.

Indeed, the current legal framework, construed specifically for Ukrainian war migrants at the beginning of the war, and local support should be seen in the broader context of the existing support structures. These include a Ukrainian secondary school in Riga and the availability of both childcare and also education (including secondary) in the Russian language, alongside a very active Ukrainian diaspora, existing access to the Latvian labour market for Ukrainian workers, and the Agreement between the Republic of Latvia and Ukraine on Cooperation in the Field of Social Security with the possibility to transfer social security entitlements between the two countries. This, together with the historically shared social experience and probably a deeper level of understanding for the Ukrainian plight than many other regions of Europe, has created a comparatively favourable environment for acceptance and integration of Ukrainian war migrants.

2. General framework.

In Latvia, Directive 2001/55/EC⁴ was implemented in the Asylum Law,⁵ the Administrative Procedure Law⁶ and a series of secondary governmental regulations.⁷ Council Decision 2022/382,⁸ however, was implemented not through the general Asylum Law procedures but via a special law adopted in March 2022, the Law on Assistance to Ukrainian Civilians (LAUC).⁹ Hence, the focus in this chapter will be primarily on the coverage and content of this *lex specialis* adopted for the mass influx from Ukraine starting in February 2022.

³ Vārpiņa Z., Fredheim K., *Ukrainian asylum seekers in Latvia: the circumstances of destination choice*, in *Migration letters*, 19, 6, 2022, 821.

⁴ 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, Official Journal of the European Communities, L 212/12–23 later on as: Directive 2001/55).

⁵ Asylum Law (Patvēruma likums), Latvijas Vēstnesis (2), 5 January 2016, available at: <https://likumi.lv/ta/en/en/id/278986-asylum-law> (accessed 2 May 2023).

⁶ Administrative Procedure Law (Administratīvā procesa likums), Latvijas Vēstnesis 164, 14 November 2001, available at <https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law> (accessed 2 May 2023).

⁷ Zaudējis spēku - Grozījumi Ministru kabineta 2004.gada 20.janvāra noteikumos Nr.44 ‘Noteikumi par darba atļaujām ārzemniekiem’ (likumi.lv) (last viewed 2 May 2023); Zaudējis spēku - Noteikumi par darba atļaujām ārzemniekiem (likumi.lv), Ministru kabineta noteikumi Nr. 553 (last viewed 2 May 2023); Noteikumi par ārzemnieku nodarbināšanu (likumi.lv), Ministru kabineta noteikumi Nr.55; Zaudējis spēku - Kārtība, kādā Latvijas Republikā notiek bēgļa, alternatīvo statusu vai pagaidu aizsardzību ieguvušās personas ģimenes atkalapvienošana (likumi.lv), Ministru kabineta noteikumi Nr.74; Noteikumi par pārvietošanas dokumentu personai, kurai piešķirta pagaidu aizsardzība (likumi.lv), Ministru kabineta noteikumi Nr.74.

⁸ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁹ Law on Assistance to Ukrainian Civilians (Ukrainas civiliedzīvotāju atbalsta likums), Latvijas Vēstnesis 45A, 4 March 2022, available at <https://likumi.lv/ta/en/en/id/330546-law-on-assistance-to-ukrainian-civilians> (accessed 2 May 2023).

The primary objective of the LAUC was to determine who does what to support Ukrainian civilians and population in general in the context of the war between Russia and Ukraine, as well as to introduce specific rules for dealing with the mass influx expected as a result of Russian invasion. At the same time, the Annotation of the law reveals that this measure to a very large extent was also aimed at regulating Ukrainian war migrants' labour market access, even introducing specific rules for employment in certain sectors.¹⁰ This is unusual for a law aimed primarily at the protection of refugees.¹¹ Also, in contrast to this approach taken in the response to the Ukrainian influx, the national rules that originally implemented Directive 2001/55 were not focused on labour market access at all (Article 61 Asylum Law). In the manner in which Directive 2001/55 was implemented in Latvia the national rules did not foresee labour market access as one of the elements of temporary protection (Section XI Asylum Law). This might have been one of the reasons why a special law was deemed necessary as part of the response to the war in Ukraine.

Indeed, the Annotation of the LAUC proposed 'the essential need to provide the right to freely access the Latvian labour market for Ukrainians that have fled the war and have entered Latvian territory' as the primary solution to the situation that had arisen.¹² It is also interesting that the Annotation explicitly recognises that by introducing special rules for the employment of Ukrainians in the education and health-care sectors, the LAUC both ensures Ukrainians' economic interests and reduces the labour shortage in these two sectors. All in all, it is clear from the rules introduced in response to the war in Ukraine that labour market needs, together with the protection of Ukrainians fleeing the war were the top priorities for the Latvian legislators when introducing this special temporary protection regime.

Directive 2001/55 applies to Ukrainians who were residing in Ukraine before 24 February 2022 (para 1), but the LAUC is not so exact in terms of its *ratione temporis*. It prescribed temporary protection for Ukrainian civilians 'who leave Ukraine or who cannot return to Ukraine due to the armed conflict [...]' in the Republic of Latvia within the meaning of the Asylum Law (Article 1¹). Hence it can be applied also to Ukrainians who left (shortly) before 24 February 2022 or were in Latvia or even elsewhere when the war started. At the same time, the transitional provisions declare that the Latvian state will pay for assistance laid out in the LAUC and healthcare services provided to Ukrainian civilians starting from 24 February 2022 (para 1); 24 February was therefore the first day on which they had the right to receive support.

The LAUC also does not have a specific end-date and the general approach is that the law is likely to be revoked or changed when the war ends. This is in contrast to the regular prolongation of the Decision 2022/382 at the EU level, whereby protection was extended until March 2024 and can be further extended until 2025. However, the temporary protection regime provides, for those who received this status in 2022 (until 31 December 2022), that

¹⁰ Annotation of the Law on Assistance to Ukrainian Civilians, 2022, available at <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/877EDC3DAD423E20C22587F9002447CD?OpenDocument> (accessed 2 May 2023).

¹¹ Rasnača Z., *Patvēruma meklētāju aizsardzības tiesiskais ietvars*, in Austers A., Beitnere-Le Galla D., Rasnača Z. (eds), *Patvēruma meklētāju problēma un tās risinājumi Eiropas Savienībā un Latvijā*, LU Akadēmiskais apgāds, 2019, 183–184.

¹² Annotation of the Law on Assistance to Ukrainian Civilians, nt. (9).

their initial visas and permits will be valid until 4 March 2024, and for those who arrived in Latvia after 31 December 2022 that they will receive the initial permits for a period of two years. In addition, for certain rights or matters, some end-dates are laid down in national law but it remains to be seen whether the legislator decides to change them closer to their expiry date. For example, expired travel documents issued in Ukraine are considered valid in Latvia until 28 February 2024 (Article 4); and full compensation for medical products or medical devices is available until 30 June 2023 (para 10 of the transitional provisions). Hence the timeframe could be seen as more flexible than the one offered by the EU framework; however, and notably, not all protective measures that were implemented at national level (beyond what was required by Decision 2022/382 and Directive 2001/55) are being continued in line with the extended deadlines at European level.

All in all, the Latvian national framework seems to go beyond what the EU level measures require and is more flexible in terms of its temporary scope. Furthermore, a key characteristic of the Latvian approach to tackling the arrival of Ukrainian war migrants is the strong emphasis on labour market access. This is somewhat mirrored in the early data on why Ukrainian war migrants chose Latvia as their country of destination: labour market opportunities were among the key factors mentioned as the reason to come to Latvia.¹³

3. Personal scope of applicable support measures.

Article 2 of Decision 2022/382 sets out the personal scope of the measure. It states that those covered include Ukrainian nationals residing in Ukraine before 24 February 2022, and stateless or third-country nationals who benefitted from international protection in Ukraine and family members (Article 2(1) Decision 2022/382). Family members include spouses or partners in a stable relationship, if such partnerships are recognised in the Member State in question, minor unmarried children and other close relatives who live together as a family unit (Article 2(4)). The Member States also have to apply either Decision 2022/382 or ‘adequate protection’ to stateless persons or third-country nationals who were residing legally in Ukraine before 24 February 2022, with a valid permanent residence permit (Article 2(2)). Finally, Member States were free to extend Decision 2022/382 also to those who were legally residing in Ukraine and were unable to return to their country of origin under safe and durable conditions (Article 2(3)).

The Latvian approach to personal scope differed slightly from the one in Decision 2022/382. The Latvian implementing law (LAUC) applies to ‘Ukrainian civilians who leave Ukraine or who cannot return to Ukraine due to the armed conflict caused by the Russian Federation during the course of such armed conflict’. The definition of ‘Ukrainian civilians’ offered by LAUC in Article 1(1) is as follows:

Citizens of Ukraine and their family members, and also persons who have received a permanent residence permit in Ukraine and cannot return to the country of their citizenship,

¹³ Vārpiņa Z., Fredheim K., nt. (3).

[and persons who have] the status of stateless persons, or the status of international protection in Ukraine and their family members.

It is thus, on one hand, potentially slightly broader than that of Decision 2022/382 because it does not explicitly require people to have been eligible for residence in Ukraine prior to 24 February 2022. In other words, also those Ukrainians who had resided outside of Ukraine can be covered; indeed, all Ukrainian civilians who either leave or cannot return to Ukraine because of to the military conflict are covered within the personal scope.

On the other hand, the definition of ‘Ukrainian civilian’ is narrower than what one might normally associate with the term ‘civilian’. In its ordinary meaning in Latvian the word ‘civilian’ refers to any person living in the country who is not considered to be military or police personnel.¹⁴ It thus would seem to cover everyone except for those directly participating in the military conflict. As the clarifying definition explains, however, only citizens of Ukraine and their family members, persons with permanent residence in Ukraine, and persons given stateless or international protection status under Ukrainian law are covered by this special law. Accordingly, Latvia did not exercise the option to extend the protection to those legally residing in Ukraine and unable to return to their country of origin in line with Article 2(3) Decision 2022/382.

LAUC also does not seem to cover in its personal scope, at least explicitly, family members of stateless persons and those enjoying international protection under Ukrainian law in contrast to what Article 1(1)(b) and (c), read together with (4) of Decision 2022/382 seem to require. At the same time, the Latvian rules can still be considered to be in line with EU requirements. Simply, instead of the comparatively generous framework created by the LAUC, such persons have to rely on the temporary protection regime, as implemented in the Asylum law.¹⁵ All things considered, the personal scope of the special protective regime created in order to help deal with the mass influx of people from Ukraine is in part broader than that required by EU rules, and in part narrower, necessitating a fallback to the general asylum regime and temporary protection regime as it has been implemented there for some categories of persons who have fled or cannot return to Ukrainian territory.

Moreover, LAUC also states that the Office of Citizenship and Migration Affairs (OCMA), the State Border Guard or any Latvian diplomatic and consular missions abroad can issue a long-term visa with the right to employment without restrictions for a period up to one year, without fulfilling the requirements of the Immigration Law (Articles 4(1), 3 and 5), and without any fee for examining the documents, for those Ukrainian civilians who do not have the right to remain in Latvia, or who have the right to remain but no right to employment, if they have a valid travel document. This also further extends the range of people who can benefit from the right to remain in Latvia and access the Latvian labour market.

Regarding the process, for those who fall under the definition of ‘Ukrainian civilian’ as explained above, the Office of Citizenship and Migration Affairs¹⁶ issues a temporary

¹⁴ Tezaurs, *Civiliedzīvotājs*, 2023, available at <https://tezaurs.lv/civiliedz%C4%ABvot%C4%81js:1> (accessed 2 May 2023).

¹⁵ Asylum Law, nt. (5).

¹⁶ *Pilsonības un Migrācijas Lietu Pārvalde*, available at <https://www.pmlp.gov.lv/en> (accessed 2 May 2023).

residence permit (ie an identity card for a third-country citizen) for the (initial) time period of two years (Article 3(2)). Applicants can apply for this card and status either to the OCMA, by mail or electronically, or in person at the Special Support Centre for Ukrainians in Riga.¹⁷ In the case of applications by Ukrainian civilians, Article 65(2) Asylum Law, which lays down that people need to hand over all the personal identification documents and travel documents at their disposal and issued in foreign countries, does not apply. Furthermore, the administrative fee normally applicable is not levied (Article 3(4)). If this is the first time a person has received such a personal identification document in Latvia, their identity has to be certified by an interview questionnaire approved by an official from either the Border Guard or the OCMA (Article 3(3)). The official carrying out the registration shall also update the Register of Natural Persons (Article 3(5)). All in all, the procedure involves submitting a questionnaire, together with documents supporting the application, and an in-person interview, if necessary.

In case there are some issues with the documents necessary for a visa or residence permit application (essentially, if a person does not have a valid or even invalid ID card or passport or permanent residence card or another document confirming their right to protection under LAUC) issued by Ukraine,¹⁸ the OCMA can give the person up to one year for the submission of documents confirming their right to special temporary protection. Also, Article 4 LAUC explicitly provides that if a travel document issued in Ukraine has expired, it will be considered valid in Latvia until 28 February 2024. The rules on the personal scope of the special protection regime introduced in response to the Russian war in Ukraine are thus comparatively generous, at least compared with the rules applicable to war migrants from other countries.

4. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

The general level of support for Ukrainians fleeing the war is certainly higher than it was for refugees in the past. It is also fundamentally different both because those eligible have instant access to the labour market, but also because their access to housing, healthcare and education is significantly eased by the widespread knowledge of the Russian language in Latvia. Because of the broad support of the local population and existing support structures for Ukrainian migrants in Latvia (Ukrainian school, various associations, including cultural heritage organisations), they have been on a different footing in terms of ability to access various services.

In this section, however, I shall not focus on existing support structures, but instead provide an overview of the main elements in terms of financial, housing, healthcare and education support introduced from 24 February 2022 onwards. Nevertheless, for anyone

¹⁷ Article 5(2) LAUC; for up-to-date information on the relevant process, see *From Ukraine to Latvia*, Information for Ukrainians coming to Latvia, available at <https://www.ukraine-latvia.com/lv#arrival> (accessed 2 May 2023).

¹⁸ This was the case, for example, for some Ukrainians fleeing already occupied territories, such as parts of Donetsk or Crimea.

interested in the question of Ukrainian war migrants' integration in Latvia, it is important to see these specific support measures in their broader context of the available integration resources and also the already existing labour market opportunities for Ukrainians.

Information on the support available has been published online in Latvian, Ukrainian, Russian and English. In addition, an informative phone number is available for consultation and finally many (probably most) municipalities have support centres where Ukrainians can receive help and information about all types of available aid in an accessible language. Generally, Ukrainian civilians have the same right to social services, social assistance and other material assistance provided by local government (municipality) as the citizens of Latvia (Article 7(3) LAUC). Hence in this section I describe mainly additional support where such has been made available.

4.1. Financial support.

The financial support amounted to a one-off benefit of 272 euros (€) (€190 for a minor) and a monthly benefit of €109 for the first member of the household who arrives in Latvia and €76 for each further member of the same household. Ukrainian civilians also have a right to other material or social support in line with individual needs, although those support measures depend largely on the municipality in which someone settles.

Another line of support involves food and other packages. Ukrainian civilians have the right to receive food packages (two for each person in the household every month), a package of hygiene-related **and household goods**, **two additional kids' packages if the family has children between 7 and 24 months**, and an additional package with hygiene items for kids under 2 years old. Finally, school-aged kids have a right to a special kit with education materials and items necessary for school. Additional food and other packages have been available over the past year due to inflation. Another type of support which could be considered financial in nature is for transport – Ukrainian civilians have the right to use public transport free of charge.

When it comes to child support, Ukrainian civilians can receive childbirth allowance (€421 for each child), childcare allowance (€171 per month for kids under 1.5 years old and €43 for older kids) and family state allowance (€25 per month for one child; €100 for two children; €225 for three children and €100 for each additional child), with additional benefits and support for children with disabilities (Article 7(11) LAUC). There is also special financial support (€106 per month) for children suffering from coeliac disease.

Finally, regarding pensions, a Ukrainian civilian who has reached retirement age and is residing in Latvia with a valid long-term visa or residence permit and has resided in Latvia for at least three months, has a right to social security benefit as an advance payment until the Latvian State Social Insurance Agency receives information from the competent Ukrainian authority on the pension granted and received in Ukraine and the amount thereof, which is necessary for the disbursement of state social security benefit in Latvia (in line with the Agreement between the Republic of Latvia and Ukraine on Cooperation in the Field of

Social Security)¹⁹ (Article 7³ LAUC). Any overpayment after the advance payment will not be recovered from Ukrainian civilians. Furthermore, any Ukrainian civilian already receiving a pension in Ukraine can opt to have that pension disbursed through the intermediation of the Latvian State Social Insurance Agency (Article 7³(1) LAUC).

Article 13 Decision 2022/382 requires that Member States ensure necessary assistance in terms of social welfare and means of subsistence. While Latvia has formally complied with this requirement and various financial benefits and benefits in kind exist and have been introduced, their level is rather low. Hence one might question whether the objectives of Decision 2022/382 are fully met. The social support system in Latvia is comparatively weak for everyone, not only asylum seekers,²⁰ and often does not ensure that people relying on it can live with dignity. At the same time in order to facilitate integration the financial support mechanisms at least for Ukrainian displaced persons who cannot work should be improved further.

4.2. Housing support.

Latvia ensures free accommodation and food for the first 120 days for Ukrainian civilians who started receiving support before 24 May 2022 and accommodation for 120 days and food for 30 days for those who started receiving support from 25 May 2022. Since 20 July 2022 municipalities have been able to reduce the length of accommodation to 60 days if they reach 80% of their capacity. The State Fire and Rescue Service is responsible for coordination between local governments, taking into account their capacity for accommodating Ukrainian civilians and is in charge of directing them to different local governments where accommodation services are still available (Article 2(8) LAUC).

Taking into account the time limits set for free accommodation, one might question whether LAUC is in line with the requirements of Article 13(1) Decision 2022/382. The obligation to provide suitable accommodation for persons enjoying temporary protection or means to obtain housing, as defined there, is rather broad and the Latvian rules are not particularly favourable in this regard beyond the first 120 days following arrival.

There is a further possibility to receive support for longer than 120 days for certain groups of persons who might face special difficulties (eg people with disabilities, people aiding people with disabilities, people of retirement age, minors in education and students, pregnant women, parents with children aged under 2 years or parents with children who cannot attend pre-school for any reason). However, this free extra accommodation support did not continue after 30 June 2023. Overall, there seems to be an attempt to gradually integrate Ukrainian civilians in the general Latvian welfare system. Ukrainians whose expenses for

¹⁹ Agreement between Latvia and Ukraine about cooperation in the area of social security (Latvijas Republikas un Ukrainas līgums par sadarbību sociālās drošības jomā), Latvijas Vēstnesis 138/141, 19 May 1998, available at <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/867> (accessed 2 May 2023).

²⁰ On the general approach to social welfare for asylum seekers, see Rasnača Z., *Latvijas intereses patvēruma meklētāju politikas jomā starptautiskajā un Eiropas Savienības līmenī*, and Austers A., *Patvēruma meklētāju politika Latvijā – fakti, programma un integrācijas gaita*, in Austers A., Beitnere-Le Galla D., Rasnača Z. (eds), *Patvēruma meklētāju problēma un tās risinājumi Eiropas Savienībā un Latvijā*, LU Akadēmiskais apgāds, 2019, 38–58, 226–250.

accommodation are greater than their income have a right to receive housing benefit (just like all Latvian permanent residents). A Ukrainian civilian has the right to receive the housing allowance provided for in Section 35, paragraph 1, clause 2 Law on Social Services and Social Assistance, also to cover expenditures related to and contracted for premises that are fit for habitation, lighted, heated, and suitable for long-term human accommodation and for household items (Article 7(3³) LAUC).

At the same time, in reality because of the sheer number of Ukrainians who have arrived in Latvia since 24 February 2022, in practice housing support, at least in the period since the invasion, has often fallen on the shoulders of volunteers. Many Latvians have opened their homes to Ukrainian war migrants, most often for free, and continue to do so. This high degree of voluntarism has been internationally recognised.²¹ In fact, the public housing possibilities are insufficient and housing continues to be a problematic issue for all refugees in Latvia, including Ukrainians. The information on accommodation possibilities is publicly available online and a centralised database has been created to help match potential landlords with tenants.²²

To facilitate offers of housing from private individuals, Latvians who offer free accommodation to Ukrainians have been given the right to compensation from the state (€100 for the first person and €50 for each additional person they accommodate; altogether up to €300 per month). Support is also available for legal persons who offer accommodation (after an initial 120 days of state-offered accommodation) for the groups of people under special protection identified above. However, this compensation is time-limited and set to expire on 30 June 2023 (Article 7¹(1¹)).

4.3. Access to healthcare.

In Latvia healthcare is covered by the state (no mandatory insurance payments are necessary). Every Ukrainian who arrives in Latvia or is already residing there has full access to state-covered healthcare and medical services free of charge, including medicines, in the same way as they are available to Latvian residents (Article 7(4) LAUC). Healthcare for children (except perhaps dentistry) is relatively easily accessible and the Children's Clinical University Hospital (BKUS) provides all necessary medical care to children from Ukraine.

At the same time, in reality state-covered free healthcare often involves long waiting times and queues for more serious interventions. Moreover, dentistry is not free for adults. In general, it is much easier and faster to access non-urgent medical assistance with private insurance. Hence, while in theory access to free healthcare is ensured, in practice it might not be easily accessible within a reasonable time period for either Latvian long-term residents or Ukrainians. This, however, potentially creates an especially difficult situation for war migrants who might have suffered injuries or require urgent help, access to which might

²¹ Nordentoft H.M., *UNHCR: Ukrainas begļi – cilvēciņa un tiesiskums iet roku rokā*, 2023, available at <https://www.unhcr.org/neu/lv/94907-unhcr-ukrainas-begli-cilveciba-un-tiesiskums-iet-roku-roka.html> (accessed 2 May 2023).

²² *Ukrainas civiliedzīvotāju atbalsta sniegšanai nepieciešamās informācijas reģistrs (UCASNIR)*, available at <https://cak.iem.gov.lv/> (accessed 2 May 2023).

entail a long wait. At the same time Article 7(1)(3) requires that the Social Integration State Agency coordinate to ensure 24-hour service for persons in need of social rehabilitation for up to 60 days. Hence, adequate legal obligations have been introduced to protect Ukrainian civilians. The remaining issues, however, are due to the general state of medical care in Latvia.

At the same time, several NGOs and also medical organisations have been active in trying to ensure that the war migrants from Ukraine receive the help they need. Finally, healthcare in Latvia is relatively easily available in Russian and often also the English language, which can be very helpful for Ukrainian war migrants seeking help (especially in comparison to refugees who do not speak Latvian, Russian or English).

4.4. Access to education.

Every child who arrives in Latvia as a war migrant from Ukraine has the right to education (free of charge) in either the state language (Latvian) at all levels of primary and secondary education or a minority language (Ukrainian) at the level of pre-school and primary. This means that for Ukrainian children education is available in Ukrainian up to the ninth grade (around age 15–16). This is extremely important for families with children who fled Ukraine for a relatively short period of time and have already returned or intend to return to Ukraine shortly. They could thus continue their education in Ukrainian. Also Russian language schools are state-funded and widely accessible.

In the interest of long-term integration and secondary education, however, knowledge of the Latvian language is paramount. Hence, many war migrants chose to send their children to Latvian-language schools. At the same time, not all Ukrainian children who have been registered in Latvia are in education. In May 2022, 4 144 children were registered in Latvia, but only just over 3 000 started the school year in September 2022.²³ Education experts explain this by returns to Ukraine, possibilities for continuing education online available to many Ukrainians, and families moving to another EU country.²⁴

Access to higher education has also eased somewhat for Ukrainian civilians. After undergoing a special procedure (involving two streams or two different procedures, one available to those who have the necessary education documents from Ukraine and another for those who do not), Ukrainian students have been given a possibility to continue their higher education at a Latvian university without the need to start from the beginning.²⁵

Overall, the Latvian social policy support system for Ukrainian civilians is characterised by relatively low financial and other types of support (compared with many western European and Scandinavian countries at least). However, integration in the healthcare and education systems has been fairly direct and straightforward. It is important to remember that there has been a lot of voluntary support via donations and help to Ukrainian war

²³ LV, *Par ukraiņu pedagogiem Latvijas skolās*, in *LV portāls*, 31 March 2023, available at <https://lvportals.lv/norises/350446-par-ukrainu-pedagogiem-latvijas-skolas-2023> (accessed 2 May 2023).

²⁴ LV, *ibidem*.

²⁵ LSPA, *Admission of Ukrainians students for studies in Latvian higher education institutions*, 2022, available at <https://www.lspa.lv/files/2022/UA%20stud%C4%93jo%C5%A1o%20uz%C5%86em%C5%A1ana%20augstskol%C4%81s%20ENG.pdf> (accessed 2 May 2023).

migrants from the general population. Such support has typically not been available to refugees in the past (with a partial exception in the case of Belarussians fleeing the regime and its increased brutality in the past few years). In addition, as already explained, there were pre-existing support systems in Latvia for Ukrainians and they do not experience the same barriers (not least linguistic ones but also in terms of, for example, racial discrimination) as other refugees in terms of access to support services, healthcare, accommodation and education. This, together with the relatively barrier-free access to the labour market discussed below, has created a relatively favourable integration environment for them.

5. Social policy measures for Ukrainians: supporting professional activity.

The State Employment Agency reports that from 1 March 2022 until 31 December 2022, it provided assistance to 17 452 Ukrainian civilians. In the same period, 4 168 Ukrainians were registered as unemployed. While the exact number of Ukrainians on the Latvian labour market is not clear, according to State Employment Agency data in 2022, 10 303 Ukrainian civilians received the one-off job-start benefit and 79 received the one-off self-employment start-up benefit.²⁶ These numbers might therefore give an approximate picture of the number of Ukrainian war migrants who have started work in Latvia.

Of course, it is unclear whether some Ukrainian civilians are working undeclared or maybe continue working remotely for their Ukrainian employers or employers abroad (this is an open question, especially in the IT sector). For Ukrainian war migrants who are not tax residents in Latvia special rules were introduced in LAUC. In line with these rules, Ukrainian civilians who are non-residents for tax purposes have the right to apply the minimum non-taxable allowance with personal income tax of €250 per month (Article 8³(1) LAUC). They also have the right to tax relief for dependent minor children (Article 8³(2) LAUC).

5.1. General rules on accessing the Latvia labour market.

In line with the special Latvian temporary protection regime, Ukrainian civilians have been eligible for long-term visas with the right to access the labour market without any restrictions. According to the amendments in force since 26 March 2022, Ukrainian civilians with a travel document issued by Ukraine (eg passport) have a right to start employment even before obtaining a long-term visa.²⁷

When employing third-country nationals, there is typically an obligation to first register the vacancy with the State Employment Agency and to pay them at least the average Latvian wage for the prior year. Also, third-country nationals entering the Latvian labour market for

²⁶ Nodarbinātības Valsts Aģentūra, 2022.gadā NVA atbalstu saņēma 17 452 Ukrainas civiliedzīvotāji | Nodarbinātības valsts aģentūra, 23 January 2023, available at <https://www.nva.gov.lv/lv/jaunums/2022gada-nva-atbalstu-sanema-17-452-ukrainas-civiliedzivotaji> (accessed 2 May 2023).

²⁷ They had to apply for such a visa within 10 days of starting work.

the first time typically have to undergo a health check in order to receive a residence permit.²⁸ However, the employment of Ukrainian civilians was exempted from these rules. Regarding the health check, the legislator adopted an exception that made it possible to employ Ukrainian civilians without a mandatory health check, unless the person in question is to be employed in a high-risk work environment, in line with Cabinet of Ministers Regulation No 219.²⁹

To further ease the entry of Ukrainians in the labour market, they were eligible for a one-off job-start benefit at the level of one minimum monthly wage (this benefit is not taxed) (Article 7(7) LAUC). The same level of benefit was also foreseen for Ukrainians who register as self-employed (Article 7(14)). This was meant to support employees and self-employed at the start of work activities. Finally, and importantly, the Latvian legislator permitted the employment of Ukrainian war migrants also without any knowledge of the Latvian language (which is typically mandatory in all public sector jobs and also in the private sector if the job is of a public interest nature or it is necessary to ensure the protection of consumers or clients), insofar as it did not prevent them from exercising their employment obligations.

All these extra facilitation measures illustrate that the Latvian legislator considered speedy employment of Ukrainians to be of the utmost importance. At the same time, the relaxation of the requirement to pay at least the average sectoral wage might create a situation in which wages in certain sectors are pushed downwards and facilitate exploitation of Ukrainian workers on the Latvian labour market. Furthermore, the lack of a compulsory health check might be detrimental to workers' health and safety rights.

5.2. Special rules in certain sectors.

A special exception from mandatory language rules was introduced for medical personal. Healthcare institutions were allowed to employ Ukrainian civilians without a knowledge of the state language if communication can be ensured in some other way (eg by using a translator or in another language, such as English or Russian, if personnel and clients understand it). The same rules were also applied for pharmacists. Furthermore, Ukrainian civilians in healthcare and pharmaceuticals, as well as in education (including secondary, but excluding higher education) were allowed to work without going through the process of recognition of qualifications. In this sense, the influx of Ukrainians was also seen as a way to slightly ease the rather extreme labour shortages in these sectors.

Further rules were adopted to facilitate the entry of Ukrainian civilians into medical and pharmaceutical jobs. The recently introduced amendments provide that they can continue working in the sector for two more years (initially, they were given a permit for one year). Finally, in case they want to stay in Latvia and continue to work in the profession after the end of the war in Ukraine, they will be given access to the diploma recognition and

²⁸ VCA, *Veselības pārbaude uzturēšanās atļaujas saņemšanai*, available at <https://www.vca.lv/visi-pakalpojumi-vca/profilakse-veselibas-parbaudes/veselibas-parbaude-uzturesanas-atlaujas-sanemsanai.html> (accessed 2 May 2023).

²⁹ Regulations of the Cabinet of Ministers No 219, 10 March 2009, Order of the mandatory health check (*Kārtība, kādā veicama obligātā veselības pārbaude*, Latvijas Vēstnesis) 41, 13 March 2009.

equalisation procedure. The materials available online also provide extensive additional guidance and resources (including contact information) for Ukrainian medical professionals.³⁰ In fact, some hospitals have issued specific calls for workers and invited Ukrainian civilians to contact them if they are seeking employment as doctors, nurses, nursing assistants and other medical personnel.³¹

Exceptions to facilitate the employment of Ukrainians in the construction sector were introduced in the public procurement rules. For the provision of the assistance for Ukrainian civilians specified in this Law, a commissioning party within the meaning of the Public Procurement Law and the Law on the Procurements of Public Service Providers has the right to perform procurements without applying the legal norms governing the relevant procurement sector, and also to make changes in the relevant contracts entered into with suppliers insofar as it is objectively necessary for the provision of assistance to Ukrainian civilians (Article 9 LAUC).

Besides the possibility that the special temporary protection regime available to Ukrainians can come to an end at some point and the need potentially to prolong residence permits, there are no other limits on entrance to the Latvian labour market. Barriers such as language may still create some frictions, but they have been significantly eased by the special rules explained above. Ukrainian civilians working in Latvia also enjoy the same rights as the native workforce in terms of labour mobility (eg posting of workers) and enforcement of their rights. At the same time, the latter might still be indirectly discouraged because Latvian labour law enforcement structures typically operate in the Latvian language.

6. Final considerations.

Overall, considered in their historical context, the measures adopted in Latvia are unprecedented in terms of support for this group of war migrants. This lack of precedent is easily explainable, however, in terms of the deep solidarity with Ukrainians felt among the Latvian population and the very well-founded fear of Russian military aggression that pervades Latvian society.

At the same time, support measures are not very generous in financial terms, especially for Ukrainians who cannot or do not wish to enter the labour market immediately or in the foreseeable future. Therefore, short-term integration and adequate living conditions might be difficult to achieve for Ukrainian civilians who do not have substantial own resources. At the same time, there are comparatively decent long-term integration prospects for Ukrainian war migrants in Latvia because they are subject to comparatively fewer barriers and obstacles in terms of their access to the labour market and employment, as well as in terms of their ability to access many public services, including healthcare and education.

³⁰ Ministry of Health, *Darba iespējas Ukrainas mediķiem*, 4 March 2022, available at: <https://www.vm.gov.lv/lv/darba-iespejas-ukrainas-medikiem-pracevlashtuvannya-ukrainskikh-likariv> (accessed 2 May 2023).

³¹ ASlimnīca, Rīgas Austrumu klīniskā universitātes slimnīca gatava piedāvāt darbu Ukrainas begļiem, 2022, available at <https://aslimnica.lv/jaunumi/zinas/rigas-austrumu-slimnica-ir-gatava-piedavat-darbu-ukrainas-begliem/> (accessed 2 May 2023).

The Latvian approach to integrating and supporting Ukrainian war migrants has thus been unprecedented, especially for a country whose population has been characterised as ‘hostile’³² towards refugees as such, but hardly unexpected given the general understanding and compassion with the situation in its historical context. It remains to be seen, however, whether this approach will yield any lessons for the integration of other groups of refugees in the future.

³² Vārpiņa Z., Fredheim K., nt. (3). See also Murašovs V., *et al.*, *Expecting refugees in Latvia: Negative stereotyping*, in *Economics and Business*, 29, 1, 2016, 56–64.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Lithuania.

Daiva Petrylaite* - Vida Petrylaite**

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

The main legal instrument regulating the legal status of foreigners in Lithuania is the Law on the Legal Status of Foreigners¹ (*Lietuvos Respublikos užsieniečių teisinės padėties įstatymas*; hereinafter – the Law). The Law covers all the issues fundamental for the legal status of foreigners: the procedure of entry and departure, stay and residence, granting of asylum and temporary protection in the Republic of Lithuania, the procedure of integration and lodging of appeals against decisions concerning the legal status of foreigners, etc. This Law is also the main instrument for the implementation of European Union (hereinafter – EU) legislation, including Directive 2001/55/EC.²

According to the provisions of the Law (Article 92), where the Council of the European Union takes a decision that there is a mass influx of foreigners into the European Union or that there is a risk of such influx, a resolution on temporary protection shall be taken by the Government of the Republic of Lithuania (hereinafter – the Government) on a recommendation of the Minister of the Interior. At the same time, the Government shall, by adopting the above-referred resolution, designate and confer specific powers to the state

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¹ Official Journal, 30/04/2004, No. 73-2539.

² 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

authorities and institutions responsible for the management of the process for granting and implementing temporary protection.

Considering Directive 2001/55 and the relevant provisions of the Law, the Government passed Resolution No. 224 on granting temporary protection to foreigners in the Republic of Lithuania³ on 16 March 2022 (*Lietuvos Respublikos Vyriausybės nutarimas Nr. 224 "Dėl laikinosios apsaugos Lietuvos Respublikoje užsieniečiams sutėkimu"*; hereinafter – the Government Resolution) (entered into force on 17 March 2022). This legal act has acknowledged that there is an influx of displaced persons from Ukraine and introduced temporary protection (under Directive 2001/55) to displaced persons in this context.

According to the data of the Operational Data Portal as of 31 March 2023, 76.309 persons from Ukraine under temporary protection (or the corresponding status under national law) have been officially registered in Lithuania.⁴ According to the data of the Migration Department of Lithuania, on 4 April 2023, the number of registered war migrants from Ukraine was 76.020 (irrespective of the status granted).⁵ It should be noted that, according to the data of the Migration Department of Lithuania, some of these persons came to Lithuania for a short period of time and were unwilling to benefit from temporary protection, some received temporary protection and later applied for residence permits on other grounds, while others simply left Lithuania.⁶ Thus, the total number of registered war migrants is not so much a reflection of their actual number in Lithuania, but rather an indication of the intensity of the migration flow and the load that the state authorities and other organisations involved in supporting war migrants have to cope with, both in the short and in the longer term.

According to the State Data Agency of Lithuania,⁷ the vast majority of war migrants were aged between 18 and 64 (46.228 persons), followed by persons aged between 6 and 17 (19.744 persons), children under the age of 6 accounting for just over 6.000 persons, and war migrants aged 65 and over were the smallest group (3.865 persons).

Looking at the gender distribution of war migrants, it is clear that the majority of them are women. In the age group between 19 and 80 years, the proportion of women is between 60 and 80%. A more or less equal gender distribution is in the age group of children and adolescents, i.e. persons under the age of 18. In the older age group (from around 85 years of age), the proportion of women also decreases, although it still represents a significant share of around 50%.

An analysis of the statistics presented above makes it clear that a distinction can be made of two (overlapping) groups of people for whom the issues of temporary protection measures are most relevant – mostly women of working age. In addition, some of them came with their minor children, whose care and, potentially, also maintenance falls on the mothers who arrived alone. It should be noted that, even among the native Lithuanian

³ Register of Legal Acts, 16/03/2022, No. 4886.

⁴ <https://data.unhcr.org/en/situations/ukraine> (accessed 14 April 2023).

⁵ <https://migracija.lrv.lt/en/> (accessed 14 April 2023).

⁶ Revised number of Ukrainian war refugees in Lithuania, 23 March 2023: <https://migracija.lrv.lt/lt/naujienos/patikslintas-lietuvoje-esanciu-ukrainos-karo-pabegeliu-skaicius> (accessed 14 April 2023).

⁷ *War refugees from Ukraine*, 23 March 2023, <https://osp.stat.gov.lt/ukraine-dashboards> (accessed 14 April 2023).

population, these groups are generally considered to be the most vulnerable and in need of social assistance. Thus, the scope of guarantees for beneficiaries of temporary protection is also very important and significant.

The general rules on the duration of temporary protection are laid down in the Law (Article 92(3), (4) and (5)), which essentially reiterates the provisions of Directive 2001/55. Temporary protection is granted for one year from the date the relevant decision of the Council of the European Union enters into force.⁸ If the Council of the European Union has not taken a decision to terminate the temporary protection, the temporary protection may be extended twice for 6 months each by a decision of the Government. At the end of this period, the Government may extend the period of temporary protection, but for no longer than one year, provided that the decision to extend the period of temporary protection is taken by the Council of the European Union. The period of temporary protection comes to an end at the expiry of the set period of temporary protection or if the Council of the European Union decides to withdraw the temporary protection.

The duration of temporary protection has been detailed in the Resolution of the Government. According to this legal act, temporary protection applies from 4 March 2022 until 4 March 2024. As can be seen, the Government Resolution establishes an extended period of temporary protection, while leaving two legal options: to terminate the period of temporary protection before that date (if the Council of the European Union adopts a decision to this effect) or to extend the period of temporary protection (also subject to a decision by the Council of the European Union).

2. Personal scope of applicable support measures.

The Government Resolution identifies specific groups of persons who are covered by the statutory guarantee of temporary protection.

Firstly, temporary protection applies to persons who fled (were displaced from) Ukraine on or after 24 February 2022 as a result of the military aggression of Russia, who are:

- (a) Ukrainian nationals residing in Ukraine before 24 February 2022; or
- (b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; or
- (c) family members of the persons referred to in points (a) and (b), as defined in Article 2(4) of Decision 2022/382; or
- (d) stateless persons or nationals of third countries other than Ukraine who had legal permanent residence in Ukraine with a valid permanent residence permit until 24 February 2022 and who cannot be returned safely and permanently to the country of their origin or to the any other receiving state.

⁸ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

Secondly, protection also applies to persons who have temporarily left Ukraine and were legally present in the territory of the European Union or another third country no earlier than 24 February 2022, provided that they entered the Republic of Lithuania before 1 May 2022.

Thirdly, protection also applies to children born to the persons referred to in this Resolution after 24 February 2022 outside Ukraine or during the period of residence of these persons in the Republic of Lithuania.

For all the above-referred persons, a temporary residence permit in the Republic of Lithuania shall be issued on the basis of Article 40(1)(10) of the Law (a special provision on the application of temporary protection) for the period until 4 March 2024, and, if technically feasible, a digital document shall be issued, which shall confer the right to temporary residence in the Republic of Lithuania and, accordingly, shall confirm the temporary protection granted for the above-referred period (this document is available from 5 March 2023). For foreigners who have been granted temporary protection but are still present on the territory of a foreign state, the Migration Department of Lithuania (hereinafter – the Migration Department) issues a travel document of the required form for entry into the Republic of Lithuania.

Persons may submit an application for confirmation of the temporary residence permit in Lithuania electronically via the information system of the Migration Department (using e-mail data). However, newly arrived war migrants who have not yet registered with the Migration Department must not only apply for a digital temporary residence permit via the information system, but also visit the customer service division of their choice at the Migration Department at least once. There are thirteen such divisions in Lithuania (in ten major cities and three additional municipalities). At the time of registration, the person must present a personal identity document such as a passport, ID card (internal passport), or, if he or she does not have these documents, other documents for example, a driving license, birth certificate, etc., may be provided. All services for changing and issuing permits on the basis of temporary protection are free of charge for Ukrainian war migrants.

It should be noted that both the submission of relevant documents and the requirement to appear at least once in person at the place of registration are directly linked to the identification of the person's status, situation and relevant circumstances. Taking into consideration the data collected about the person, the Migration Department may carry out an investigation to determine whether there are grounds to exclude a displaced person from temporary protection.

A foreigner shall be excluded from temporary protection if there are serious grounds for considering that:

(a) the foreigner has committed a crime against peace, a crime against humanity or a war crime, as defined in laws of the Republic of Lithuania, international treaties or other sources of international law, instigated or otherwise participated in committing such;

(b) the foreigner has committed a serious non-political crime outside the Republic of Lithuania prior to his or her entry into the Republic of Lithuania as a person enjoying temporary protection;

(c) the foreigner is accused of acts contrary to the purposes and principles of the United Nations;

(d) his or her stay in the Republic of Lithuania is a threat to national security or he or she has been held guilty of a very serious crime by a final judgment and constitutes a threat to the community.

A decision to exclude a foreigner from temporary protection is taken by the Migration Department. If necessary, information available from other public authorities (e.g. the State Security Department) is also taken into account. Such a foreigner shall be refused entry into the Republic of Lithuania or, in case he or she already is present in the territory of the Republic of Lithuania, shall be expelled from the Republic of Lithuania.

It should be noted that if the above-referred circumstances are identified after the person has been recognized as a beneficiary of the temporary protection, it is revoked by a decision of the Migration Department. The effects of such decision are the same, i.e. refusal of entry or obligation to leave the territory of the Republic of Lithuania.

Moreover, the temporary protection in Lithuania is also terminated if the foreigner leaves to live in a foreign country and, as mentioned above, if the Council of the European Union adopts a decision to terminate the temporary protection.

The person who meets the requirements for temporary protection gets a document issued by the Migration Department with the following personal data: name, surname, date of birth, number of the foreigner with interests in Lithuania (ILTU) and electronic health record (ESI) number.

In accordance with the provisions of Article 140¹ of the Law, the decision of the Migration Department to refuse or revoke temporary protection may be appealed against to the Vilnius Regional Administrative Court within 14 calendar days from the date of service of the decision to the person. The case concerning the refusal or termination of temporary protection must be disposed of and a court's decision must be given within 2 months from the date of receipt of the appeal. A decision of Vilnius Regional Administrative Court may be appealed against to the Supreme Administrative Court of Lithuania within 14 calendar days from the date of publication of the decision. An appeal must be heard under the appeal procedure no later than within 2 months from the date of admission of the appeal. It should be noted that a decision of the Supreme Administrative Court of Lithuania is final and not subject to appeal.

3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education.

First of all, it should be noted that Lithuanian legislation provides for a two-tier system of legal and social security for foreigners entitled to temporary protection. The first category of security guarantees (rights) applies to persons who meet the conditions for temporary protection and have registered with the national authority before the decision on granting temporary protection status. The second set of guarantees (mostly social) is available after temporary protection has been granted.

Thus, foreigners who are eligible for temporary protection enjoy the following fundamental rights until the decision to recognize/refuse temporary protection is taken, but no longer than during the period of temporary protection:

(a) to apply for asylum in the Republic of Lithuania under the procedure laid down by legal acts of the Republic of Lithuania;

(b) to live free of charge in accommodation facilities provided by state and municipal authorities/institutions, as well as in accommodation places voluntarily offered by natural persons or legal entities;

(c) to get all the necessary information regarding their legal status in the Republic of Lithuania in their mother tongue or in a language they understand;

(d) to take up employment and be exempt from the obligation to obtain a work permit, also the right to engage self-employed activities;

(e) to receive state-guaranteed (free) healthcare, as provided for in the legal acts regulating the healthcare system, and, subject to the availability of the state budget, get prescription medicines in the cases, under the conditions and procedure set out by the Minister of Health;

(f) to get social services under the conditions and financing procedure set out by the Minister of Social Security and Labour;

(g) to access the labour market services and employment support measures provided for in the legislation regulating the employment system;

(h) other rights guaranteed to them under international treaties, laws and other legal acts of the Republic of Lithuania. It should be noted that Lithuania and Ukraine concluded a bilateral agreement on social security on 23 April 2001;⁹ its provisions are based on the principle of coordination of the social security systems, that is, they lay down the rules for determining the applicable law and the provisions on the granting and payment of individual social security benefits.

Minors entitled to temporary protection also have the right to study under general education or vocational training programmes in accordance with the procedure set out by the Minister of Education, Science and Sport.

In addition to the rights mentioned above, the persons who have already been granted temporary protection are also entitled to additional social benefits:

(a) the right to social support for low-income persons, which consists of direct cash benefits and compensations (e.g. for housing heating costs), which is a means-tested type of support;

(b) the right to child benefits, which are part of the universal social support and are granted if at least one person (parent, adoptive parent, guardian or child) has been offered temporary protection;

(c) the right to social assistance pensions (universal support benefits to ensure minimum income, payable as an alternative to old-age, disability or orphan pensions) and the right to targeted compensations for nursing and care, which are allocated for family members being cared for at home;

⁹ Official Journal, 07/11/2001, No. 93-3261.

(d) the right to apply to the national disability identification and assessment authority with a request to determine the level of disability (or decide on its equivalence to the level already determined by the Ukrainian authorities);

(e) the right to get special support from the state for the purchase or rent of housing in accordance with national legislation.

The application and practical implementation of the statutory and additional benefits has also been revised by the Government Resolution. The following list includes the measures aimed specifically at ensuring the social security of persons who apply for the confirmation of the temporary protection or have been granted it.

First of all, the persons who meet the conditions in order to get temporary protection are entitled to get free of charge catering services and hygiene products after 33 calendar days from the date of registration with the Migration Department until the date of adoption of the decision to grant (or refuse) temporary protection confirmation. Such temporary assistance is organised by individual municipalities, with the help of NGOs where necessary. It should be noted that this assistance is minimal and is intended to provide minimum social protection for individuals until decisions are taken on other long-term social protection measures. One such universally applied and supported initiatives is the provision of **food cards to displaced Ukrainians, implemented by the Charity and Support Funds “Food Bank”**.¹⁰ Under this programme, each person (who enjoys temporary protection) is entitled to get a food card worth EUR 20¹¹ per week until a permit for residence in Lithuania is granted. The card can be exchanged for food products at any of the major Lithuanian supermarkets.

One of the long-term areas of social support is social services. Ukrainian displaced persons who are covered by temporary protection in Lithuania have the right to a full package of social services, as provided for by Lithuanian legislation:

(a) special-purpose compensations for special needs or actual provision of technical aids (wheelchairs, walkers, beds, etc.);

(b) general social services, which can be provided even if an individual need for social services has not been determined (without an individual assessment): information, counselling, mediation and representation, meal arrangements, provision of clothing and footwear, transport arrangements, socio-cultural services, arrangements for personal hygiene and care services, etc.;

(c) special social services, which are provided if general social services in the person's home or in a social services institution are not sufficient. These services are of two types: social welfare and social care services. Social welfare and care services are provided according to the established need for social services. For example, home care, development of social skills, support and recovery, day, short-term or long-term social care, and temporary respite for relatives.

¹⁰ <https://www.maistobankas.lt/ukraina/> (accessed 17 April 2023).

¹¹ Here and further in the article, the amounts of support in euros valid at the time of the preparation of the publication - in 2023.

Ukrainians who are covered by temporary protection in Lithuania, as mentioned above, are also entitled to receive social assistance benefits in cash. The main measures of such assistance include:

(a) social assistance monetary social allowance, which is granted if the average monthly income per person does not exceed EUR 161.7. The maximum amount of such cash benefit for a person who has no income is initially EUR 205 (for the first 6 months) and then EUR 176 (from 7 to 12 months). If the social assistance benefit is paid longer than 12 months, it is EUR 162. In addition, each municipality responsible for the allocation of this benefit has the right, even if the person's income exceeds the threshold for this social benefit (EUR 161.7), to grant the social assistance monetary social allowance by way of exception, after verifying living conditions;

(b) depending on the individual situation of a person, Ukrainians may be provided with one-off targeted periodic conditional social benefits or other social support (e.g. payment of debts for housing maintenance) from the municipality's own budget under the procedure laid down by each municipality. It should be noted that the rules for granting such targeted individual support may vary in different municipalities of Lithuania. In any case, municipalities must be guided by the principles of equality, justice and fairness when establishing the rules for the granting of such support and when taking decisions on its allocation;

(c) child benefits (according to the Law on Benefits for Children)¹² of the following main types: periodic monthly benefits for each child in the family, a lump-sum childbirth benefit, and a lump-sum benefit for a pregnant woman (if she does not qualify for the relevant maternity benefits under the social insurance);

(d) for Ukrainian children who start attending school in Lithuania – free school meals (pre-schoolers, first and second year pupils receive free lunches without means-testing) and support for purchasing school supplies at the start of the school year;

(e) social assistance old-age pensions, which are available to persons who have reached the old-age pension age specified in Lithuania (64 years and 4 months for men and 63 years and 8 months for women)¹³ or the relevant social assistance pensions available to persons with disabilities or to orphans. The amount of the social assistance pensions may vary depending on the person's status (e.g. level of disability), however, the basic amount of such benefits is EUR 173. The attention should be drawn to the fact that these benefits are universal and are not means-tested. In addition to these benefits, means-tested social benefits may be allocated if necessary (based on the person's income). Moreover, child benefits (point (c) above) are granted irrespective of other benefits received and/or their amount.

Another social policy measure that has had to be tailored specifically for displaced Ukrainians is housing. In this case, two types of guarantees are foreseen and defined in Lithuania.

¹² *Lietuvos Respublikos išmokų vaikams įstatymas*; Register of Legal Acts, 18/12/2017, No. 20326.

¹³ The retirement age applies in 2023.

Firstly, accommodation for Ukrainians can be provided free of charge in the housing managed (owned or held under the right of trust) by state or municipal institutions/organisations. In this case, such institutions/organisations are reimbursed for the actual maintenance costs of the housing with the funds of the state: costs of hot water preparation and housing heating; electricity for lighting, heating and other needs; drinking water and sewage treatment costs; costs for municipal waste disposal; gas supply costs. It should be noted that the above costs are reimbursed to the institutions/organisations that manage the premises rather than directly to the persons who use the premises. The condition applicable in this case is that the housing users do not cover such costs on their own.

The second measure relating to the housing of Ukrainians is aimed at and applies to private natural persons or legal entities who voluntarily provide free housing for Ukrainians. Such persons get a special compensation for the provision of housing. If housing is provided to one registered foreigner, the lender receives EUR 150 per month, and if the same housing is provided to every other registered foreigner, additional EUR 50 per month are paid for each additional registered foreigner. Currently, the period of payment of the compensation may not be longer than 31 December 2023 and may not exceed the duration of the agreement on the lending of housing. It should be noted that, in this case, no additional compensations for housing maintenance costs has been foreseen. These costs are covered on the basis of agreements made by the persons concerning the lending of housing (they can be paid by the persons who use the housing or by the owners of the housing on their own, or by a mixed/partial mechanism to cover the costs is possible).

In addition to the above-discussed customary social assistance measures provided for in the Lithuanian legislation, special targeted assistance instruments are also available to Ukrainians. The Refugee Reception Centre¹⁴ runs a special project for personal assistant (mentor) services as one of its main activities. A personal assistant can assess social needs, provide assistance in finding housing and employment, enrol children in the education system – school and pre-school education, provide the required information of interest on social issues, accompany during shopping for food, hygiene products, clothes, to medical treatment facilities, provide all the assistance necessary according to needs.

As far as the rights of persons entitled to temporary protection (or enjoying temporary protection) to healthcare services are concerned, several levels of social security can be singled out. First of all, the general rule is that, both before and after the granting of temporary protection status, any person is guaranteed the right to state-guaranteed (free) healthcare as laid down in the Law on the Health system of the Republic of Lithuania.¹⁵ According to this Law, such healthcare includes emergency medical care and other necessary personal healthcare services, which, if not provided, would be likely to lead to a deterioration of the patient's state of health to such an extent that he or she would require emergency medical care. In the case of Ukrainians, healthcare services also include specific additional services: immunoprophylaxis against COVID-19, pregnancy care, tuberculosis screening; the services of the institution that determines disability and mobile nursing services. In

¹⁴ <https://rppc.lt/> (accessed 17 April 2023).

¹⁵ *Lietuvos Respublikos sveikatos sistemos įstatymas*, Official Journal, 23/12/1998, No. 112-3099.

addition, free medical rehabilitation services are guaranteed for persons injured during the military operations in Ukraine.

The above-discussed healthcare guarantees are a minimum package of services that apply as a general rule. In addition, a distinction can be made of two categories of persons who are fully covered by the Lithuanian healthcare system and receive health services under the same procedure as permanent residents of Lithuania. The first group is the persons who get employed under employment contracts or become self-employed in Lithuania. In this case, based on the general provisions of the Law on Health Insurance of the Republic of Lithuania,¹⁶ individuals are compulsorily covered by the state health insurance, and a fixed amount of health insurance contributions is paid from their salaries or other income, which guarantees comprehensive national healthcare. The second group of persons who are also covered by comprehensive national health insurance are the persons (who have been granted temporary protection) covered by state-funded health insurance, i.e. children (persons under 18 years of age) and persons receiving old-age or disability pensions in Lithuania or in the country from which they arrived (Ukraine).

Another relevant social area is the access of minors who have the right (or have been granted) temporary protection to national general education or vocational training programmes. This right is guaranteed by Lithuanian legislation and the procedure for its implementation is established and controlled by the responsible authority – the Ministry of Education, Science and Sport of Lithuania.

The Law on Education of the Republic of Lithuania¹⁷ stipulates that state-guaranteed education under primary, basic and secondary education programmes is also provided to foreigners who have the right of temporary residence in the Republic of Lithuania, including persons with temporary protection status. The admission of these persons to educational establishments is carried out in accordance with the general procedure, with special exceptions. First of all, it should be noted that the lack of knowledge of the Lithuanian language cannot be an obstacle to the admission of the above-referred persons to education. Secondly, a preliminary period of adaptation is provided before the pupil starts studying at school. During the adaptation period, the individual progress and achievements of pupils are observed. The period of adaptation of each pupil is individual, and the school determines the end of the adaptation time based on how well the child adapts. It is understood that the biggest practical barrier to learning in Lithuanian schools for Ukrainian children is the knowledge of the Lithuanian language. In this case, schools may, according to the methodologies approved by the Ministry, choose alternative methods: organise the learning of the pupil together with other peers in a designated classroom, with appropriate individual learning and other educational support (e.g. by formulating assignments and presenting materials in a language that the pupil understands); organise learning in groups or in other forms; organise intensive training courses of the Lithuanian language, with the use of other forms of learning; organise the teaching of part of subjects in a school in Lithuania, and part of the subjects remotely in a school in Ukraine.

¹⁶ *Lietuvos Respublikos sveikatos draudimo įstatymas*, Official Journal, 24/12/2002, No. 123-5512.

¹⁷ *Lietuvos Respublikos švietimo įstatymas*, Official Journal, 31/03/2011, No. 38-1804.

Another option that Lithuanian schools are obliged to make available under the legislation is to provide the possibility of distance learning for Ukrainian children in Ukrainian schools. If a pupil or his or her parents (guardians) express their wish to study under the Ukrainian curricula by distance learning in a school operating in Ukraine, the pupil must also be assigned to a school operating in Lithuania. The school operating in Lithuania must have a written confirmation from the school in Ukraine that the pupil is studying there remotely. The pupil must be provided with Lithuanian language learning in Lithuania in the manner offered by the school, and may be offered to participate in non-formal education activities (clubs) or other school activities that ensure communication with peers in Lithuania.

A very important guarantee ensured by Lithuanian legislation is the possibility for Ukrainian children who attend Lithuanian schools to learn Ukrainian. If a pupil displaced from Ukraine chooses to study the Ukrainian language, he or she will be given at least 5 lessons (classes) per week for this subject (which can be combined with other subjects, such as Ukrainian history), where possible.

It is understood that the choice of individual educational instruments in practice is determined by both subjective (the choice of pupils and/or their parents) and objective (the resources and possibilities available to schools) factors. The statement of the Ministry of Education, Science and Sport of the Republic of Lithuania of 22 June 2022 “On the organisation of the general education of pupils who came to the Republic of Lithuania from Ukraine due to the military actions of the Russian Federation in Ukraine”¹⁸ indicates that Lithuanian schools use various methods of teaching Ukrainian children. The biggest challenges facing Lithuanian schools are the lack of specialists of the Ukrainian language. Some schools are addressing this problem by using shared online resources that provide learning materials in Ukrainian, as well as by combining the presentation of materials in several languages (e.g. Lithuanian, Russian, English, Ukrainian). In addition, some schools rely on use and employ teachers from Ukraine as educational assistance specialists.

4. Social policy measures for Ukrainians: supporting professional activity.

According to the provisions of the Law and the Government Resolution, a Ukrainian who is eligible to temporary protection has the right to work in Lithuania both before and after the decision to grant temporary protection and is exempted from the obligation to obtain a work permit. Such a person also has the right to engage in self-employed activities in accordance with Lithuanian legislation. Thus, a Lithuanian employer wishing to employ a displaced Ukrainian does not need to carry out any additional procedures, for example, to apply to the relevant state authorities (the Employment Service of Lithuania) for a work permit. Similarly, both employed and self-employed persons do not need to undergo an assessment of their conformity for the needs of the Lithuanian labour market.

¹⁸ <https://smsm.lrv.lt/uploads/smsm/documents/files/aalaikini/> (accessed 17 April 2023).

The only additional procedure that a Lithuanian employer is obliged to carry out when employing a Ukrainian is the submission of a special notification on the foreigner working in Lithuania (LDU) to the Lithuanian national social insurance authority – the Social Insurance Fund Board.¹⁹ This procedure, however, is not limited to the employment of Ukrainians only. This is a common national procedure that requires employers to provide a notification and related information about the employee being employed or posted, regardless of the nationality of the posted or employed employee. This obligation applies both to the employment of persons from third countries and to nationals of EU Member States. A notification is also required in cases where a foreigner is employed in Lithuania (by a company registered in Lithuania) but works abroad remotely on the instruction of the employer.

The same Lithuanian labour law requirements apply to the conclusion and performance of employment contracts, however, there are special provisions for foreigners (again, without distinguishing Ukrainians). According to the Labour Code of the Republic of Lithuania,²⁰ the employer must conclude a written employment contract with the person hired. The contract shall be drawn up in two counterparts. If the employee is a foreigner (who does not know the Lithuanian language), the employment contract must be made in at least two languages – Lithuanian (mandatory language) and another language that the employee understands. All information about the employee's working conditions, the procedure of work at the workplace and occupational health and safety requirements must also be given in two languages. The model form of the employment contract in Lithuanian has been approved by order of the Minister of Social Security and Labour, and the Ukrainian version of this form is available in public on the website of the State Labour Inspectorate of Lithuania.²¹

After signing an employment contract with a Ukrainian, all employment and social security guarantees and obligations come into force. Such a person is covered by all types of social insurance without exception: pension, sickness, maternity, occupational accidents and diseases, unemployment and health insurance. Accordingly, he or she can get social insurance benefits under the general procedure laid down by legal acts. As already mentioned, the bilateral agreement on social security has been concluded between Lithuania and Ukraine, which ensures the conditions for allocating and paying social benefits in accordance with the principles of coordination.

The general provisions on the performance of the employment contract apply to the person employed. In accordance with the provisions of the Labour Code on the posting of foreign nationals from/to Lithuanian companies, they may also be posted and received as posted workers.

Ukrainian citizens may also carry out self-employed commercial, industrial, creative or professional activities in Lithuania. A choice is possible from two forms of self-employed

¹⁹ Order No. V-401 “On the Provision of Information on Foreigners Employed in Lithuania” (*sąkymas Nr. V-401*D I Informacijos apie L ietuvje dirban ius užsienie ius patik imo*) of 27 September 2019, Register of Legal Acts, 30/09.2019, No. 15469.

²⁰ *Lietuvos Respublikos darbo kodeksas*; Register of Legal Acts, 19/09/2016, No. 23709.

²¹ https://www.vdi.lt/Forms/Tekstas1.aspx?Tekstai_ID=3601 (accessed 17 April 2023).

activities: work under self-employment certificate or under business certificate. The two types of self-employment differ in the nature of the activities that can be carried out and in the tax burden. Foreign nationals are subject to the same requirements as Lithuanian nationals – they must register their activities with the State Tax Inspectorate of Lithuania, declare their income, pay taxes (e.g. personal income tax and social security contributions) and comply with other legal requirements for self-employment. It should be noted that the State Tax Inspectorate of Lithuania provides all the essential information about the registration of activity and its requirements in Ukrainian as well, and registration is possible not only electronically (in Lithuanian) but also by telephone or by visiting the customer servicing places where services are available in English, Russian, and, if possible, in Ukrainian.

According to the data of the Employment Service of Lithuania²² (data of 3 April 2023), 24,045 Ukrainians have been employed in Lithuania since the beginning of the war in Ukraine. This represents about half of all Ukrainians of working age who have arrived in Lithuania. Half of the employed persons were employed through the Employment Service of Lithuania, the other half found employment on their own, without intermediation of public authorities.

The aggregate statistics for 2022²³ show that Ukrainians in employment are spread across the whole territory of Lithuania, although the largest number of Ukrainians are in employment in the three largest cities of the country: Vilnius, Kaunas, Klaipėda. The largest number of Ukrainians worked in manufacturing, construction, transport and warehousing, accommodation and food services, wholesale and retail trade. About 24% of Ukrainians worked in low-skilled and unskilled jobs. Most of them worked as office and hotel cleaners, kitchen assistants and packers, agricultural and forestry workers, food preparation and auxiliary workers. The majority of Ukrainians – 68% – worked in medium-skilled jobs. They worked as customer service specialists, salespeople, construction workers, metalworkers, electromechanical and electronic equipment mechanics, stationary equipment and machinery operators, drivers. 8% of Ukrainians worked in highly skilled jobs. They worked in business and administration (logistics and sales managers), health professionals: doctors, nurses, veterinarians, as well as in teaching, IT, physical engineering, law, social and cultural fields.

The experience of specialists of the Employment Service of Lithuania²⁴ shows that the most frequent problems in the employment process of Ukrainians are caused by the lack of knowledge of the Lithuanian language. Non-recognition of qualifications (or the lengthy process) is also often an obstacle to finding a skilled job. Other reasons that make it

²² <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-integracija/lietuva-ukrainai/ukrainieciai-lietuvoje-statistika?lang=lt> (accessed 17 April 2023).

²³ Ministry of Social Security and Labour, “Ukrainian employees in Lithuania pay EUR 40 million in taxes in 2022”, 25 January 2023, <https://socmin.lrv.lt/lt/naujienos/lietuvoje-dirbantys-ukrainieciai-pernai-sumokejo-40-mln-euru-mokesciu?lang=lt> (accessed 17 April 2023).

²⁴ Piečytė M., *Ukrainians working in Lithuania: what sectors they work in most often and what salaries they receive*, publication of the daily Lrytas.lt, 8 November 2022, <https://www.lrytas.lt/verslas/rinkos-pulsas/2022/11/08/news/ivertino-lietuvoje-dirbancius-ukrainiecius-kokiuose-sektoriuose-dazniausiai-dirba-ir-kokius-gauna-atlyginimus-25088215> (accessed 17 April 2023).

difficult to find a job include: unsatisfactory working conditions and pay, and too long travel time to/from the workplace. Given that the majority of arrivals are women with minor children, lack of childcare facilities or nursing and care for elderly family members are also identified as difficulties. Some of these problems (e.g. lack of childcare services, nursing for family members) are not related only to the situation of Ukrainians. These problems are addressed on a country-wide basis in Lithuania and require time and relevant resources.

One of the above-referred obstacles can be related not only the lack of knowledge of the Lithuanian language by displaced persons, but also to certain requirements imposed by the state. According to the Law on the State Language of the Republic of Lithuania,²⁵ every resident has the right to communicate, receive services and information in Lithuanian. Accordingly, all foreigners coming to Lithuania to work must pass a Lithuanian language proficiency exam, depending on the position they are employed in. The Resolution of the Government “**On the Approval of the Categories of Proficiency in the State Language and the Description of the Procedure for their Application**”²⁶ states that:

(a) A2 level Lithuanian language proficiency is required for foreigners working in the fields of service provision, manufacturing, trade, transport, and if they need to communicate with clients and fill in standard forms of documents in their work;

(b) B1 level Lithuanian language proficiency is required for foreigners working in the fields of education, culture, healthcare, social security, if they need to communicate with persons on a regular basis and fill in standard forms of document in their work;

(c) B2 level Lithuanian language proficiency is required for heads of state and municipal institutions, bodies, enterprises and organisations, civil servants and public officials, teachers, aviation, maritime and inland waterway transport specialists (air traffic controllers and flight crews, ship captains or at least one of the assistant captains of the ship, etc.).

In 2022, after the outbreak of the war in Ukraine, the Government adopted an amendment to the above-referred Resolution and stipulated that the Lithuanian language proficiency requirements for temporary employment will not apply to foreigners who have been granted temporary protection in Lithuania. It has also been established that this exemption will be applicable no longer than for 2 years (24 months) after temporary protection has been granted to a person. Thus, in principle, this exemption has been introduced for Ukrainian war migrants and they have been given 24 months to learn and pass the Lithuanian language exam. This means that, from March 2024, Ukrainians working in the labour market will either have to have passed the Lithuanian language exam at the appropriate level, or will have to switch to jobs where no knowledge of the official Lithuanian language is required (basically technical, ancillary jobs, where there are no professional competency requirements, no communication with clients, no handling of documents).

There are no official statistics in Lithuania on the number of Ukrainians learning the Lithuanian language. Free Lithuanian language courses for Ukrainians are offered by various

²⁵ *Lietuvos Respublikos valstybinės kalbos įstatymas*; Official Journal, 18/02/1995, No. 15-344.

²⁶ *Lietuvos Respublikos Vyriausybės nutarimas “Dėl valstybinės kalbos mokėjimo kategorijų nustatymo ir jų taikymo tvarkos aprašo patvirtinimo”*; Register of Legal Acts, 29/10/2021, No. 22674.

public organisations, universities, schools and other volunteers. The Government also provides project funding to municipalities that organise Lithuanian language courses for Ukrainians. According to the data of municipalities, around 2,500 Ukrainians were learning Lithuanian in 2022. Lithuanian language courses for employees and unemployed people are also organised by the Employment Service of Lithuania. However, despite all the initiatives, it is publicly stated that there is a lack of places in Lithuania where Ukrainians can learn Lithuanian for free. State authorities and, in particular, the State Language Inspectorate of Lithuania note that Ukrainians do not show sufficient interest and do not seek to acquire the necessary level of knowledge of Lithuanian. The reason for this phenomenon, according to the Inspectorate, is the belief of Ukrainians that the war will soon be over and they will leave Lithuania, while other Ukrainians hope that Russian or English will be enough for them and do not think about the requirement to speak Lithuanian as the state language, which will be applicable to them in less than a year.²⁷ The fact that the Lithuanian language is not cognate to Ukrainian or other Slavic languages (e.g. Russian or Polish) and, therefore, requires extra effort is undoubtedly another reason for the difficulties in learning and mastering Lithuanian to a sufficient level.

It should be noted that the employer has the obligation to ensure that foreign workers have the required level of knowledge of the Lithuanian language. The Code of Administrative Offences of the Republic of Lithuania²⁸ provides for fines for violations of the use of the state language. Article 499 of the Code provides that the employer and the employee may be subject to an administrative fine from sixty to one hundred and forty euros or a warning for failure to use the state language in the performance of job functions (in the functions where the knowledge of the Lithuanian language at the appropriate level is required). In the event of a repeated offence, the persons concerned shall be subject to a fine from one hundred and forty to three hundred euros.

The exceptions to the Lithuanian language requirement will remain in place until at least March 2024. It is likely that the Government or the Lithuanian Parliament will adopt additional legal decisions during this period to extend the exemption period or to apply other, temporary, exemptions.

Another problem encountered in practice concerns the recognition of the qualifications of those who have arrived. Qualifications of Ukrainian citizens acquired in Ukraine or in another country are recognised under the general procedure laid down by the Law on Recognition of Regulated Professional Qualifications of the Republic of Lithuania.²⁹ A person seeking recognition of a professional qualification must apply to the designated national competent authorities (according to the field of activity) in accordance with the procedure laid down by law. In accordance with the general provisions, the competent

²⁷ Interview with Audrius Valotka, Head of the State Language Inspectorate of Lithuania. From the LRT TV programme “Lietuvos diena”, broadcast on 5 April 2023, 15:20. <https://www.youtube.com/watch?v=iF-Q954zkck> (accessed 17 April 2023).

²⁸ *Lietuvos Respublikos administracinių nusižengimų kodeksas*; Register of Legal Acts, 10/07/2015, No. 11216

²⁹ *Lietuvos Respublikos reglamentuojamų profesinių kvalifikacijų pripažinimo įstatymas*; Official Journal, 24/04/2008, No. 47-1747.

authority shall take its decision and inform the applicant in writing no later than within 3 months from the date of receipt of the application and the documents required.

However, some competent authorities have decided to facilitate recognition procedures for persons coming from Ukraine, to the extent that they are able to determine their internal procedures.

For example, the Ministry of the Environment of the Republic of Lithuania³⁰ applies a more flexible procedure for the recognition of diplomas of architects and construction engineers from Ukraine and have reduced the formalities: only the minimum documents are required and the authenticity of such documents can be certified by the applicant himself/herself (without the need for notarisation or certification by the relevant authority). Translations into the Lithuanian language are required only of the essential documents (e.g. a diploma or other document certifying qualifications). The aim is to shorten the entire decision-making procedure to one month. The relevant faster and simpler procedures have also been introduced by other competent authorities.

5. Final considerations.

Lithuania is not only for the first time facing the need to apply the special instrument of the European Union – temporary protection; it had not yet, in general, faced the phenomenon of a mass influx of refugees or asylum seekers. Therefore, there is no doubt that this period of time will lead to considerable experience and will reveal the potential strengths and weaknesses in the legal regulation and/or practical implementation. This will, in its own turn, allow the legislator or public authorities to take decisions on the improvement of rules and/or procedures. Even the Government Resolution of 16 March 2022, which has activated temporary protection, has been amended and supplemented four times since its adoption with supplements of its text, revisions of certain provisions in the light of the needs that have emerged in the course of its application.

Most of the above-discussed regulations and procedures are measures of temporary nature and will cease to apply once the activation of the temporary protection has come to an end. However, some of the regulatory changes will also have a long-term permanent effect as the relevant provisions will remain in force indefinitely. For example, such changes have been made in the Law on Employment of the Republic of Lithuania, which includes a permanent provision that active labour market measures (including subsidies to employers) shall also apply to persons enjoying temporary protection (without reference to the Ukrainian situation). A positive and effective measure was the digitalisation of the issuance of residence permits to persons enjoying temporary protection, implemented from 2023. The digitalisation of the process enables an efficient and cost-effective confirmation of the

³⁰ Ministry of Environment of the Republic of Lithuania, *The procedure for recognising the professional qualifications of architects and civil engineers from Ukraine will be faster and simpler*, 22 March 2022. <https://am.lrv.lt/lt/naujienos/architektu-ir-statybos-inzineriu-is-ukrainos-profesines-kvalifikacijos-pripazinimo-procedura-bus-greitesne-ir-paprastesne> (accessed 17 April 2023).

status of a Ukrainian and allows the authorities providing services to Ukrainians to get information as quickly as possible.

It can also be noted that the main problems of integration of Ukrainians are not related to their large numbers. Although the number of new arrivals was expected to increase substantially during the winter of 2022-2023, after the mass arrival of Ukrainians to Lithuania in March-May 2022, their number of new arrivals has been steadily decreasing. More problems can be observed at the individual level, where they are pre-determined by the ability of individuals to find a skilled job matching their profession or by the language barrier, which also makes integration processes more difficult.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Moldova.

Natalia Sirețanu*

1. General framework. 2. Legal status of the beneficiaries of temporary protection from Ukraine. 3. Financial, healthcare and education support. 4. Granting the right to work. 5. Final considerations.

1. General framework.

On February 22, 2022, the whole world woke up to news that hadn't been heard since the Second World War. Since that day, Moldova has been facing a war just tens of km away, with hundreds of thousands of Ukrainian war migrants on the border and a series of unprecedented challenges for its own citizens. In order to manage the migration crisis and the imminent risks to the state security, on February 24, 2022, the Commission for Exceptional Situations declared a state of emergency regime. For a year and almost 2 months, about 800 000¹ people from Ukraine have passed the Moldovan-Ukrainian border, in order to stop here or to seek refuge in other European countries. Around 106 000 of them stopped in Moldova in different temporary placement centers, hotels and even private apartments offered by Moldovans from the first days of the war.² The government, the private sector, civil society, and even ordinary citizens, have made a significant effort to support the war migrants. Local businesses, while still not recovered from the COVID-19 crisis, are contributing significantly to migrants' support. The main telephone operators in Moldova provide free cards and offer reduced prices for phone calls to Ukraine. Hotels, tourist guesthouses, wineries and construction companies offer free shelter and catering services.

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¹ According to official UNCHR database on April 9, 2023, accessible at the following link: <https://data.unhcr.org/en/situations/ukraine>.

² On March 2, 2023, Moldovan Parliament has adopted the Declaration regarding the aggression of the Federation Russia against Ukraine, by which is declared that since February 2014, the Russian Federation, has been waging an illegal, unprovoked and unjustified war of aggression against Ukraine, amplified on February 24, 2022 by a large-scale invasion of the territory of Ukraine.

The number is even higher if we rely on the Moldovan Border Police Report³ as of February 23, which states that around 937 000 citizens of Ukraine entered the Republic of Moldova, which is the highest number of war migrants per 10 000 inhabitants.

Given its status as a candidate country for joining the European Union, Moldova is in the process of direct transposition of the European directives and implementation of social insurance standards. To this end, in order to directly transpose Council Directive 2001/55/EC of July 20, 2001,⁴ as well as Council Implementing Decision (EU) 2022/382 of March 4, 2022,⁵ the Moldovan Government has passed the Decision No. 21/2023 on granting temporary protection to displaced persons from Ukraine (*Hotărârea Guvernului Nr. 21/2023 privind acordarea protecției temporare persoanelor strămutate din Ucraina*; later on as a Government Decision). The Government Decision is based on the Article 21 from the Law No. 270/2008 regarding asylum in Moldova which establishes that temporary protection is granted by decision of the Government, at the proposal of the Ministry of Internal Affairs, based on a report presented by the General Inspectorate for Migration regarding the need to grant temporary protection. When granting, implementing and terminating temporary protection, the Government shall consult the United Nations High Commissioner for Refugees and other international organizations.

According to the preamble of the Government Decision, temporary protection is introduced on the territory of the Republic of Moldova for a period of 1 year, starting from March 1, 2023. Additionally, the Law No. 270/2008 regarding the asylum states that for the reasons for temporary protection persist, the duration of temporary protection can be extended in periods of 6 months, for a maximum of one year, but not exceeding 2 years, which equals the established cumulative maximum term by Article 6 para. (1)-(2) from the Directive 2001/55.

2. Legal status of the beneficiaries of temporary protection from Ukraine.

Pursuant to Article 1 from the Government Decision, temporary protection shall be granted to the following categories of persons:

- 1) Ukrainian citizens residing in Ukraine before February 24, 2022;
- 2) Ukrainian citizens who were on the territory of the Republic of Moldova before February 24, 2022;

³ Moldovan Border Policy Report as of February 23, 2023, accessible at the following link: <https://www.border.gov.md/en/node/8090>.

⁴ 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, L 212/12-23, later on as: Directive 2001/55.

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, L 71/1-6, later on as: Decision 2022/382.

- 3) stateless persons and nationals of third countries, other than Ukraine, who benefited from international protection or an equivalent national protection in Ukraine before February 24, 2022 and who cannot safely return to their country or region of origin;
- 4) family members of the persons mentioned in subsection 1), 2) and 3) which include: spouse; partner - a third-country national/stateless person who lives with a person who shall benefit from temporary protection and with whom he has at least one child; unmarried minor children, regardless of whether they are from marriage, out of wedlock or adopted according to the national law of the country of origin; dependent person, including for disability or medical reasons; dependent parents from the subject of temporary protection or his or her spouse; persons over whom guardianship is instituted.

Given that the Government Decision applies the Decision 2022/382, the list of beneficiaries is nearly identical to the Decision 2022/382 list, excepting the family members, namely: (i) only if a common child is born, the unmarried partner will benefit from temporary protection and (ii) the list of dependent persons is exhaustive, while the Decision 2022/382 provides only the condition of dependency from the applicant in order to benefit from temporary protection.

In order to confirm the status, the applicant shall present one of the following documents:

- 1) for Ukrainian citizens – the national identity document (ID card, internal or travel passport), including the expired ones, identity certificate of the citizen of Ukraine, issued by the Embassy of Ukraine in the Republic of Moldova;
- 2) for minor Ukrainian citizens – the birth certificate/certificate attesting the birth of the child, issued by the medical institution, or any other documents listed in point 1 above;
- 3) for stateless persons and nationals of third countries, other than Ukraine, who benefited from international protection or an equivalent national protection in Ukraine before February 24, 2022 - valid identity document or with the validity period expired after February 24, 2022, issued in accordance with Ukrainian law certifying status and legal residence in Ukraine on February 24, 2022;
- 4) for family members of the applicant – the marriage certificate, the birth certificate, the legal act concluded in authentic (notarized) form confirming the adoption or guardianship.

Temporary protection becomes effective from the date of the expressing the will to benefit from this type of protection, by registering the request for obtaining the identity document at the competent authority for foreigners of the Ministry of Internal Affairs - General Inspectorate for Migration. The request may be submitted online on a special platform: <https://protectietemporara.gov.md/> or physically at the Inspectorate.⁶

In order to submit the online request, the applicant shall have a Moldovan phone number, and photo of his or her documents. Also, the applicant shall confirm the domicile address/temporary residence in the Republic of Moldova, by presenting a declaration of acceptance into the housing space by the owner or co-owners of the house. After submission

⁶ The General Inspectorate for Migration elaborated a special guideline in Ukrainian regarding the online submission of the request.

of the request, the applicant will set an appointment to the General Inspectorate for Migration in order to receive the identity document of temporary protection.

The beneficiaries of temporary protection can lose this status if there are reasonable grounds to believe that he or she:

- 1) committed a crime against peace, a war crime or a crime against humanity;
- 2) committed a grave, particularly grave or exceptionally grave crime before entering the territory of the Republic of Moldova;
- 3) committed acts that are contrary to the principles of the United Nations Organization, stated in the Preamble and in art. 1 and 2 of the United Nations Charter;
- 4) presents a danger to public order or the security of the Republic of Moldova;
- 5) planned, facilitated or participated in the commission of acts of terrorism.

Obtaining the temporary protection status and issuing the identity document are free of charge, and the beneficiaries may travel outside the territory of the Republic of Moldova, including Ukraine, for a period not greater than 45 days cumulatively.

3. Financial, healthcare and education support.

The received identity document grants several rights to beneficiaries of temporary protection, as follows: right to stay in the country during the period of temporary protection granted (until 01.03.2024); right to work; access to primary and emergency medical assistance services; access to accommodation in temporary placement centers; access to general education for minors; access to social inclusion measures.

For the organizational, logistical, managerial and financial coordination of the crisis caused by the war, the Commission for Exceptional Situations decided to create the Single Crisis Management Center (CUGC). CUGC is a temporary coordination body and has the competence to carry out the necessary measures for the prompt and timely management of the flow of war migrants from Ukraine, starting with their reception, accommodation and ensuring their transit; accumulation and information management about humanitarian assistance received, generalization and dissemination of data and information for the general public, in order to maintain the appropriate level of economic and social stability of the country.

Beneficiaries can be placed in temporary placement centers for war migrants, where they are provided with accommodation and the minimum necessary for living. When there are doubts that the newly arrived person carries diseases socially conditioned with a major impact on public health, he or she will be accommodated, after consulting a specialist, for a period of 3-5 days, in a separate space in order to ensure the safety of the people staying in the Center and the Center's staff. During this period, the necessary evidence and investigations will be carried out. If no illnesses are detected, the person will be transferred to a common space. If diseases are detected, the competent healthcare institutions will be contacted in order to provide adequate medical assistance.

Since the beginning of the crisis until mid-2023, there have been opened 130 temporary placement centers that had a total accommodation capacity of over 10 000 people. Currently, 74 centers are active with a total capacity of 5500 seats.

During this period, more than 65 000 people were registered and 1 517 580 hot meals were provided. Beneficiaries were accommodated free of charge within centers, as well as ensured with the whole range of facilities including free access to Internet. Accommodation was carried out without discrimination based on citizenship, ethnic origin, religion, gender or age.

Regarding the financial allowance, the World Food Program (WFP) and the UN Refugee Agency have announced support programs to support war migrants from Ukraine staying on the territory of the Republic of Moldova. Thus, until April 2022, the registrations were open and based on them, WFP granted a one-time financial support for families hosting war migrants in the amount of 3 500 MDL, to help them secure food and other important needs.

At the same time, the UN Refugee Agency offers a cash assistance program for Ukrainian war migrants in Moldova, providing 2 200 MDL for each war migrant, every month of his or her stay in Moldova.⁷ So far, there have been already carried out 5 payment installments (with 220 689 unique payments), from which 66 925 people benefited, who are grouped in 28 493 families.

Also, until now, on the account opened by the Ministry of Finance for aid to war migrants from Ukraine, an amount of 162 560 151 MDL has been accumulated. This money has been directed toward ensuring the transport of war migrants and maintenance of temporarily placement centers. Their usage rate is 73%. Also, Moldova received 587 humanitarian lots intended for war migrants, totaling more than 323 000 000 MDL.

The Ministry of Education and Research has ordered that general education institutions in Moldova will offer opportunities for all children from war migrants families from Ukraine to participate in the educational process. Out of the total number of Ukrainian war migrants children on the territory of the Republic of Moldova - 41 655, only 5 909 are currently registered with the local educational institutions. In mid-August 2022, in primary education institutions and secondary (schools), 891 war migrants children were enrolled. The relatively small number of placements of war migrants children in the national education system is due to several factors, among which, the most important, is the fact that the Ukrainian authorities facilitate and encourage the continuation of the studies of war migrants children in Ukrainian educational institutions through online education.

As in the case of access to education, war migrants from Ukraine have full, free and non-discriminatory access to healthcare services. During the period of state emergency, from the war migrants from Ukraine were carried out no fewer of 19 790 requests for primary, emergency or hospital assistance. From the total number of requests, no fewer than 9 201 referred to children and 3 219 to pregnant women. From the total number of requests, 2 025 were completed with hospitalizations, from which 1 134 were children. Also, during the period state of emergency, 129 births were reported and, unfortunately, 17 deaths.

⁷ The application to the UN Refugee Agency can be submitted here: https://enketo.unhcr.org/single/tgfcKBZ0#_ga=2.67569938.2084298420.16487241521170044634.1648724152 (last accessed 16 April 2023).

For specific and expensive treatments that cannot be fully covered within the medical institutions of Moldova, authorities have developed partnerships with the European countries regarding the transfer of these patients. So far, only through the national authorities were carried out around 27 such medical transfers. Currently, there were registered 341 chemotherapy and/or radiotherapy referrals, as well as 840 dialysis sessions were performed.

4. Granting the right to work.

Pursuant to Article 23-24 from the Government Decision, the beneficiaries of temporary protection have the right to work on the territory of the Republic of Moldova, without obtaining the right of temporary residence for the purpose of work.

According to Decision No. 4 as of March 1, 2022 of the Commission for Exceptional Situations of the Republic of Moldova, beneficiaries of temporary protection can work in the Republic of Moldova without obtaining the right of temporary residence for the purpose of work.

During the state of emergency, they can approach territorial agencies for employment, which offer free employment support services, professional training courses, training for public works, information and professional advice and other specialized services, in identifying the employer who can offer the beneficiary of temporary protection a job. Employment will be based on the individual employment contract for the duration determined during the state of emergency.

The employment of temporary protection beneficiaries will be done on the basis of the individual employment contract, with the mandatory notification by the employer, within up to 5 days from the date of conclusion of the contract, of the National Employment Agency (ANOFM) about the employment of the temporary protection beneficiary.

Actually, ANOFM received notifications from economic agents about the employment of 1 042 beneficiaries of temporary protection, with 754 being women and 288 being men. Most of the beneficiaries are employed in the Chisinau municipality (789), UTA Gagauzia (49), and Balti (38).

The notification procedure is quite simple and can be performed online by the employer, based on the following set of documents:

- 1) copy of the identity document of the beneficiary of temporary protection;
- 2) copy of the employment contract, drawn up according to the applicable legislation for citizens of the Republic of Moldova;
- 3) the information regarding the personal numerical code (IDNP) assigned upon entering the territory of the Republic of Moldova.

Also, 552 women and 161 men were included in the work activities. At the same time, 370 of beneficiaries were registered at the call center of the ANOFM, to receive employment support. In total, 140 employers in Moldova have announced the availability of over 2 200 job vacancies for beneficiaries of temporary protection from Ukraine.

Pursuant to Article 25 from the Government Decision, there is a special rule regarding the medical staff employment. Thus, in case of employment in the healthcare system,

beneficiaries of temporary protection shall obtain the approval of the Ministry of Health for their employment during the period of temporary protection.

According to ANOFM data, permissive activity notices were issued for 51 war migrants as medical workers from Ukraine, and were employed – 38 persons (25 doctors, 13 nurses).

Beneficiaries of temporary protection were also employed as: programmers, engineers, tailors, salesmen, cooks, waiters, educators, managers in various fields and others. It should be noted that the percentage relatively small enrollment of beneficiaries of temporary protection from Ukraine in the field of work, is primarily due to the fact that the majority of mature beneficiaries of temporary protection on the territory of Moldova are women (who have children to care for) and elderly people.⁸

5. Final considerations.

The war in Ukraine represents the most severe security crisis since the World War II. The mass migration of Ukrainians is unprecedented, and although the Republic of Moldova responded quickly to assist, it is in a vulnerable position. Moldova has experienced an economic recession and an energy crisis, which limits their ability to provide aid. The Government of Moldova has shown leadership in managing the war migration crisis, mobilizing all available resources. Systems for managing the flow of war migrants, green corridors to facilitate the transit of the country's territory, land and air transport, etc., were put into operation. These measures come to reduce the pressure on the social system, but, faced with the current realities, the authorities have reached the limit of their own capacities. Therefore, Moldova requires significant assistance from foreign countries to continue offering support to Ukrainian war migrants. The international community must promptly and in solidarity respond to the Moldovan government's call for help. Any delays could weaken regional security and potentially lead to an unstable situation due to the worsening humanitarian, social, and economic conditions.

⁸ According to the data of the National Employment Agency: <https://www.anofm.md/ro/node/19920> (last accessed 16 April 2023).

Mass influx of people from Ukraine: social entitlements and access to the labour market: Netherlands. Gerrie Lodder*

1. General framework. 2. Scope of protection and procedure to acquire protection. 2.1. Scope. 2.2. Acquiring the status of displaced person. 2.3. Refusal of the status of displaced persons and legal remedies. 3. Social policy measures. 3.1. Housing. 3.2. Financial support. 3.3. Healthcare. 3.4. Education. 4. Access to the labour market. 5. Final remarks.

1. General framework.

The Temporary Protection Directive¹ is implemented in the Netherlands by Act in 2004.² At that moment, the Dutch Aliens Act (*Vreemdelingenwet*) had just been revised a few years before.³ A key aim of the review was to simplify the asylum system in order to avoid litigation for a stronger asylum status. To that end, the Dutch legislator had chosen for one type of asylum related residence permit for limited duration. This means that irrespective of the ground for protection, everyone with an asylum status is entitled to the same rights. Initially after three years and now after five years, the possibility exists to acquire a permanent asylum residence permit.

The Dutch legislator didn't want to change this system for the implementation of the Directive 2001/55.⁴ Consequently, they have chosen not to create a residence status for temporary protection, but for a decision moratorium. During this moratorium, no decision

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With sincere gratitude to Anke van der Hoeven for carefully reading the concept.

¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L. 212/12-23, later on as: Directive 2001/55.

² Wet van 16 december 2004 tot wijziging van de Vreemdelingenwet 2000 ter implementatie van richtlijn nr. 2001/55/EG van de Raad van 20 juli 2001, Stbl. 2004/691, (Act of 16 December 2004 amending the Aliens Act 2000 implementing Council Directive 2001/55/EC of 20 July 2001).

³ Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000), Stb. 2000, 495, 23 november 2000, (Act of 23 November 2000 on the general revision of the Aliens Act).

⁴ Kamerstukken II 2002-2003, 29031, nr. 3 (Memorie van Toelichting bij voorstel tot wijziging vreemdelingenwet 2000 ter implementatie van Richtlijn 2001/55/EG).

will be taken on the asylum application, but the displaced person has legal residence as an asylum seeker.

The decision moratorium is laid down in Article 43a of the Aliens Act 2000. This provision states that the decision on an asylum application of persons who enjoy temporary protection will be taken between the moment of the application and six months after the ending of the temporary protection. Temporary protection is defined in Article 1 Aliens Act 2000 as the lawful residence of an alien who will not be expelled based on the Directive 2001/55.⁵ Lawful residence is based on Article 8 under f or h Aliens Act 2000. This is a form of legal stay awaiting the decision or appeal on an asylum application.⁶ In the 2004 implementation of the Directive 2001/55, persons entitled to temporary protection were defined as asylum seekers. This means that they would be entitled to the same reception facilities as asylum seekers in general.⁷ If their asylum application would have been declined, but they were still within the scope of the Directive 2001/55, they could still rely on the facilities for asylum seekers.⁸ To a certain extent this point of view has been altered for the current reception of displaced persons from Ukraine. In discussing the applicable facilities, such as housing and access to work, some of the differences between displaced persons and **‘regular asylum’ seekers will be highlighted.**

The categories of persons who can derive rights based on temporary protection in general are defined in Article 3.1a of the Aliens Decree 2000. These categories are the groups as defined in a Council Decision about temporary protection, a definition of the eligible family members and the possibility to widen the group to other persons who need protection for the same reason. The Council Implementing Decision (EU) 2022/382 of 4 March 2022⁹ is implemented in a Ministerial Decree (*Voorschrift Vreemdelingen*). Protection in the Netherlands started at the moment the Decision 2022/382 was taken, on 4 March 2022. After the first year, protection is prolonged by another year until the 4 March 2024.¹⁰ Persons within the scope of the directive and who are registered in the municipality, will get the prolongation automatically.¹¹

On 14 April 2023, 91.930 displaced nationals from Ukraine were registered in the municipal registration system (Burgerregistratie Personen: BRP).¹² Until this date, 20.940

⁵ Art. 1 Aliens Act 2000.

⁶ Art. 8 (f) Aliens Act applies to persons waiting for a decision on their asylum application and Art. 8 (h) Aliens Act applies to persons waiting for the outcome of a legal remedy against the rejection of their application.

⁷ Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 van 26 januari 2005 (RVA), Stcrt. 3 februari 2005, nr. 24, 17 (Regulation on the provision of benefits for asylum seekers and other categories of foreign nationals 2005 of 26 January 2005).

⁸ Art. 3 (3) sub j RVA 2005 and art. 45 (6) and (7) Aliens Act 2000.

⁹ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

¹⁰ Brief van de Staatssecretaris van Justitie en Veiligheid, Tweede Kamer 2022-2023, 19637 & 36045, nr. 2994.

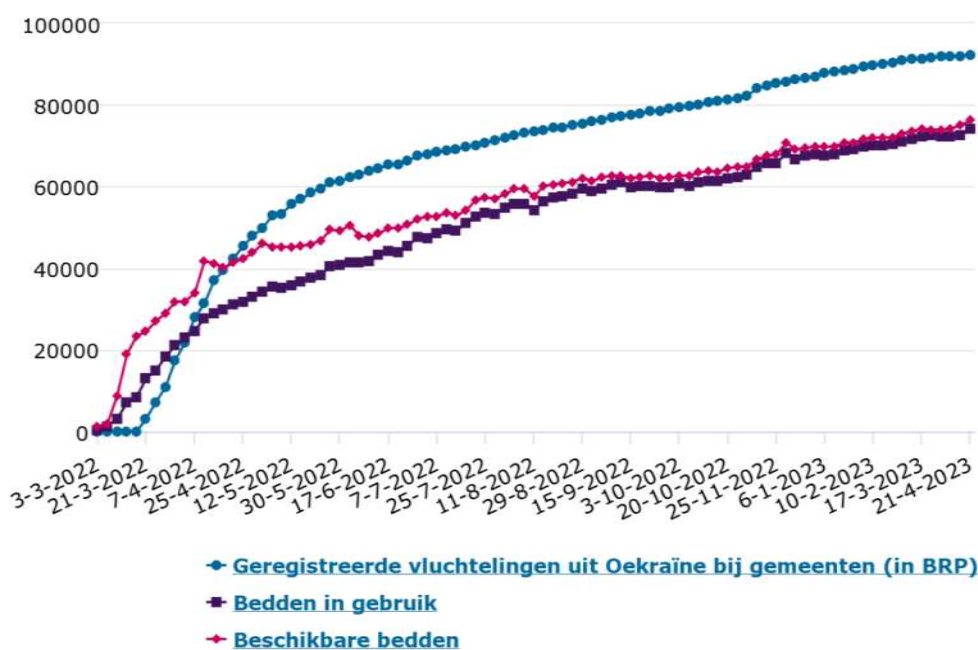
¹¹ Bewijs van verblijf voor Oekrainers automatisch verlengd, available at <https://ind.nl/nl/nieuws/bewijs-van-verblijf-voor-oekrainers-automatisch-verlengd#:~:text=De%20Europese%20Richtlijn%20Tijdelijke%20Bescherming,verblijfsvergunning%20of%20asielvergunning%20in%20Oekra%C3%AFne> .

¹² Staassecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 1.

nationals have unsubscribed from the registration system. It is not clear what the reason is why people unsubscribe. Some of them are returning to Ukraine, others might migrate to another EU member state or a country outside the EU. For nationals from Ukraine who voluntarily want to return to Ukraine, the Dutch Repatriation and Departure Service (DT&V) offers government support.¹³ Apart from Ukraine nationals, 6.320 displaced persons with another nationality who fled Ukraine are registered in the BRP and 1.260 unsubscribed.¹⁴ At the end of the first quarter of 2023, the influx was about 450 Ukraine nationals per week. Approximately 72.200 displaced persons are living in municipal reception facilities. This means that 97,3 percent of the available places in these facilities are occupied. In April 2023, approximately 220 displaced persons from Ukraine were staying in temporary crises reception facilities.¹⁵

The graph below shows developments in the number of displaced persons from Ukraine who are registered, the number of available places and the number of occupied places from the beginning of the invasion to 21 April 2023.

Figure 1. Numbers displaced persons from Ukraine in the Netherlands.



Source: *Rijksoverheid.nl*, 2 May 2023. *Cijfers opvang vluchtelingen uit Oekraïne in Nederland, Opvang vluchtelingen uit Oekraïne*.¹⁶

¹³ Ministry of Justice and Security – Repatriation and Departure Service, *Assistance for those returning to Ukraine / Допомога з поверненням в Україну*, available at: <https://english.dienstterugkeerenvertrek.nl/latest/news/2022/07/01/assistance-for-those-returning-to-ukraine> (accessed 5 May 2023).

¹⁴ Also for this group the reason of un subscription is unknown.

¹⁵ Staassecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 1. These are facilities, designed for a very short stay which are normally used for civilian shelter in cases of incidents, disasters or crises, such as sports halls.

¹⁶ See <https://www.rijksoverheid.nl/> (accessed 5 May 2023). These numbers only include displaced persons with Ukraine nationality. ‘Geregistreeerde vluchtelingen uit Oekraïne bij gemeente (in BRP)’ means: registered

2. Scope of protection and procedure to acquire protection.

2.1. Scope.

According to the Decision 2022/382, temporary protection applies to different groups. Firstly, to nationals from Ukraine who left Ukraine on or after 24 February 2022. Secondly, to other third country nationals (TCNs) and stateless person who were receiving a form of international protection in Ukraine, who were residing in Ukraine on 23 February 2022 and who left Ukraine on or after 24 February 2022. Furthermore, the Directive 2001/55 applies to the family members of these two groups of persons. The obligatory protection for other (non-Ukrainian) TCNs and stateless persons with legal residence in Ukraine prior to the Russian invasion is limited to those who are not able to return to their country of origin in durable and safe conditions.

In the Netherlands, the group of beneficiaries is extended to Ukrainian nationals who left Ukraine before the Russian invasion on 24 February 2022. Nationals from Ukraine who fled Ukraine after 26 November 2021 due to an increase in tensions or who were on the territory of the Union on or after 27 November 2021 (e.g. for holidays or work) come within the scope of the Directive 2001/55.¹⁷ The date of 26 November 2021 is chosen, because this is 90 days before the Russian invasion and Ukrainian nationals had already the possibility of visa free travelling in the EU during 90 days before the start of the war. Temporary protection in the Netherlands is further applicable to nationals from Ukraine who can prove that they were already staying in the Netherlands before 27 November 2021. Reasons for this stay can be a previously submitted asylum application, a regular residence permit or a residence permit that has been terminated. It is not a condition that this stay was legal.¹⁸ However, nationals from Ukraine who were staying before 27 November 2021 in another country in or outside the EU cannot rely on protection in the Netherlands based on the Directive 2001/55.¹⁹

Also the scope regarding TCNs other than Ukrainian nationals and stateless persons is wider than the scope of the Decision 2022/382. Firstly, persons with a permanent residence **right in Ukraine on 23 February 2022, who left Ukraine after 26 November 2021 and didn't** return since then to their home country, are entitled to protection in the Netherlands.²⁰ Persons who have an asylum based residence right, even if this is temporary, in Ukraine on the 23 of February 2002 are considered to have a permanent residence right.²¹ Furthermore, TCNs with a temporary residence permit were also eligible for protection. However, this policy has changed as from 19 July 2022 and is now rather complex.²² Third-country nationals with a temporary residence permit in Ukraine who were registered in the BRP on 19 July

displaced persons from Ukraine in the municipal registration system; 'Bedden in gebruik' means: Occupied places; 'beschikbare bedden' means: available places.

¹⁷ Art. 3.9a (1.a) Voorschrift Vreemdelingen (Regulations on foreign nationals); Werkinstructie SUA 2022/17, 1, 2.1, (Work Instruction SUA).

¹⁸ Art. 3.9a (1.b) Voorschrift Vreemdelingen; Werkinstructie SUA 2022/17, 1, 2.1.

¹⁹ Werkinstructie SUA 2022/17, 1, 2.1.

²⁰ Art. 3.9a (1.c) Voorschrift Vreemdelingen.

²¹ Werkinstructie SUA 2022/17, 1, 2.2.

²² Kamerstukken II 2021-2022, 19637/ 36045, nr. 2945, 2; Ministerie van Justitie en Veiligheid, Aanpassing instructieadvies voor derdelanders uit Oekraïne, Circulaire 17 februari 2023, 1.

2022 continue to have protection based on the Directive 2001/55 until 4 September 2023.²³ This group consists of approximately 4.660 persons.²⁴ The municipality can register TCNs retroactively. This regards TCNs who made an appointment with the municipality before 19 July 2022, but who have not been registered in the BRP due to causes they cannot be held liable for. These TCNs also fall under the protection of the Directive 2001/55 until 4 September 2023.²⁵ TCNs who were not registered before 19 July 2022, nor made an appointment with municipality before that time, are excluded from the protection.

Persons who fall outside the scope of the protection are not entitled to reception and other facilities in the Netherlands based on the Directive 2001/55. Ukrainian nationals who are not within the scope, can apply for asylum in the regular procedure at the application centre in Ter Apel. They are entitled to the facilities for regular asylum seekers. However, a decision moratorium is still applicable to their asylum requests. TCNs and stateless persons who fall outside the scope can return with the assistance of a return support program, return themselves or apply for asylum.²⁶ There is no decision moratorium for this group of TCNs and stateless persons.

Recently, the State Secretary of Justice and Safety has specified the criteria further.²⁷ The first situation applies to Ukrainian nationals who returned to Ukraine for a short period, after they were denied temporary protection in the Netherlands. If they come back to the Netherlands and apply again for protection, this application will be rejected. The same applies for other TCNs who got a residence permit in Ukraine after 23 February 2022. Finally, EU citizens will not get protection under the temporary protection scheme.

2.2. Acquiring the status of displaced person.

The process to apply for the confirmation of the status of temporary protection is different from the regular asylum application procedure. The first step is that the person is registered in the municipal registration system. A national from Ukraine can be registered if he or she has sufficient (official) documentation of identity and nationality and a residency in a municipal reception facility or a private reception facility. Minors who are accompanied by their parents and who don't have official identity documents can be registered based on a sworn statement by their parents. Nationals of Ukraine who don't have sufficient documentation will be directed to the embassy of Ukraine. The consular department can issue a certificate which can be used to register the person concerned after they verified the

²³ Ministerie van Justitie en Veiligheid, Circulaire 17 februari 2023, 1. This date was first 4 March 2023 (see for example Werkinstructie SUA 2022/17, point 2.2), but has been delayed.

²⁴ Kamerstukken II 2022-2023, 19637 nr. 3070, 2; Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 3.

²⁵ Ministerie van Justitie en Veiligheid, Derdelanderbeleid Richtlijn tijdelijke bescherming, Bijlage bij Circulaire 17 februari 2023.

²⁶ Ministerie van Justitie en Veiligheid, Aanpassing instructieadvies voor derdelanders uit Oekraïne, Circulaire 17 februari 2023, 2-3.

²⁷ Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 17 februari 2023, kenmerk 4497654, 4.

identity and nationality of the person. Also other TCNs who can prove their identity, nationality and legal residence in Ukraine, can be registered. TCNs who don't have (sufficient) official documentation are referred to an additional identification process in respect of their identity, nationality and legal residence in Ukraine. TCNs who cannot make their identity, nationality and/ or legal residence in Ukraine plausible, have the option to apply for asylum in the regular asylum procedure. They can also get assistance from the Dutch Repatriation and Departure Service or the International Organisation for Migration to return to their country of origin or another country. The registration in the BRP is considered as the start date of a (albeit incomplete) asylum application. This application will be notified to the immigration and naturalisation services (hereafter immigration services or IND).²⁸

The second step is an appointment with the immigration services. A person who is registered in the BRP is invited by the IND to formalise his or her asylum application. During a very short appointment the applicant is asked to sign the asylum application and a background statement regarding public order and safety. After the immigration services have assessed whether the person formally meets the criteria of the temporary protection, this person gets a certificate of temporary protected status. This can be either a sticker in his or her passport or a separate document. This document or sticker is proof of lawful residence.

The issuance of this certificate of temporary protection temporarily stops the other steps of the regular asylum procedure, such as the taking of hearings.

2.3. Refusal of the status of displaced persons and legal remedies.

The legal remedies against the refusal to grant temporary protection are not completely clear. The refusal to grant temporary protection is not a rejection of the asylum application, but only a refusal of the temporary protection confirmation. However, a displaced person has formally not applied for temporary protection, but for asylum. This legal construction confuses the applicable legal remedies. In practice, the regular administrative appeal possibilities are considered to apply.²⁹ However, whether an appeal against the decision of the Immigration Services about the temporary protection has suspensive effects, is not regulated in the Aliens Act. In the case law so far, it is assumed this decision has no suspensive effect. All the available relevant court cases have been about maintaining the right to shelter facilities pending the decision on appeal. All courts ruled that the decision on the temporary protection by the immigration services did not comply with due diligence and justification requirements. Most courts decided in favour of the applicant. They argued that the IND is not allowed to solely consider whether someone fell within the scope of application. According to these rulings, the IND should also consider other interests of the persons concerned such as the loss of rights if the temporary protection status is denied.³⁰ Only in

²⁸ Werkinstructie SUA 2022/17, 3-4.

²⁹ See Art. 72 (1) Vreemdelingenwet 2000.

³⁰ See for example: Rechtbank (Rb) Den Haag zittingsplaats (zp) Roermond 31-03-2023, ECLI:NL:RBDHA:2023:4678; Rb Den Haag 's-Hertogenbosch 02-02-2023, ECLI:NL:RBDHA:2023:1008.

one case the court decided the appeal would not make a reasonable chance to succeed. In this case the IND decision also was not properly motivated. However, in this specific case the person concerned left Ukraine already in 2013 and never returned.³¹

3. Social policy measures for displaced persons from Ukraine.

3.1. Housing.

The Central Agency for the Reception of Asylum Seekers (COA) is responsible for the reception of asylum seekers in the Netherlands.³² However, due to serious problems with sufficient reception places for asylum seekers,³³ the government looked for an alternative system for the housing of displaced persons from Ukraine. Within two weeks after the Russian invasion the government announced the option to use state emergency law in case of exceptional circumstances due to a very large influx of displaced persons from Ukraine.³⁴ The use of the Act on Population Relocation would make it possible to assign the task of providing reception facilities for displaced persons to the mayor. A few weeks later the decision to actually activate the emergency law was taken.³⁵ From the first of April 2022 onwards mayors were given the formal task of providing for the reception of displaced persons from Ukraine. The coordination was designed to the 25 safety regions in the Netherlands. The number of reception places per safety region is based on the number of inhabitants, the land area and the required number of reception places.³⁶

The government is preparing a proposal for a temporary law that assigns the obligation to provide shelter for displaced persons from Ukraine to the mayor and aldermen.³⁷ According to the proposal, the obligation will end a year after the termination of the temporary protection. Only after this year the responsibility will shift back to the COA.³⁸

Apart from housing in municipal reception facilities, displaced persons from Ukraine are also living in private homes. A new organization has been created to support safe temporary

³¹ Rb Den Haag zp Roermond 03-04-2023, ECLI:NL:RBDHA:2023:4586.

³² Art. 3, Wet Centraal Orgaan Opvang Asielzoekers (Act on the Central Agency for the Reception of Asylum Seekers).

³³ See for example: Middel, M., *Crises Ter Apel is nationaal vraagstuk*, in *NRC*, 21 oktober 2021; Kuiper, M., Van der Poel, R., *Deze crises zag het COA al jaren aankomen*, in *NRC*, 28 juli 2022; Rijksoverheid, *Aanpak opvangcrisis*, available at <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/aanpak-crisis-opvang-asielzoekers> (accessed 18 April 2023). The Court of Appeal ruled in December 2022 that the reception of asylum seekers does not meet the minimum standards of the Reception Facility Directive (Directive 2013/33/EU) on a number of points. See *Gerechtshof Den Haag* 20 december 2022, ECLI:NL:GHDHA:2022:2429.

³⁴ Based on Art. 2c and 4 of the Wet verplaatsing bevolking (Population Displacement Act); Brief staatssecretaris Justitie 8 maart 2022, Kamerstukken II 2021-2022, 19 637, nr. 2829.

³⁵ Brief staatssecretaris Justitie 30 maart 2022 Kamerstukken II 2021-2022, 19 637, nr. 2907, p. 2.

³⁶ Verdeelsleutel noodopvang ontheemden uit Oekraïne. Bijlage bij Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 16 december 2022, kenmerk 474546.

³⁷ Rijksoverheid, *Tijdelijke wet opvang ontheemden Oekraïne in consultatie*, available at <https://www.rijksoverheid.nl/actueel/nieuws/2022/12/12/tijdelijke-wet-opvang-ontheemden-oekraïne-in-consultatie> (accessed 5 May 2023).

³⁸ See: Art. 7C, Wetvoorstel Tijdelijke wet opvang ontheemden Oekraïne (Legislative proposal for the Temporary Act for the Reception of Displaced Persons in Ukraine).

stay in private households: RefugeeHomeNL.³⁹ This organization is a collaboration of four NGOs; the Red Cross, The Salvation Army, Refugee Aid and Takecarebnb. The initiative is supported by the Ministry of Justice. The right to reception and other facilities for displaced persons is laid down in the Regulation Reception facilities.⁴⁰ The facilities described below are also applicable to displaced persons living in private households (either with or without the support of RefugeeHomeNL).

3.2. Financial support.

The main criterium for the initial rules for financial support was that the rules had to be easy to implement.⁴¹ There were two different regimes. One for people who are residing in municipal reception facilities and the other for persons who are living in private facilities. Financial support is divided in support for food, clothing and other personal expenses, and an extra housing component for people living in private households. The displaced persons are free to decide whether or not they want to use this money to pay a contribution to the family they are living with. The amounts per month until 1 February 2023 are summarized in Table 1.

Table 1. Financial support per month until 1 February 2023.

	Municipality reception	Private reception	
Food	€205	€205	
Clothing	€55	€55	
Extra		Adult: €215	18-: €55

Source: *Authors own compilation, based on Regeling opvang ontheemden Oekraïne, Stcr. 1 april 2022, nr. 9469.*

These amounts are based on the **financial support for ‘regular’ asylum seekers.**⁴² If meals are provided in the municipal reception centre, the residents of this centre will not receive financial support for food, or less financial support depending on the number of meals provided. The regulation offers the possibility to end the financial support for both people residing in the municipal reception facilities and in private reception facilities if the displaced person receives income from paid work.⁴³

The purpose of an ‘easy to implement regulation’ is reflected in several choices made in the original regulation. For example, rounded amounts have been chosen (which makes it easier to pay the allowance in cash), a fixed amount per person (without differentiation between the size of a household or the age of the displaced person (except for the extra allowance) and one reference date each month to establish a right to financial support.

³⁹ See: RefugeeHomeNL, *Home*, available at <https://www.rhnl.nl/en/> (accessed 5 May 2023).

⁴⁰ Regeling opvang ontheemden Oekraïne (Regulation for the reception of displaced persons in Ukraine), Stcr. 1 april 2022, nr. 9469.

⁴¹ Regeling opvang ontheemden Oekraïne, Stcr. 1 april 2022, nr. 9469. See also: Brief staatssecretaris Justitie 30 maart 2022, Kamerstukken II 2021–2022, 19 637, nr. 2907.

⁴² See: Art. 14 Regeling verstrekkingen asielzoekers.

⁴³ Art. 7 (2) and 13 (2) Regeling opvang ontheemden.

Furthermore, income from paid labour only influenced the financial support for the person working and not for his or her family members.

Since 1 February 2023 the rules regarding financial support have been altered.⁴⁴ There were some concerns in relation to the more favourable treatment of displaced persons over asylum seekers and people living from social benefits.⁴⁵ For asylum seekers and people living from social benefits, the financial support depends on the size of the household and age. Another disparity is that if one person of a household finds a (paid) job this has consequences for the income of the other family members. In the revised regulation a differentiation in the received financial support is introduced, based on size of the household and age of the persons concerned. Furthermore, benefits may be withdrawn in whole or in part if the displaced person or an adult member of his family has income from employment or receives a wage loss allowance.⁴⁶

These changes are meant to create a more equal system. The downside is that it is more difficult to carry out.⁴⁷ The new monthly amounts are shown in Table 2.⁴⁸

Table 2. *Financial support per month since 1 February 2023.*

	Household with 1 or 2 persons	Household with 3 persons	Household with 4 or more persons
Food	€215,06 per adult or unaccompanied minor	€171,99 per adult	€50,45 per adult
	€178,36 per (other) minor	€142,57 per minor	€24,97 per minor
Clothing	€56,12 per person	€56,12 per person	€56,12 per person
Extra for private households	€93 per person	€93 per person	€93 per person

Source: *Authors own compilation, based on Regeling opvang ontheemden (new).*

3.3. Healthcare.

On 1 July 2022, a Medical Care Scheme for Displaced Persons from Ukraine (RMO) entered into force for the reimbursement of care for Ukrainians.⁴⁹ This scheme has the same

⁴⁴ Regeling van de Minister van Justitie en Veiligheid en de Staatssecretaris van Justitie en Veiligheid van 24 november 2022, nummer 4295670, tot wijziging van de Regeling opvang ontheemden Oekraïne in verband met de opvang van begeleide alleenstaande minderjarige ontheemden, Stcr. 2023, 31970.

⁴⁵ Ministerie van Justitie en Veiligheid 24 oktober 2022, Nota Aangepaste Regeling opvang ontheemden Oekraïne (RooO) n.a.v. uitvoeringstoets, kenmerk 4281949; Brief staatssecretaris Justitie 4 november 2022, Kamerstukken II 2022–2023, 19 637, nr. 3004.

⁴⁶ Art. 7 (2) and 13 (10) Regeling opvang ontheemden (new).

⁴⁷ Van Beek L., Bückmann E., “*Uitvoeringstoets genijzigde Regeling Opvang Ontheemden Oekraïne Eindrapport*”, in *VNG Realisatie*, Den Haag, 7 november 2022, 3.

⁴⁸ Art. 10 and 12 Regeling opvang ontheemden (new).

⁴⁹ Rijksoverheid, Zorgverzekering ontheemden Oekraïne verandert, available at: <https://www.rijksoverheid.nl/actueel/nieuws/2022/06/29/zorgverzekering-ontheemden-oekraïne-verandert> (accessed 5 May 2023).

care package as the existing package for asylum seekers. In addition to the care from the basic package, additional care such as dental care regarding pain complaints, abortion care and contraception are reimbursed.

How the healthcare is organised, differs per reception facility and municipality. According to a report of the Inspection of Healthcare and Youth, the healthcare in the reception facilities is well arranged.⁵⁰ Healthcare in temporary crises reception facilities for asylum seekers functions less well.⁵¹ However (as said), in April 2023 only 220 displaced persons from Ukraine were staying in temporary crises reception facilities.⁵²

3.4. Education.

For primary and secondary education for displaced persons, the existing facilities for newcomers education are used. The group of newcomers consists of asylum seekers, asylum status holders and children from other migrants. This group has grown last year by the influx of displaced children from Ukraine. Newcomers primary education can be facilitated in the regular school buildings, but also in special school facilities. For secondary education also some form of intermediate international classes exists. Because of the large influx of displaced persons and the pressure this has created on the existing facilities, temporary legislation has entered into force. This legislation enables it to adjust the obligatory curriculum and provide for education at distance if it is not feasible to give all the education physically.⁵³ Also, qualified teachers from Ukraine are allowed to teach in primary (temporarily) education facilities.⁵⁴ In April 2023, over 20.000 school-age pupils were enrolled in primary and secondary education.⁵⁵ However, especially in the secondary education for newcomers there are significant shortages and consequently waiting lists for the international intermediate classes.⁵⁶

For educational activities for adults different (financial) possibilities exist. Displaced persons from Ukraine can take part in activities for adult professional education. Municipalities can also use the budget for the reception of displaced persons to organise educational activities. According to a research performed by Berenschot and commissioned

⁵⁰ Inspectie Gezondheidszorg en Jeugd, Ministerie van Volksgezondheid, Welzijn en Sport, *Inspectie: Gezondheidszorg in opvang voor Oekraïners goed geregeld*, Nieuwsbericht 10 mei 2022; See also: Inspectie Gezondheidszorg en Jeugd, Ministerie van Volksgezondheid, Welzijn en Sport, *Gezondheidszorg voor Oekraïense ontheemden in opvanglocaties. Toegang tot zorg op bezochte locaties geregeld*, IGJ - mei 2022.

⁵¹ Houtekamer C., Brouwers L., “*Het verdienmodel van detacheerder Arts & Specialist: minimale zorg voor asielzoekers tegen maximale winst*”, in NRC, 31 March 2023.

⁵² Staassecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176.

⁵³ Wet en Regeling tijdelijke onderwijsvoorziening bij massale toestroom ontheemden (Act and Regulation on Temporary Education Provision in the event of a mass influx of displaced persons).

⁵⁴ Art. 2.3 Regeling tijdelijke onderwijsvoorziening bij massale toestroom ontheemden.

⁵⁵ Staassecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 4.

⁵⁶ See: LOWAN, *Wachlijsten en leerlingenstop ISK's*, available at <https://www.lowan.nl/vo/nieuws/wachlijsten-en-leerlingenstop-isk-vo/>; NOS, *Honderden asielkinderen op wachtlijst voor onderwijs, Den Haag wil hulp van kabinet*, in NOS Nieuws, 9 November 2023, available at <https://nos.nl/artikel/2451782-honderden-asielkinderen-op-wachtlijst-voor-onderwijs-den-haag-wil-hulp-van-kabinet> (accessed 5 May 2023).

by the government 44 out of 50 (86%) municipalities which took part in the survey, provide some form of Dutch language education to displaced persons from Ukraine.⁵⁷ Most language education is organized specifically for Ukrainian displaced persons. Besides that, a number of municipalities organise adult education or language education for newcomers, where Ukrainian displaced persons can make use.

As the government recognises the importance of Dutch language education, especially to improve the access to the Dutch labour market, it has promised another 15 million Euro for educational activities for displaced persons.⁵⁸

4. Access to the labour market.

For displaced persons, access to the labour market is more extensive than for asylum seekers. Article 12 of the Directive 2001/55 obliges member states to give recipients of temporary protection access to the labour market for both employed and self-employed activities. Member states are allowed to prioritise EU citizens and TCNs with legal residence. In the Netherlands, all persons within the scope of the Directive 2001/55 have free access to employed activities. A work permit is not a condition for this type of work.⁵⁹ This means that employers are not obliged to look for personnel within the prioritized categories of persons. The Dutch government motivated this choice by referring to the standard policy in other EU member states.⁶⁰ However, if an employer hires a displaced person, they have the duty to report this at the organisation who is responsible for the implementation of employee insurances [Uitvoeringsinstituut werknemersverzekeringen (UWV)] two days in advance. The government has introduced this obligation to identify and reduce the risk of abuse of labour migrants. Examples of abuse at the workplace are underpayment and poor working circumstances.

According to the government, in case of self-employed activities it is more complex to control and enforce labour standards. For this reason a work permit is necessary for this type of work.⁶¹ This also means that all the conditions of the Foreign Nationals Employment Act have to be fulfilled, including prove of the absence of prioritised workers. The government

⁵⁷ Lankreijer B., Sapulete S., Van Eldik I., Jordaan M., *Eerste Monitor Taalonderwijs volwassen Oekraïense ontbeelden*, Berenschot, Utrecht, 17 januari 2023, 9.

⁵⁸ Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 17 februari 2023, kenmerk 4497654, 5.

⁵⁹ Besluit van 29 maart 2022 tot wijziging van het Besluit uitvoering Wet arbeid vreemdelingen 2022 in verband met een tijdelijke vrijstelling van de tewerkstellingsvergunningsplicht (...), Stb. 2022, 130 (Decree of 29 March 2022 amending the Decree on the Implementation of the Foreign Nationals Employment Act 2022 in connection with a temporary exemption from the work permit requirement) & Regeling van de Minister van Sociale Zaken en Werkgelegenheid van 8 april 2022, 2022-0000093087, tot wijziging van de Regeling uitvoering Wet arbeid vreemdelingen 2022 (...) Str. 2022, 10447, (Regulation of the Minister of Social Affairs and Employment of 8 April 2022, 2022-0000093087, amending the Regulation on the Implementation of the Foreign Nationals Employment Act 2022). The first Act in this footnote applies to nationals from Ukraine and the second act to stateless persons and TCNs with other than Ukraine nationality who fall within the scope of temporary protection in the Netherlands.

⁶⁰ Brief staatssecretaris Justitie 30 maart 2022, Kamerstukken II 2021–2022, 19 637, 2907, 19.

⁶¹ *Ibidem*.

has promised to evaluate the policy in respect of access to self-employed activities in the first half of 2023.⁶²

The labour participation of displaced persons from Ukraine has rapidly grown. Displaced persons are supported mostly to find a job in local cooperation initiatives organised by employers, civil society organizations, (local) governments and volunteers.⁶³ On 1 November 2022, nearly half of the displaced persons (46%) between the ages of 15 and 65 found work in the Netherlands.⁶⁴ This percentage was 35 % on 1 July 2022.⁶⁵ Since April 2022 the UWV received in total 68.678 notifications of employers who hired a displaced person.⁶⁶

There have been signals of labour exploitation experienced by displaced persons from Ukraine. FairWork is a non-governmental organisation which fights against labour exploitation in the Netherlands and stands up for the interests of the victims. Since the Russian invasion in 2022, FairWork has registered 213 Ukrainian refugee clients. In 74 cases there were signs of labour exploitation.⁶⁷ Most of the complaints FairWork received were about non-payment of salary. According to FairWork, this happened 82 times in 2022, often in combination with other employment law complaints. Also other examples of bad practices were found. In one case an Ukrainian employee had to pay an employer to acquire a civil service number. This number is provided free of charge by the authorities after registration in the municipal registration system. In another case Ukrainian employees were forced by an intermediary to register with the Chamber of Commerce even though self-employed work is not allowed without a work permit.⁶⁸

The Foundation for Cooperation on Vocational Education, Training and Labour Market (*Samenwerkingsorganisatie Beroepsonderwijs Bedrijfsleven* (SBB) and Nuffic have been commissioned jointly by the Dutch government for international credential evaluation. The SBB is responsible for evaluating study programmes from other countries. SBB assesses if these programmes are comparable to study programmes in Dutch senior secondary vocational education and training institutions (MBO) and preparatory vocational secondary

⁶² Kamerstukken II 2022-2023, 36045/ 29861, 149, 3. At the moment of finishing this contribution, this policy has not yet changed.

⁶³ Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 5.

⁶⁴ Centraal Bureau voor de Statistiek, *Aandeel Oekraïense vluchtelingen met werk toegenomen*, 1 February 2023, available at: <https://www.cbs.nl/nl-nl/nieuws/2023/05/aandeel-oekraïense-vluchtelingen-met-werk-toegenomen> (accessed 5 May 2023).

⁶⁵ Staatssecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 17 februari 2023, kenmerk 4497654, 6.

⁶⁶ WERK, *Dashboard vluchtelingen uit Oekraïne*, 16 February 2023, available at: <https://www.werk.nl/arbeidsmarktinformatie/dashboards/vluchtelingen-oekraïne> (accessed 5 May 2023).

⁶⁷ FairWork, *Oekraïense vluchtelingen benadeeld en uitgebuit in Nederland*, 22 March 2023, available at <https://www.fairwork.nl/2023/03/22/oekraïense-vluchtelingen-benadeeld-en-uitgebuit-in-nederland/>. See also: Voermans T., *Oekraïense vluchtelingen worden door werkgevers uitgebuit*, in *AD*, 22 March 2023, available at <https://www.ad.nl/economie/oekraïense-vluchtelingen-woorden-door-werkgevers-uitgebuit~ac13efce/#:~:text=Vluchtelingen%20uit%20Oekra%C3%AFne%20worden%20in,kennis%20over%20de%20Nederlandse%20arbeidsregels.&text=Dat%20stelt%20Fairwork%2C%20een%20organisatie,de%20belangen%20van%20de%20slachtoffers>; Hoorntje R., *Zorgen over uitbuiting Oekraïense vluchtelingen in Nederland*, in *NOS*, 22 March 2023, available at <https://nos.nl/artikel/2468389-zorgen-over-uitbuiting-oekraïense-vluchtelingen-in-nederland>.

⁶⁸ FairWork, *ibidem*.

education (VMBO). Nuffic is responsible for evaluating study programmes from other countries that are comparable to Dutch senior general secondary education (HAVO) and pre-university education (VWO), and higher education (HBO and WO).⁶⁹ Displaced persons from Ukraine can apply for a free credential evaluation.

5. Final considerations.

Overall, the Dutch measures seem to be in line with the required level of protection based on the Directive 2001/55. The construction of temporary protection as a form of legal stay awaiting the decision on an asylum application is allowed under the Directive 2001/55. Article 8 of the Directive 2001/55 prescribes the issuance of a *residence permit* to persons entitled to temporary protection. However, residence permit is defined in Article 2(g) Directive 2001/55 as any permit or authorisation issued by the authorities of a Member State. The initial duration of the protection of one year and the prolongation with another year until 4 March 2024, is in accordance with Article 4(1) Directive 2001/55. The scope of application is wider than requested. Until now there is no final answer to the question whether it is allowed to apply a strict date to define the scope, or that it is mandatory to carry out a proportionality test even if someone does not meet the criteria. So far, most judges decided in favour of the proportionality test. However, these were all rulings in a preliminary injunction and not in a substantive case. It is difficult to predict the outcome of a ruling on this issue in substantive cases. At the other hand, as the Decision 2022/382 defines the scope of application based on the date of the Russian invasion and the fact that the Dutch scope is already wider, the judgment in substantive cases can be expected to be more restrictive regarding the scope than the rulings in preliminary injunctions.

It will be a big challenge to be prepared for future developments. Clingendael, Netherlands Institute for International relations, is commissioned by the government to monitor the developments regarding the number of displaced persons seeking protection in the Netherlands.⁷⁰ It is expected that the number of displaced persons in need of protection in the Netherlands will continue to grow steadily in the coming period. However, other scenarios with higher or lower influx are also possible.⁷¹ Consequently, the municipalities have to prepare for more reception facilities.

The duration of the protection has already been extended until 4 March 2024. Nonetheless, the scenario that an extension until 2025 or even beyond the expiry of the

⁶⁹ Internationale diplomawaardering, available at <https://www.idw.nl/> (accessed 5 May 2023).

⁷⁰ Rijksoverheid, *Beschermingsopdracht Oekraïense ontheemden. Pieksenario's door nieuwe offensieven*, 17 February 2023, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2023/02/17/tk-bijlage-1-beschermingsopdracht-oekraïense-ontheemden-pieksenario-s-nieuwe-offensieven>; Rijksoverheid, *Beschermingsopdracht Oekraïense ontheemden in Nederland. Humanitaire condities in Oekraïne kritiek*, 16 December 2022, available at <https://www.rijksoverheid.nl/documenten/rapporten/2022/12/16/tk-bijlage-5-ii-verzamelbrief-opvang-oekraïne-clingendael-rapport-humanitaire-condities-in-oekraïne-kritiek>.

⁷¹ Ministerie van Justitie & Veiligheid, *Beslisnota, Aanpak langetermijnbeleid Oekraïense ontheemden*, kenmerk 4379205, 7 December 2022.

maximum duration of the Directive 2001/55 is required, is taken into account. This means that the reception facilities must be suitable for longer stay. Furthermore, more attention should be paid to integration in Dutch society by offering language courses and stimulate participation through work.⁷²

Finally, the question remains how to deal with the legal position of displaced persons after the expiration of the temporary protection. If after this temporary protection period displaced persons would enter the regular asylum system the immigration services and other partners are barely equipped to deal with that situation.⁷³ National possibilities are explored by the Dutch government. Nonetheless, the government has expressed its strong preference for a coordinated approach at EU level. This would help to avoid major differences between countries in the EU and secondary migration movements as a possible consequence of this.⁷⁴

⁷² Ministerie van Justitie & Veiligheid, *ibidem*.

⁷³ Ministerie van Justitie & Veiligheid, *ibidem*.

⁷⁴ Staassecretaris van Justitie en Veiligheid, Verzamelbrief opvang Oekraïne 14 april 2023, kenmerk 4605176, 6.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Poland.

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1. General framework. 2. Personal scope of applicable support measures. 2.1. War migration. 2.1.1. The Ukrainian Act. 2.1.2. The Protection Act. 2.2. Residence rights of non-war migrants. 3. Social policy measures for Ukrainians: financial support, housing, and access to healthcare and education. 3.1. General remarks. 3.2. Support provided to war migrants from Ukraine with regard to Article 13 points 1 and 2 of Directive 2001/55. 3.3. Support provided to war migrants from Ukraine with regard to Article 13 points 2 and 4 of Directive 2001/55. 3.4. Support provided to victims of the war in Ukraine with regard to Article 14 of Directive 2001/55. 4. Social entitlements in the Protection Act. 5. Social policy measures for Ukrainians: supporting professional activity. 6. Final considerations.

1. General framework.

According to the Polish Border Guard, by the end of August 2023, since February 22nd, 2022, more than 14 million people from Ukraine had entered Poland.¹ The number is huge, but it should be borne in mind that it includes both war and non-war-related arrivals (e.g., for economic purposes), as well as multiple border crossings by the same people. However, there is no doubt that Poland has been the country with the largest influx of war migrants from Ukraine since the beginning of the war. According to statistics from the Office for Foreigners, a year after the outbreak of the war, one million Ukrainian citizens, mostly women and children, were using temporary protection in Poland.²

When Poland joined the European Union, it implemented Council Directive 2001/55/EC of July 20 2001,³ on minimum standards for giving temporary protection in the

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¹ Podorska W., *Uchodzący z Ukrainy. Ilu uchodźców z Ukrainy jest w Polsce?*, available at <https://www.fxmag.pl/artykul/uchodzcy-z-ukrainy-ilu-uchodzcow-z-ukrainy-jest-w-polsce-sprawdz-najnowsze-informacje> (last accessed 1 September 2023).

² Dudziak J., *Obywatele Ukrainy w Polsce – aktualne dane migracyjne*, <https://udsc.prowly.com/233284-obywatele-ukrainy-w-polsce-aktualne-dane-migracyjne> (last accessed 1 September 2023).

³ See Benio M., *Minimalne standardy ochrony tymczasowej w prawie unijnym*, in Florczak I. (ed.), *Pobyt i zatrudnienie cudzoziemców w Polsce. Rozwiązania wynikające z ustawy i pomocy obywatelom Ukrainy*, C.H. Beck, Warszawa, 2022, 19-20.

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.⁴ It was implemented by the Act (Section III, Chapter 3) on granting protection to foreigners in Poland.⁵ Under the provisions of the Protection Act, foreigners arriving *en masse* in Poland who have left their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflict or flagrant violations of human rights may be granted temporary protection in Poland regardless of whether their arrival was spontaneous or the result of assistance provided to them by Poland or the international community. Temporary protection is granted until it becomes possible for the foreigners to return to their previous place of residence. However, this protection is granted for no longer than a year. If, after one year, the obstacles to the **foreigners'** safe return to their previous place of residence have not ceased, the period of temporary protection is extended for a further six months, but no more than twice.

After the outbreak of the war in Ukraine, the Protection Act was supplemented with a regulation that the section on temporary protection contained therein applies to the extent not regulated by separate regulations, which define the categories of people benefiting in Poland from temporary protection.

According to Article 107 of the Protection Act, temporary protection shall be granted on the basis and within the limits specified in the Decision of the Council of the European Union for the period specified in this Decision. Additionally, through regulation, the Council of Ministers may grant temporary protection to foreigners not covered by the Decision who are forced to leave the country or geographical area to which the Decision applies due to the occurrence of events referred to in the Protection Act. The Polish legislator did not use this option, instead issuing a separate legal act that specifically addresses the situation of war migrants from Ukraine. It is the Act of March 12, 2022, on assistance to citizens of Ukraine in connection with the armed conflict in that country.⁶

Therefore, Poland currently has three systems of legal protection that war migrants from Ukraine can take advantage of:

- the first is based on the general international protection that can be granted to war migrants under the regulations of the Protection Act;
- the second refers specifically to the aforementioned Chapter 3 in Section III of the Protection Act, and thus to the regulation implementing Directive 2001/55;
- the third system was introduced by the Ukrainian Act, which excludes the application of the provisions of Chapter 3 in Section III of the Protection Act to people who fall

⁴ 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 (later on as: Directive 2001/55).

⁵ Act on granting protection to foreigners on the territory of the Republic of Poland (Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej), JoL 2022, item 1264 as amended (later on as: Protection Act).

⁶ Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country (Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa), JoL 2023, item 103 as amended (later on as: Ukrainian Act).

within the scope of the beneficiaries of the Ukrainian Act (Article 2, points 6-8),⁷ constituting a special, extraordinary way of implementing Directive 2001/55.

2. Personal scope of applicable support measures.

2.1. War migration.

As indicated in Part 1, the systems dedicated to war migrants are the regulations under the Protection Act and the Ukrainian Act. The latter has priority when applied to the categories of persons designated therein. Thus, to determine the status of war migrants, it is necessary to determine under which of the aforementioned acts they qualify.

2.1.1. The Ukrainian Act.

Article 1 point 1 of the Ukrainian Act indicates, as its title implies, that it applies to people who are citizens of Ukraine. However, as will become clear, that is not true. The Act sets out specific rules for legalising the residence of Ukrainian citizens who:

- 1) arrived in Poland from Ukraine in connection with military operations conducted there. The original wording of the Ukrainian Act narrowed its applicability to people who came directly from Ukraine (i.e., they crossed the Ukrainian-Polish border). However, this exception was immediately removed, significantly affecting the scope of the Ukrainian Act⁸; and
- 2) are citizens of Ukraine with a Pole's Card,⁹ who, together with their immediate family, arrived in Poland due to these hostilities. However, the Ukrainian Act does not specify who is considered "immediate family".

According to Article 1 point 2 of the Ukrainian Act, whenever the Ukrainian Act refers to a citizen of Ukraine, it is understood to include the non-citizen spouse of a citizen, provided that he or she has arrived in Poland from Ukraine in connection with the military operations conducted on the territory of that country, and is not a Polish citizen or a citizen of a European Union member State other than the Republic of Poland. This means that the scope of the Ukrainian Act goes beyond the citizens of Ukraine in terms of subjective matter. Importantly, all provisions of the Ukrainian Act applicable to "citizens of Ukraine" also apply to the spouses of Ukrainian citizens referred to in Article 1 point 2 of the Ukrainian Act, so, among other things, also the rules for taking up employment or exercising social rights.

If a citizen of Ukraine, referred to in Article 1 point 1 of the Ukrainian Act (therefore, also the spouse of a Ukrainian citizen, referred to in Article 1 point 2 of the Ukrainian Act), arrived legally in Poland from February 24, 2022, until the date specified in separate

⁷ Klaus W., *Komentarz do artykułu 1*, in Klaus W. (ed.), *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa*, Wolters Kluwer Poland, Warsaw, 2022.

⁸ Florczak I., *Uwagi wstępne dotyczące zagadnień związanych z zatrudnianiem cudzoziemców w realiach specustawy*, in Florczak I. (ed.), nt. (3), 9-10.

⁹ The Pole's Card is a document confirming that the holder belongs to the Polish Nation.

regulations¹⁰ and declares his intention to stay in the territory of the Republic of Poland, his stay is considered legal until March 4, 2023. Originally, the term of the legal stay was calculated as 18 months, counted from February 24, 2022, so it ended on August 24, 2023. The relevant change was made by the Act of April 14, 2023, on changing the names of State service universities supervised by the minister responsible for internal affairs, amending the Act on the Police, the Act on the Border Guard, the Act on the State Fire Service and certain other acts.¹¹

Pursuant to Article 2 point 1 of the Ukrainian Act, the stay of a child born in Poland to a mother whose situation is described above during the period that concerns the mother is also considered legal.

Thus, to determine the legality of residency until March 4, 2023, it is necessary to identify the situation of the war migrant on the basis of Article 1 points 1 and 2 and Article 2 point 2 of the Ukrainian Act. In this regard, the Ukrainian Act defines the personal scope of people benefiting from protection. This is in contrast to the Council Implementing Decision (EU) 2022/382 of March 4, 2022, which establishes the existence of a mass influx of displaced people from Ukraine within the meaning of Article 5 of Directive 2001/55, and has the effect of introducing temporary protection.¹² The Decision 2022/382 refers to the need to leave Ukraine from February 24, 2022, while the Ukrainian Act refers to arriving in Poland from February 24, 2022. After removing the condition of direct arrival in Poland from Ukraine from Article 1 point 1 of the Ukrainian Act, the Ukrainian Act should also be applied to people who left Ukraine shortly before February 24, 2022 (for example, due to going on vacation or a business trip), as long as they arrived in Poland as of February 24, 2022, in connection with military operations.¹³ In this respect, Poland has exercised its right, guaranteed by Article 7 of Directive 2001/55, to unbundle the protection granted.

The regulations of Article 1 points 1 and 2 of the Ukrainian Act do not apply to citizens of Ukraine:

- 1) with:
 - a) permanent residence permit;
 - b) a residence permit for a long-term resident of the European Union;

¹⁰ The Council of Ministers is to determine, by means of a regulation, the date which is the last day of the period in which the legal entry of a Ukrainian citizen into Poland from Ukraine who declares their intention to stay in Poland results in his/her stay being considered legal, taking into account the number of foreigners who enter Poland, the situation of the civilian population, and the prospects for the cessation of hostilities in Ukraine, as well as considerations of defence, State security and considerations of the protection of public security and order.

¹¹ Act on changing the names of State service universities supervised by the minister responsible for internal affairs, amending the Act on the Police, the Act on the Border Guard, the Act on the State Fire Service and certain other acts (*Ustawa z dnia 14 kwietnia 2023 r. o zmianie nazw uczelni służb państwowych nadzorowanych przez ministra właściwego do spraw wewnętrznych, o zmianie ustawy o Policji, ustawy o Straży Granicznej, ustawy o Państwowej Straży Pożarnej oraz niektórych innych ustaw*), *JoL*. 2023, item 1088.

¹² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (later on as: Decision 2022/382).

¹³ According to the supplement to the Explanatory Memorandum to the Commission's draft law on amending the law on assistance to citizens of Ukraine in connection with the armed conflict in that country and the law – the Law on higher education and science (Print number 290 of the 19th Sejm term), which, when it came into force, removed the requirement of arriving directly from Ukraine.

- c) temporary residence permit;
 - d) refugee status;
 - e) subsidiary protection;
 - f) a permit for tolerated stay;
 - g) permission to stay for humanitarian reasons;
- 2) who:
- a) have submitted applications for international protection in Poland or on whose behalf such applications have been submitted;
 - b) have declared their intention to submit applications for international protection in Poland in accordance with the procedure set forth in the Protection Act, or to whom such declarations of intention relate;
- 3) enjoy temporary protection in a European Union Member State other than Poland granted due to hostilities in Ukraine.¹⁴

Therefore, the listed categories of people do not enjoy the right to stay in Poland under the Ukrainian Act.

As indicated above, the condition for exercising the possibility to stay based on Article 2 point 1 of the Ukrainian Act is declaring the intention to stay in Poland. This declaration does not require any extraordinary form; it is analysed through factual circumstances in the context of an actual stay in Poland. According to Article 11 point 2 of the Ukrainian Act, the departure of a Ukrainian citizen from Poland for a period exceeding 30 days¹⁵ deprives him of the right to stay under Article 2 point 1 of the Ukrainian Act.

War migrants from Ukraine arriving in Poland due to the war are required to register their entry and obtain a PESEL registration number,¹⁶ which receives the prefix UKR (i.e., the PESEL-UKR). Currently, the Ukrainian Act requires that an application for a PESEL-UKR be submitted to any municipal office within 30 days of arriving in Poland. Having a PESEL-UKR number thus confirms that a person is subject to the residency status defined in Article 2 point 1 of the Ukrainian Act. Several specific remarks should be made in this regard.

First, in the initial wording of the Ukrainian Act, war migrants had 60 days to register entry, during which they applied for PESEL-UKR. The deadline was then extended to 90 days before being reduced to 30 days with the reversed rule: applying for PESEL-UKR when registering entry was replaced by registering entry when applying for PESEL-UKR.

¹⁴ If a citizen of Ukraine acquired the right to reside in Poland based on Article 2 point 1 of the Ukrainian Act and subsequently obtained the status of a person enjoying temporary protection in another Member State, he loses the status granted in Poland (Article 11 point 3 of the Ukrainian Act).

¹⁵ It was originally a period of 1 month. The 30-day period was introduced by the amendment of the Ukrainian Act – the Act of 13th January 2023 on amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine and Certain Other Acts (item 185, as amended). Another amendment to the Ukrainian Act introduced an exception to the loss of residence status under Article 2 point 1 of the Ukrainian Act – this rule does not apply to people posted to perform work or services outside Poland by entities operating in Poland (Act of 8th of June 2022 amending the Act on Assistance to Citizens of Ukraine in Connection with Armed Conflict on the Territory of Ukraine and Certain Other Acts) (item 1383, as amended).

¹⁶ PESEL - Polish acronym for “Universal Electronic System for Registration of the Population”.

Second, not applying for PESEL-UKR is not sanctioned. Since temporary protection is granted automatically, the certificate of possession of the PESEL-UKR number merely confirms the possession of a protected status.

Third, since one can lose the entitlement granted by Article 2 point 1 of the Ukrainian Act, one can also lose the PESEL-UKR (in favour of PESEL-NUE, which refers to non-EU citizenship). As already indicated, this can happen when a migrant leaves Poland for more than 30 days. Importantly, a PESEL-UKR can be re-acquired if, upon the next arrival in Poland, the person again meets the conditions pursuant to Article 1 point 1 and Article 2 point 2 of the Ukrainian Act.¹⁷ Therefore, once issued, a certificate of possession of the PESEL-UKR number confirms its possession as of a given date and does not mean that there was no subsequent loss of it (as a consequence of the loss of residence status as defined in Article 2 point 1 of the Ukrainian Act).

Fourth, obtaining a PESEL-UKR is possible even if a person has already obtained a PESEL registration number. The UKR prefix is added to the existing number.

As of August 21, 2023, a total of 1,667,555 PESEL-UKR applications were registered. The following table shows the percentage of women and men in the applications submitted, divided by age.¹⁸

Table 1. *Number of submitted application for PESEL-UKR.*

Women <18 years old	Women 18-65 years old	Women >65 years old	Men <18 years old	Men 18-65 years old	Men >65 years old
18.2%	47.6%	3.2%	18.5%	11.5%	1%

Source: *Governmental data.*¹⁹

As observation of the labour market shows, not all war migrants want to be recognised by the Polish system as enjoying the right to stay under Article 2 point 1 of the Ukrainian Act (and, therefore, do not want to have a PESEL-UKR number). This is because falling under this status, and therefore enjoying temporary protection, is an obstacle to applying to legalise their stay in Poland based on a temporary residence permit. According to Article 99 point 1 subpoint 4 of the Act on Foreigners,²⁰ a foreigner shall not be allowed to initiate proceedings for the granting of a temporary residence permit if, on the date of the application for such a permit, he or she is in Poland in connection with the granting of asylum protection.

In its original formulation, the Ukrainian Act gave those having residency status under provision of Article 2 point 1 the right to apply for a two-year residence permit nine months after arriving in the country. Thus, the first groups of people were able to exercise this right

¹⁷ Re-acquisition of status under Article 2 point 1 of the Ukrainian Act is primarily examined in terms of the re-entry to Poland in connection with the war in Ukraine. If the reason for arrival is work - there is no connection of arrival with the war.

¹⁸ On behalf of a person without legal capacity or with limited legal capacity applying for a PESEL number or a person who, due to health or disability, is not able to submit the application himself, the application shall be submitted by one of the parents, a guardian, a curator, a temporary guardian appointed in accordance with Ukrainian Act, or a person with actual custody of the child, and in the absence of such persons, a PESEL number may be assigned ex officio.

¹⁹ <https://dane.gov.pl/pl> (last accessed 19 July 2023).

²⁰ Act on Foreigners (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach) JoL. 2023, item 519, as amended.

at the end of November 2022. However, work was already underway to repeal the possibility of such applications, stipulating that applications submitted before the repeal of such a possibility were to be left unprocessed.

This was evident from the explanatory statement to the draft that introduced this change:

*"This institution is characterised by a number of procedural simplifications with respect to the temporary residence permit granted under the regulations of the Act on Foreigners (...). However, despite these simplifications, it is necessary to take the stance that, given the scale of the influx of Ukrainian citizens into the territory of the Republic of Poland in the period from February 24, 2022, the institution of a temporary residence permit granted by voivodes will not meet the expectations placed in it. As of September 28, 2022, the submission of 1,378,360 applications for PESEL numbers by citizens of Ukraine and their eligible family members under Article 4 of the Act on Assistance to Citizens of Ukraine was recorded. Even the greatest procedural simplification and the most far-reaching automation and electrification of the process will not allow voivodes, with the maximum involvement of the capacity of the offices they manage, to ensure the efficient execution of the task of carrying out, in view of such a large number of applicants, proceedings for granting a temporary residence permit, while ensuring the realisation of other tasks."*²¹

Thus, due to the system's inefficiency in handling displaced persons diagnosed in Q4 2022, the mechanism that was supposed to guarantee their legal residence on the basis of a two-year residence permit was abandoned.

Currently, the Ukrainian Act provides for a simplified procedure for legalising the stay of displaced persons covered by its provisions in Article 42 point 13 and following. According to this regulation, the aforementioned Article 99 point 1 subpoint 4 of the Act on Foreigners does not apply to a citizen of Ukraine whose stay in Poland is considered legal under Article 2 point 1 of the Ukrainian Act and who has PESEL-UKR status. This exception pertains specifically to the aspects of the regulation (i.e., Article 99 point 1 subpoint 4 of the Act on Foreigners) relating to the granting of temporary protection, blocking the possibility of successfully applying for a temporary residence permit. The above covers the situations when a person applies for a permit for:

- 1) temporary stay and work;
- 2) temporary residence for the purpose of performing work in a highly skilled occupation;
- or
- 3) temporary residence for the purpose of conducting business activities.

Thus, a simplified procedure for applying for continued residence, despite the use of temporary protection, is possible, as long as the person's stay is related to their professional activity.

In July 2022, Poland notified the European Commission of Diia.pl, an electronic document available to war migrants from Ukraine. It confirms their legal residence in Poland and allows them to travel within the European Union and cross its external borders. This is the first fully digital permit in the European Union. The Diia.pl document is available

²¹ Print number 2845 of the 19th Sejm term – the Government draft law amending the Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine and certain other laws.

through the mObywatel mobile application, which can be installed on smartphones with Android or iOS operating systems.

2.1.2. The Protection Act.

If a foreigner does not fall under the personal scope of the Ukrainian Act, but is subject to Decision 2022/382, his status is determined by the Protection Act. As already indicated, such a person shall initially be granted protection until the reason causing him or her to receive it ceases, but no longer than one year. If, after one year, the obstacles to the safe return of foreigners to their previous place of residence have not ceased, the period of temporary protection shall be extended for a further six months, but no more than two times.

From the point of view of the personal scope of the solutions applied, it is important that citizens of Ukraine are in no way covered by the Protection Act. They are covered by the Ukrainian Act, which either includes their situation as falling under its regulations or excludes it, leaving the person outside the system of benefiting from protection mechanisms related to the war in Ukraine.

Thus, according to Decision 2022/382, the Protection Act applies to persons displaced from Ukraine on or after February 24 2022, as a result of the military invasion by Russian armed forces that began on that date:

- a) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before February 24 2022; and,
- b) family members of the persons referred to in letter (a) and of Ukrainian nationals residing in Ukraine before February 24 2022 (as long as they are not the spouse of a Ukrainian citizen or a family member of a Ukrainian citizen who holds a Pole's Card or a child born in Poland to a mother who is covered by Article 2 point 1);
- c) stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before February 24 2022 based on a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin (as long as they are not the spouse of a Ukrainian citizen or a family member of a Ukrainian citizen who holds a Pole's Card or a child born in Poland to a mother who is covered by Article 2 point 1).

If a displaced person qualifies for temporary protection under the Protection Act, he or she will receive a certificate of temporary protection issued by the Office for Foreigners. Foreigners must attach the following documents to the application for the certificate:

- a copy of a travel document with the confirmation of entry to Poland as at February 24 2022;
- a copy of a document confirming the right to protection or a legal stay in Ukraine based on a valid certificate of permanent residence;
- a declaration on the lack of possibility to return to the country or region of origin;

- copies of documents regarding relationships with persons eligible for temporary protection in the case of children or other close relatives who lived together as a single family.

An employee of the Office for Foreigners will contact the foreigner and book a date for the personal collection of the certificate. Original copies of the documents attached to the application must be presented upon collection of the certificate. The certificate will be issued only after the original copies are validated with the originals.

The declarations for issuing the certificate may be filed by letter, e-mail, electronically, or in person.²²

The temporary protection mechanism, implemented by Decision 2022/382 in March 2022 initially for one year, was extended until March 4, 2024. As a result, the validity of the certificates of temporary protection issued so far by the Office for Foreigners are also similarly extended. Those who have received from the Office for Foreigners a certificate of temporary protection with an expiry date of March 4 or September 4, 2023, do not need to apply for new documents. Certificates issued will remain valid until March 4, 2024.²³

On the basis of Article 109 of the Protection Act, the Head of the Office for Foreigners may refuse, by means of a decision, which is final, to grant a foreigner temporary protection if:

- 1) there are reasonable suspicions that he or she:
 - a) has committed a crime against peace, a war crime or a crime against humanity within the meaning of the provisions of international law relating to these crimes;
 - b) has committed, outside Poland and prior to his or her arrival in the country to benefit from temporary protection, a non-political crime;
 - c) has committed acts contrary to the goals and principles of the United Nations;
- 2) his or her entry or stay may threaten the security of the State;
- 3) has been convicted by a final judgment of such a crime, the nature of which indicates that his or her presence in Poland could constitute a threat to its citizens.

2.2. Residence rights of non-war migrants.

An important element of the Ukrainian Act is that it also covers those Ukrainian citizens whose stay in Poland has no connection to the war. The relevant regulations were first in force (depending on the basis of residence) until December 31 2022 or for an additional period of 18 months, and then, collectively for all bases of residence until August 24 2023. Currently, the relevant regulations found in Article 42 of the Ukrainian Act have been unified, and the cut-off date for the possibility of legal residence is March 4, 2024.

²² Government of Poland, *Change in the rules of issuing temporary protection certificates*, available at: <https://www.gov.pl/web/ochrona-en/change-in-the-rules-of-issuing-temporary-protection-certificates> (last accessed 1 September 2023).

²³ Government of Poland, *Extending the validity of temporary protection certificates*, available at: <https://www.gov.pl/web/ochrona-en/extension-of-temporary-protection> (last accessed 1 September 2023).

With regard to residency bases, this deadline applies to:

- 1) citizens of Ukraine whose last day of the period of stay in Poland based on a national visa falls after February 24, 2022. In this case, a new visa sticker shall not be placed in the travel document of those citizens. A national visa during the period of extending the period of stay and the period of validity does not entitle the holder to cross the border;²⁴
- 2) citizens of Ukraine whose last day of the validity period of a temporary residence permit falls within the period from February 24, 2022;
- 3) citizens of Ukraine if the last day of the permitted period of stay falls within the period from February 24, 2022, and the basis of stay is:
 - a) a Schengen visa issued by a Polish authority;
 - b) a visa issued by another Schengen State;
 - c) a residence permit, referred to in Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of June 13 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1, as amended), issued by the competent authority of another Schengen State, or another residence permit issued by an authority of that State, entitling the holder to travel within other States of the Schengen Area;
 - d) visa-free travel.

The Ukrainian Act also extended until March 4, 2024:

- 1) the deadline for a citizen of Ukraine to leave Poland in the case specified in Article 299 point 6 of the Act on Foreigners;²⁵ and
- 2) the deadline for voluntary return concerning citizens of Ukraine.²⁶

Additionally, Article 42a of the Ukrainian Act regulates an emergency residence permit that protects Ukrainian citizens from having to return to Ukraine. This regulation concerns Ukrainian citizens whose stay in Poland (not related to work) has proven no purpose, or there are certain prerequisites for issuing a negative decision on a temporary residence permit. In such a situation, the Ukrainian citizen shall be granted a temporary residence permit for a period of 1 year until March 4, 2024, counting from the date of the decision.

²⁴ There is an exception to the above-mentioned rule for international transport drivers - in their case, the visa sticker confirming the extension of the national visa is affixed to the travel document by the voivod competent for the place of residence of that driver. The period of stay on the basis of an extended national visa resulting from the indication on the visa sticker confirming the extension of the national visa cannot exceed the period of stay provided for in the national visa.

²⁵ This refers to situations related to issuing a negative decision on further stay and not transferring the foreigner to a third country despite the lack of grounds to stay in Poland due to his/her poor health condition.

²⁶ The decision on the foreigner's obligation to return shall specify the period for voluntary departure, which shall be between 8 and 30 days, calculated from the date of service of the decision. (Article 315, point 1, Act on Foreigners).

3. Social policy measures for Ukrainians: financial support, housing, and access to healthcare and education.

3.1. General remarks.

The scope of beneficiaries and the catalogue of entitlements (as well as how they are granted) is different for each of the three protection regimes described in the General framework section. While the first issue has already been described in the previous parts of this article, this section will focus on how the Polish State has ensured the implementation of Articles 13 and 14 of the Directive, concerning social policy measures to support Ukrainian war migrants in terms of housing, sustenance, and access to healthcare and education.

These issues are regulated by the legislator in a way that allows several divisions to be distinguished. First of all, some forms of support are provided on a mandatory basis, while others are provided on a discretionary basis (discretionary power, optional). The former is mainly found in the Protection Act, while the latter appears frequently in the Ukrainian Act. In addition, some forms of support are expressed explicitly and directed at beneficiaries, while others involve relaxing commonly applicable regulations so that some procedures can be expedited or simplified. This, in turn, is intended to improve the efficiency of the assistance provided.

The last remark relates to the changes being made to the regulations that will be discussed. Just as the situation of the influx of war migrants and their needs was dynamically evolving, so too were the amendments to the Ukrainian Act. Nevertheless, the regulations of the Ukrainian Act have been amended relatively infrequently. Most of these amendments have not been about expanding the catalogue of entitlements, but about specifying the procedures or the personal scope of their application. They regard the provision of:

- access to suitable accommodation or, if necessary, receive the means to obtain housing (Article 13 point 1);
- necessary assistance in terms of social welfare and means of subsistence, as well as medical care (Article 13 point 2), and necessary medical and other assistance (points 2 and 4);
- access to education system under the same conditions as nationals of the host Member State (Article 14 point 1).

3.2. Support provided to war migrants from Ukraine with regard to Article 13 points 1 and 2 of Directive 2001/55.

Starting with the Ukrainian Act (as the main act that regulates the situation of war migrants from Ukraine in Poland), provisions for housing, social welfare and obtaining means of subsistence are regulated in several articles, most notably in Article 29, under which people whose residence in Poland is recognised as legal under Article 2 point 1 of the Ukrainian Act and who are included in the PESEL register may be granted financial and non-financial

benefits, under the terms and procedure of the Act of March 12 2004 on Social Welfare (ASoWe.)²⁷. The catalogue of grounds for providing this assistance (e.g., unemployment, integration difficulties in specific cases, random event and crisis; the catalogue is not closed) can be found in Article 7 of the ASoWe, and the income criterion is set forth in Article 8 of the ASoWe. The forms of assistance provided (Article 36 and following of the ASoWe) include both financial benefits (which include permanent benefit, periodic benefit, assistance for independence and for the continuation of education, etc.) and non-financial benefits (including in-kind assistance, shelter, meals, and necessary clothing, etc.).

In addition, a citizen of Ukraine whose residence in Poland is recognised as legal under Article 2 point 1 of the Ukrainian Act and who has been entered into the PESEL register is entitled to assistance in the form of a one-time cash benefit of PLN 300 per person for subsistence, in particular, to cover expenses for food, clothing, footwear, personal hygiene products, and housing fees (Article 31 of the Ukrainian Act). Moreover, a citizen of Ukraine residing in Poland, whose stay is recognised as legal under Article 2 point 1, may be provided free psychological assistance (Article 31 of the Ukrainian Act); however, the manner in which this is implemented is not specified. They are also granted food aid under the Fund for European Aid to the Most Deprived (Article 32 of the Ukrainian Act). For both of these regulations, this assistance is optional.²⁸

The situation is similar to the regulation of Article 12 of the Ukrainian Act. A voivode may provide assistance to Ukrainian citizens referred to in Article 1 point 1 of the Ukrainian Act, which comprises, among other things, accommodation, the provision of all-day collective feeding, the provision of cleaning and personal hygiene products and other products, the organisation of emergency medical aid sites, as well as taking other measures necessary for the implementation of assistance (the catalogue is therefore not closed). This assistance is left to the discretionary power of the voivode, based on the criteria of legality, rationality, equity, efficiency or purposefulness, and dependent on the available resources.²⁹

Article 12 of the Ukrainian Act received a significant amendment on January 13, 2023,³⁰ which changed the original wording of the regulation. The original version stipulated that the assistance referred to in point 1 shall be provided for no less than two months from the date of first entry into Poland. In the new version, the assistance referred to in point 1 subpoints 1 and 2 (accommodation and all-day collective feeding) may be provided for no more than 120 days from the date of first entry of a Ukrainian citizen into Poland (point 17). After this period expires, those who are eligible must contribute 50% of the cost of living (a maximum of PLN 40 per person per day), and after 180 days, 75% (a maximum of PLN 60 per person per day) (points 17a and 17b). Points 17c and 17d envisage the exclusion of this

²⁷ Act on Social Welfare (Ustawa z dnia 12 marca 2004 r. o pomocy społecznej) JoL. 2023, item 901 as amended (later on as: ASoWe).

²⁸ Although the commentary to Article 32 indicates that this assistance *shall be provided* to the entities indicated in the regulation upon fulfilment of certain conditions, the optional nature is not emphasized here, even though the wording in both articles is the same. Kacprzak-Szymańska E., *Komentarz do artykułu 32*, in Klaus W. (ed.), nt. (7).

²⁹ Princ M., *Komentarz do artykułu 12*, in Klaus W. (ed.), nt. (7).

³⁰ Journal of Laws of 2023, item 185.

participation for people in a particularly difficult situation (e.g., disabled, minors). Point 17f envisages the use of a humanitarian criterion for the application of participation in the case of those who are in a difficult life situation that prevents them from contributing to the cost of the assistance. Despite this, this solution has been strongly criticised, taking into account, *nota bene*, the issue of humanitarianism, the quality of the assistance provided, and potential negative consequences (e.g., homelessness).³¹

In the context of housing, Article 12a of the Ukrainian Act allows for the temporary use of a building (that has been put into use, including a building other than a collective residence building), which does not meet the technical, construction, fire, and hygiene and sanitary regulations for that building, for the purposes of collective housing of Ukrainian citizens as referred to in Article 1 point 1 of the Ukrainian Act. This permission is valid until March 4, 2024. However, such use must still ensure the fulfilment of the basic requirements for load-bearing capacity and stability of the structure and safety of use, fire safety, hygiene, health, and the environment. Article 12b of the Ukrainian Act allows buildings (or parts thereof) intended for residential purposes to undergo reconstruction, renovation or change of use, bypassing regulations on planning, spatial planning, and the technical and construction regulations for such buildings or parts thereof. However, it does not exclude the need to ensure compliance with the basic requirements for the same elements as in Article 12a. These regulations were obviously intended to provide more places where housing could be provided for the beneficiaries of Article 1 point 1 of the Ukrainian Act, by simplifying and speeding up procedures as a result of waiving some of the requirements. However, both solutions allow a compromise in terms of the safety of the residents. They also create additional legal chaos, which has been met with a critical response from the representatives of the legal literature.³² Simplified procedure was also included in Article 69 of the Ukrainian Act, which facilitates the conclusion of an occasional rental agreement by the beneficiaries of Article 1 point 1 of the Ukrainian Act, allowing them, among other things, not to indicate an alternative dwelling in which they could live in the event of eviction. This solution is considered generally favourable by the doctrine as beneficial to both tenants and landlords.³³

Closing the issue of social welfare and subsistence support, it is also necessary to mention Article 26 of the Ukrainian Act, which grants a citizen of Ukraine residing in Poland, whose stay in Poland is recognised as legal under Article 2 point 1 of the Ukrainian Act, the right to family benefits, upbringing benefit, good start benefit, family care capital, subsidising the reduction of a parent's fee for the stay of a child in a crèche, children's club or with a day-care provider on the terms and in the manner specified in other acts. In addition, according to Article 28, on an optional basis, to provide care for children up to the age of 3 who are

³¹ Migration Consortium, *Stanowisko Konsorcjum Migracyjnego w sprawie zmian w ustawie o pomocy obywatelom Ukrainy*, 22 February 2023, <https://konsorcjum.org.pl/zmi-w-ustawie-o-pomocy-obywatelom-ukrainy-w-zwiazku-z-konfliktem-zbrojnym-na-terytorium-tego-panstwa/> (last accessed 19 July 2023); Fundacja Ocalenie, *Stanowisko Fundacji Ocalenie w sprawie projektu nowelizacji „specustawy” o pomocy obywatelom Ukrainy (UD 459)*, 18 November 2022, <https://ocalenie.org.pl/wp-content/uploads/2022/11/Stanowisko-Fundacji-Ocalenie-w-sprawie-projektu-nowelizacji-specustawy-o-pomocy-obywatelom-Ukrainy.pdf> (last accessed 19 July 2023).

³² Princ M., *Komentarz do artykułu 12b*, in Klaus W. (ed.), nt. (7).

³³ Kacprzak-Szymańska E., *Komentarz do artykułu 69*, in Klaus W. (ed.), nt. (7).

citizens of Ukraine, residing in Poland, whose stay in Poland is recognised as legal under Article 2 point 1 of the Ukrainian Act, the mayor (*wójt* or *burmistrz*) or city president may establish a crèche or children's club in premises that do not meet some of the conditions set out in other regulations.

3.3. Support provided to war migrants from Ukraine with regard to Article 13 points 2 and 4 of Directive 2001/55.

The entitlements in terms of medical care are covered, first and foremost, by Article 37 of the Ukrainian Act. A citizen of Ukraine whose residence in Poland is recognised as legal under Article 2 point 1 of the Ukrainian Act (as well as a person who has been granted a PESEL number in accordance with the procedure of Article 4 of the Ukrainian Act) is entitled to medical care in Poland covering healthcare services on the terms and to the extent to which people covered by compulsory or voluntary health insurance are entitled to benefits under the Act on healthcare services financed from public funds.³⁴ It excludes health resort treatment, health resort rehabilitation, and the provision of medicinal products issued to recipients under the health policy programs of the Minister for Health. According to Article 37 point 1b of the Ukrainian Act, such care is also granted to people injured as a result of military operations conducted in Ukraine who are not otherwise entitled to it. In view of the above, access to healthcare services of Ukrainian Act beneficiaries has been almost equated with that of Polish citizens.

Among the additional facilitations, in terms of the provision of medical care, the Ukrainian Act introduced, in Article 62, the possibility of providing healthcare services to people legally residing in Poland (in accordance with Article 2 point 1 of the Ukrainian Act), by doctors and dentists undergoing postgraduate training, both in the unit where they are undergoing such training and outside of it (Article 62 point 1 of the Ukrainian Act). The provision of this care is done outside of working hours or on unpaid leave (Article 62 point 3 Ukrainian Act). Moreover, according to Article 64a of the Ukrainian Act, in the period from February 24, 2022, for a period of 18 months, Ukrainian citizens with appropriate psychological qualifications (and after meeting additional requirements) obtained in Ukraine may provide psychological services to other Ukrainian citizens (and only to them). Both regulations aim to fill staff shortages in the face of a massive influx of war migrants.

3.4. Support provided to victims of the war in Ukraine with regard to Article 14 of Directive 2001/55.

In terms of education, the Ukrainian Act introduces additional solutions. However, the eligibility for education itself is based on general regulations, i.e. Ukrainian students (of

³⁴ Act on healthcare services financed from public funds (Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych), JoL. 2022, item 2561, as amended.

compulsory schooling age) are admitted to schools under the rules that apply to Polish students.³⁵ The specific solutions include the following:

- Article 45 of the Ukrainian Act enables the university to recognize the relevant periods of study by verifying the achieved learning outcomes in the case of a person who does not have documents confirming, among other things, the periods of study and exams passed. The university's decision in this matter is discretionary. This option may be used by Polish citizens and citizens of Ukraine who are legally residing in Poland (within the meaning of Article 2 point 1 of the Ukrainian Act), who, on February 24, 2022, were students at a university functioning in Ukraine and declare that on that date they were studying at the specified year, major and level of study;
- Article 50 of the Ukrainian Act is not addressed to war migrants from Ukraine but to local administration units. It concerns an increase in finances for these units in connection with additional educational tasks resulting from the influx of migrants from Ukraine due to the war;
- Article 51 of the Ukrainian Act grants the possibility (the decision is discretionary) to create other venues for teaching, upbringing and care, omitting certain regulations contained in separate acts, including the construction law, to provide education, upbringing and care for children and pupils who are citizens of Ukraine (the beneficiaries of the Ukrainian Act). Although the regulation should expedite the creation of places where Ukrainian children could be educated, there are critical comments by representatives of the legal literature precisely because of the omission of an important regulation from the construction law, as the lack of control over the change in the use of a building could pose a potential danger to its users;³⁶
- Article 52 of the Ukrainian Act pertains to the possibility of arranging free transportation for these pupils to the place where their education, upbringing and care are provided;
- Article 53 of the Ukrainian Act permits that these pupils be granted social benefits (e.g., scholarships or school benefits, as well as several other scholarships) in compliance with the rules set forth in Chapter 8a of the Act of September 7, 1991, on the educational system;³⁷
- Article 54 of the Ukrainian Act stipulates that the procedure that precedes the authorisation of home education does not apply to Ukrainian students who are beneficiaries of the Ukrainian Act;
- Article 55 of the Ukrainian Act allows teaching in a preparatory department in an inter-school group (this concept is not further defined in the Polish legal system)³⁸. Moreover, in these groups, additional Polish language instruction may be provided in

³⁵ Ministry of Education and Science, *Zasady przyjmowania cudzoziemców do polskich szkół w kontekście obecnej sytuacji na Ukrainie*, 25 February 2022, <https://www.gov.pl/web/edukacja-i-nauka/zasady-przyjmowania-cudzoziemcow-do-polskich-szkol-w-kontekscie-obecnej-sytuacji-na-ukrainie> (last accessed 19 July 2023).

³⁶ Górski M., *Komentarz do artykułu 51*, in Klaus W. (ed.), nt. (7).

³⁷ Act on the educational system (Ustawa z dnia 7 września 1991 r. o systemie oświaty), JoL. 2022, item 2230 as amended.

³⁸ Górski M., *Komentarz do artykułu 55*, in Klaus W. (ed.), nt. (7).

the 2022/2023 and 2023/2024 school years (Article 55b). It should be noted that in the case of this regulation, the personal scope has not been narrowed to beneficiaries of the Ukrainian Act.

4. Social entitlements in the Protection Act.

Those who are ineligible for assistance under the Ukrainian Act may avail themselves of temporary protection under the general conditions (as well as international protection) contained in the Protection Act.

People who enjoy temporary protection and have the aforementioned certificate issued to them shall, at their request, be provided with medical care and be granted assistance through housing and sustenance or assistance in the form of a financial benefit. If it is not possible to provide accommodation and sustenance, a financial benefit is provided (Article 112 point 1 of the Protection Act). The period of provision of this care and assistance lasts from two months to a maximum of the end of the period of validity of the certificate of temporary protection. However, they are only provided if resources permit (Article 112 point 1a of the Protection Act). Care and assistance shall not be provided if the person is already benefiting from social welfare and medical care, as specified in this Act, on another basis (Article 112 point 1b of the Protection Act). If a foreigner is working or running a business, medical assistance and care is provided, taking into account his income. However, when a foreigner, by virtue of his work or entrepreneurial activity, has healthcare already provided, medical care is no longer provided on the basis of Article 112 (points 4 and 4d) of the Protection Act. Also, if the specified amount of monthly income per family member of a foreigner under temporary protection is exceeded, he or she loses entitlement to financial benefit and sustenance. However, that person does not lose some of the additional support, e.g., in terms of learning the Polish language or basic materials necessary for education (Article 112 point 4e of the Protection Act).

To clarify the scope of this protection, those receiving assistance in the form of housing and sustenance are additionally entitled to, *inter alia*, permanent financial assistance for purchasing cleaning and personal hygiene products or cleaning and personal hygiene products themselves. They are also entitled to assistance in the form of Polish lessons and the basic materials necessary for learning it (Article 112 point 6 of the Protection Act). Medical care is provided very much like in the Ukrainian Act, i.e., medical care includes healthcare services to the extent that people covered by compulsory or voluntary health insurance are entitled to benefits under the Act on healthcare services financed from public funds, with the exception of health resort treatment or resort rehabilitation (Article 73 of the Protection Act).

Financial benefit may be granted according to Article 72 point 1 of the Protection Act, when organisational reasons require it, it is necessary to ensure the safety of the foreigner, taking into account the special situation of single women, for the protection of public order, or for the protection and maintenance of familial ties.

5. Social policy measures for Ukrainians: supporting professional activity.

In accordance with Article 12 of the Directive 2001/55, for a period not exceeding that of temporary protection, Member States shall authorise people enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession. They may also engage in activities such as educational opportunities for adults, vocational training and practical workplace experience. Article 116 of the Protection Act contains a relevant regulation in this regard. It stipulates that a foreigner enjoying temporary protection may perform work without a work permit or pursue economic activity under the terms of the Act of March 6, 2018, on the principles of foreign entrepreneurs and other foreign persons participating in economic turnover in Poland.³⁹ These powers shall be granted without limitation.

Completely different is the access to the labour market regulated by the Ukrainian Act. According to the regulation under Article 22, a citizen of Ukraine is entitled to perform work in Poland during the period of stay in accordance with the applicable regulations, if:

- 1) his stay in Poland is considered legal under Article 2 point 1 of the Ukrainian Act or
- 2) he is a citizen of Ukraine legally residing in Poland.

Thus, the above applies to all citizens of Ukraine legally residing in Poland, regardless of whether the stay is related to the war or not. The conditions for eligibility to legally engage in employment is that the entity delegating the work must fulfil the obligation of notifying the relevant poviát labour office, within 14 days from the commencement of work by a Ukrainian citizen, about the assignment of work to that individual, in accordance with their place of residence or the entity's location. In addition, for a Ukrainian citizen to be considered eligible to perform work, the work must be assigned with a working time not less than what is specified in the notification, or a number of work hours not less than the notification's indication, and at a salary not less than the rate established in the notification. This salary should be proportionally increased if the working time or number of hours is extended.

The abovementioned regulation raises a justified controversy in terms of compliance with Article 12 of Directive 2001/55.⁴⁰ This is because it makes the right to work contingent not only on the obligation to provide notification, but also on the working conditions complying with its content. Here it is worth noting several important points.

³⁹ Journal of Laws of 2022, item 470.

⁴⁰ Kanarek-Równicka A., *Employment of Ukraine citizens in the territory of Poland from 24.02.22*, in *Palestra*, 5, 2022, 108; Gayevaya O., *Uprawnienia osłonowe przysługujące obywatelom Ukrainy przebywającym w Polsce po 24 lutego 2022 roku (cz. I)*, in *Labour and Social Security Journal*, 7, 2023, 37. It is worth presenting the opposite view, according to which the legality of employment of a displaced person covered by the Ukrainian Act depends on the notification. Gayevaya indicates that the obligation to notify does not apply in the case when a Ukrainian citizen performs work in Poland in accordance with the provisions of Article 87 of the Act of 20 April 2004 on employment promotion and labour market institutions. This provision (Article 87, point 1, subpoint 6) indicates the entitlement to perform work by a person benefiting from temporary protection. Such a person is a foreigner whose status is created by Article 2 point 2 of the Ukrainian Act. Gayevaya argues that, although Article 2 point 8 of the Ukrainian Act excludes the application of the aforementioned Article 87 point 1 subpoint 6 to its regulation, but applying the principle *lex posterior* (Article 22, point 1a) *derogat legi priori* (Article 2 point 8), it is not necessary to make a notification, as the situation of a foreigner is regulated by Article 87 (point 1, subpoint 6) of the Act on Promotion of Employment and Labour Market Institutions, which is an exception to the notification obligation.

First, notifications can only be submitted electronically at praca.gov.pl.

Second, the obligation of notification does not apply when a Ukrainian citizen has a separately sanctioned right to work other than in the Ukrainian Act. An exception is when the obligation arises from a decision granting work-related residence. In that case, the notification must be made.⁴¹

Thirdly, a Ukrainian citizen whose work is legalised with a notification is not liable for working illegally. Thus, sanctions for a lack of notification or work in conditions that do not comply with it are borne only by the entity entrusting work to the foreigner.

In 2022, 786,142 notifications were submitted for citizens of Ukraine (and other persons who qualify under the term citizen of Ukraine under the Ukrainian Act).⁴² According to Kaczmarczyk, there is a very clear concentration of Ukrainian war migrants in two occupational groups, i.e., unskilled professions (about 35-40% of refugees) and specialist or managerial professions (about 20-25% together).⁴³

Two other mechanisms that support the professional activity of Ukrainian citizens are worth mentioning. First, the legislator, by the Act of May 12, 2022, amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine and the Act on Informatisation of Activities of Entities Performing Public Tasks⁴⁴ added Articles 22a-22h to the Ukrainian Act. They oblige the minister responsible for informatisation to ensure the operation of an ICT system for facilitating contacts between employers and job-seeking Ukrainian citizens. As a result, the pracawpolsce.gov.pl site was launched on July 6, 2022. The Minister of Digital Affairs ensures the operation, security, integrity, and accessibility of the site and data protection and allows the collection and removal of job offers and information on competencies and work experience. Secondly, the Minister of Labour introduced the possibility of financing Polish lessons from the Labour Fund.

According to Article 23 of the Ukrainian Act, citizens of Ukraine whose residence in Poland is considered legal under the Ukrainian Act or the Act on Foreigners may undertake and carry out economic activity in Poland on the same terms as Polish citizens, provided that they obtain a PESEL number.

Additionally, the Ukrainian Act introduced provisions to make it easier for Ukrainian citizens to do the following: obtain unemployed status (Article 22 point 6); obtain employment in local administration units and State offices (Article 23a); practise mining-regulated professions acquired in Ukraine (Article 23b); obtain employment in higher education (Article 46 and further); obtain employment as a teaching assistant (Article 57); to

⁴¹ Since only a foreigner is party to the proceedings for granting temporary residence and work permits (thus, receiving the decision issued in the course of the proceedings) and, for the entity entrusting the performance of work, the deadline for notification runs from the date of its delivery to the foreigner, this regulation raises justified controversies. This is because the notification must be made within the deadline that the entity obliged to make the notification has no knowledge of.

⁴² Minister of Family, Labour and Social Policy, *Powiadomienie o powierzeniu wykonywania pracy obywatelowi Ukrainy*, 9 September 2022, <https://psz.praca.gov.pl/web/urzed-pracy/-/19066985-powiadomienie-o-powierzeniu-wykonywania-pracy-obywatelowi-ukrainy> (last accessed 2 September 2023).

⁴³ Kaczmarczyk P., *Ukrainian migrants in Poland during the war: the state of the art and key challenges*, in *Social Insurance. Theory and Practice*, 155, 4, 2022, 22.

⁴⁴ Journal of Laws of 2022, item 1087.

practice as a doctor or dentist (Article 61); to practice as a nurse or midwife (Article 64); to provide psychological services to their compatriots residing in Poland (Article 64a).⁴⁵

6. Final considerations.

The war in Ukraine has had a huge impact on Poland. It even involves Poland transferring people to Ukraine who have illegally crossed the border to avoid complying with mobilisation obligations.⁴⁶ The initial phase of the war resulted in a sudden exodus of Ukrainian men from the Polish labour market. They returned to defend their homeland,⁴⁷ causing huge problems in some sectors of the economy.

Unfortunately, the solutions implemented by the Polish legislator are only remedial measures; they are not aimed at consciously managing the current situation. One year after the war began, the Ombudsman sounded the alarm: "*A large number of young people are not taught in any system, the majority of students are in mixed classes, the language barrier, the trauma of the war, the lack of psychological and pedagogical support, the lack of training for teaching staff – these are just some of the problems*".⁴⁸

In view of the scale of the influx of war migrants, the structure of this migration and (unfortunately) the lack of prospects for an imminent end to the war, it would be appropriate to start working to identify the needs of war migrants and then adapt solutions that would allow them to become as independent as possible. In particular, housing, education and income needs must be taken care of.

It is also important that changes to the rules made in relation to war migrants give them a sense of stability, allowing them to plan for the future,⁴⁹ not, as was the case with the repeal of Article 38 Ukrainian Act, to be made retroactively.

The preparation of long-term solutions related to migration policy towards war migrants must be based on the assumption that a very large proportion of them will not return to Ukraine. The survey by the EWL Migration Platform and Eastern European Studies at the University of Warsaw, conducted on a group of 500 Ukrainian citizens, compares the profiles of Ukrainian war migrants. It showed that the profile is changing. Almost two-thirds of Ukrainian citizens (64%) plan to return to their homeland in the near or long term. This means that the percentage of respondents declaring their intention to stay in Poland for a

⁴⁵ See Gayevaya O., nt. (40), 37-39.

⁴⁶ Kacprzak I., Szoszyn R., *Polska zaczęła wydawać Ukrainie jej obywateli, którzy trudni się przemytem ludzi*, in *Rzeczpospolita*, 4 September 2023, <https://www.rp.pl/swiat/art39049061-polska-zaczela-wydawac-ukrainie-jej-obywateli-ktorzy-trudnia-sie-przemytem-ludzi> (last accessed 5 September 2023).

⁴⁷ "B dziemy walczą". *Ukraincy wyjeżdżają z Warszawy, by wstąpić do wojska*, 24 February 2022, <https://tvn24.pl/tvnwarszawa/ochota/warszawa-dworzec-zachodni-ukraincy-wyjezdza-z-polski-by-wstapic-do-wojska-i-walczyz-przeciwko-rosji-5612163> (last accessed 5 September 2023).

⁴⁸ Michałowski K., *Nierozwiązane problemy edukacji dzieci i młodzieży z Ukrainy*. Min. Przemysłow Czarnek odpowiada RPO, 31 March 2023, <https://bip.brpo.gov.pl/pl/content/rpo-mein-problemy-edukacja-uczniowie-ukraina-odpowiedz> (last accessed 5 September 2023).

⁴⁹ For more about how migrants acquire legal knowledge, see Adamski J.K., Florczak I., *Exploring the Model of Legal Consciousness Formation Among Foreigners Working in Poland. Preliminary Insights*, in *Studia Migracyjne – Przejąd Polonijny*, 185, 3, 2022, 85-115, available at <https://www.ejournals.eu/Studia-Migracyjne/2022/>.

longer period decreased from 62% in 2021 to 40%.⁵⁰ However, this does not change the fact that a significant number intend to stay. The situation of this group will have to be considered in planning the management of various spheres of the State, including healthcare and education.

⁵⁰ Zymnin A., Kowalski M., Bryzek S., Kowcuń S., Dąbrowska E., Sytnik M., Stelmach F., *Raport Mobilności Transgranicznej. "Obywatele Ukrainy na polskim rynku pracy. Nowe wyzwania i perspektywy"*, Badanie EWL i Studium Europy Wschodniej UW, May 2023, available at https://studium.uw.edu.pl/wp-content/uploads/2023/05/RAPORT_MOBILNOSCI_2023_POL_FINAL.pdf (last accessed 5 September 2023).

Mass influx of people from Ukraine: social entitlements and access to the labour market: Portugal.

Ana Teresa Ribeiro*

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

Despite the geographical distance and the linguistic differences, Portugal has had, since the 1990s, a significant Ukrainian community. Therefore, it is not surprising that, following the beginning of the war, the country became a destination to several thousands of Ukrainian war migrants.¹ In fact, according to the United Nations High Commissioner for Refugees,² as of 4/06/2023, 56.995 Ukrainian war migrants came to Portugal (all of which applied either to asylum, temporary protection, or another similar protection scheme). The Government even expressed the country's willingness and interest in receiving them, given the available

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¹ Since the early 2000s, Ukrainians have been one of the most relevant migrant groups present in the Portuguese territory. In 2021, there were 27.195 Ukrainian residents in Portugal – see Oliveira C.R. (coord.), *Indicadores de Integração de Imigrantes, Relatório estatístico anual 2021*, Alto Comissariado para as Migrações, Lisbon, December 2021, 53-54, available at:

<https://www.om.acm.gov.pt/documents/58428/383402/Relat%C3%B3rio+Estat%C3%ADstico+Anual+2021.pdf/e4dd5643-f282-4cc8-8be1-92aa499bb92f> (last accessed 19 August 2023); Oliveira C.R. (coord.),

Indicadores de Integração de Imigrantes, Relatório estatístico anual 2022, Alto Comissariado para as Migrações, Lisbon, December 2022, 57-59, available at:

<https://www.om.acm.gov.pt/documents/58428/383402/Relatorio+Estatistico+Anual+-+Indicadores+de+Integracao+de+Imigrantes+2022.pdf/eccd6a1b-5860-4ac4-b0ad-a391e69c3bed>

(last accessed 19 August 2023). Still, Portugal is not one of the main destinations for international protection. In 2021, of the 27.1 million refugees existing in the world (according to the UN Refugee Agency), only 2.9 million were in EU countries, and, of those, only 2.700 were in Portugal – see Oliveira C.R., *Requerentes e beneficiários de proteção internacional em Portugal. Relatório estatístico do asilo 2023*, Alto Comissariado para as Migrações, Lisbon, June 2023, 29, available at:

https://www.om.acm.gov.pt/documents/58428/1489887/Relatorio+Estatistico+Asilo+2023_CRO.pdf/faccca14-39ab-45f4-99cf-40c61d6fb308 (last accessed 22 August 2023).

² See <https://data.unhcr.org/en/situations/ukraine> (last accessed 15 August 2023).

job positions and the highly valued contribution of migrants to the national social security system.³

Regarding the framework on temporary protection, Directive 2001/55/EC of 20 July⁴ was transposed to the Portuguese legal regime through Act no. 67/2003, of 23 August.⁵

Furthermore, and even before the approval of Council Implementing Decision 2022/382,⁶ Portugal had already approved Resolution of the Council of Ministers (RCM) no. 29-A/2022, of 1 March,⁷ in which it determined the specific criteria for granting temporary protection to displaced people as a result of the war in Ukraine. This act was later adjusted to meet the stipulations of Council Implementing Decision 2022/382.

According to § 1 of said Resolution, temporary protection was conceded for the period of one year, with the possibility of renewal up to another year, by decision of the Council (of the European Union).

In the meantime, **and in accordance with the EU's intention of extending** the temporary protection of dislocated people from Ukraine until March 2024, the Government (through RCM⁸ no. 22-D/2023) prolonged this protection for another six months. This solution stems from the regime enshrined in Article 7 of Act no. 67/2003, meaning that Portugal did not chose to implement a more favourable timeframe than the one resulting from the EU legislation.

2. Personal scope of applicable support measures.

In a first moment, before the approval of Decision 2022/382, and given the pressing war migrants' situation, Portugal approved, on 1 March 2022, RCM no. 29-A/2022. The original version of this act only granted temporary protection in Portugal (with automatic concession of a residence permit) to nationals of Ukraine and their family, with provenance from that country, and that could not return due to the war taking place therein. This protection was

³ *Ucrânia. Portugal tem capacidade e necessidade de acolher pessoas, diz Governo*, in RTP Notícias, 16 March 2022, https://www.rtp.pt/noticias/pais/ucrania-portugal-tem-capacidade-e-necessidade-de-acolher-pessoas-diz-governo_n1391778; Pereira A.C., *Portugal entre os países que menos diferenciam nacionais de imigrantes na protecção social*, in *Público*, 16 February 2023, <https://www.publico.pt/2023/02/16/sociedade/noticia/portugal-paises-menos-diferencia-nacionais-imigrantes-proteccao-social-2039148> (last accessed 19 August 2023). This is, in great part, explained by the low birth rate and the migratory habits of the Portuguese population – on this subject, as well as on the positive impact migration has had regarding the decrease of the effects of this phenomena, *see* Oliveira C.R., 2021, nt. (1), 58 ff. and Oliveira C.R., 2022, nt. (1), 62 ff.

⁴ 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 (later on as: Directive 2001/55).

⁵ Law no. 67/2003 of 23 August, available at https://files.dre.pt/StaticContent/Lei_67_2003_EN.pdf (last accessed 19 August 2023).

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (later on as: Decision 2022/382).

⁷ Resolution of the Council of Ministers no. 29-A/2022, https://files.dre.pt/StaticContent/RCM_29-A_2022__EN.pdf (last accessed 5 September 2023).

⁸ Resolution of the Council of Ministers no. 22-D/2023 of March 13, available at <https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/22-d-2023-208581828> (last accessed 15 August 2023). This transposition was, therefore, in violation of the deadline established in Article 32 of Council Directive 2001/55.

also extended to their family members with different nationality, as long as they proved such relation regarding Ukrainian citizens and were also unable to return to the country due to the war.⁹

Following the approval of Decision 2022/382, the aforementioned act was amended by RCM no. 29-D/2022, of 11 March,¹⁰ in order to bring it up to speed with the options made at EU level.

Subsequently to this change, § 1 of RCM no. 29-A/2022 now reads that Portugal grants temporary protection, with automatic concession of a residence permit, to nationals of Ukraine and to foreign citizens of other nationalities or stateless persons entitled to international protection in Ukraine with provenance from that country and who are unable to return to Ukraine as a result of the war taking place therein.

In addition, § 2 of RCM no. 29-A/2022 was also changed. As previously noted, in its original version, this act merely extended this protection to family members of Ukrainian citizens with a different nationality. Following the approval of RCM no. 29-D/2022, it was determined that this protection should encompass not only citizens of other nationalities, but also stateless persons who:

- are family members of Ukrainian citizens or
- who prove to hold the right to permanent residence in the Ukraine or
- who possess an authorization for temporary residence or who benefit from a long-term visa, aiming at obtaining such kind of authorization, and whose safe and long lasting return to their country of origin is not possible.

This second category of beneficiaries was once again changed, on 28 December 2022, through RCM no. 135/2022,¹¹ which determined the final and current version of § 2 of RCM no. 29-A/2022. This provision currently states that the temporary protection afforded by Portugal also covers:

- foreign nationals of other nationalities who prove to be family members of the citizens referred to in the preceding paragraph (that is, Ukrainian citizens, or foreign nationals or stateless people who benefited, until then, from Ukrainian international protection) or who prove that they are permanent residents in Ukraine and whose safe and durable return to their country of nationality is not possible;
- stateless persons who prove to be family members of the citizens mentioned in the preceding paragraph (that is, Ukrainian citizens, or foreign nationals or stateless people who benefited, until then, from Ukrainian international protection) or who prove that they are permanent residents in Ukraine.

Comparing the categories enshrined in Article 2, nos. 1 and 2, of Decision 2022/382, with the ones contained in §§ 1 and 2 of RCM no. 29-A/2022, it is clear that the latter went generally beyond the requirements of the first (even with the latest amendment that narrowed its scope).

⁹ The original version of this act is available at: <https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/29-a-2022-179802560> (last accessed 16 August 2023).

¹⁰ Available at: <https://files.dre.pt/1s/2022/03/05001/0000200003.pdf> (last accessed 16 August 2023).

¹¹ Available at: <https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/135-2022-205378560> (last accessed 16 August 2023).

In fact, while Decision 2022/382 specifies that the connection between the displaced people and the Ukrainian territory must predate 24 February 2022, Portuguese legislation does not make such demand. Furthermore, before the amendment introduced by RCM no. 29-D/2022, the Portuguese regime also encompassed the categories of foreign and stateless persons with temporary residence, following the permission enshrined in Article 2, no. 3, of Decision 2022/382.

However, it should be noted that RCM no. 29-A/2022 does not expressly allude to foreigners and stateless persons benefiting from national protection provided by the Ukrainian State (equivalent to international protection), diverging from what is established in Article 2, no. 1, *b)* of Decision 2022/382.

Finally, it is worth mentioning that the notion of family members eligible to temporary protection has also changed over time. In its pre-Council Implementing Decision 2022/382 version, RCM no. 29-A/2022 alluded to foreign citizens who proved to be blood-relatives, in-laws, spouses, or part of an unmarried couple (living in a way comparable to a married one) of or with a Ukrainian national. After the change introduced by RCM no. 29-D/2022, this definition was expanded to also include stateless persons.

Finally, with the last amendment, § 3 of RCM no. 29-A/2022 now states that family members are:

- a) spouses;
- b) persons who have been living with the person referred to in paragraph 1 under similar conditions as spouses since more than two years;¹²
- c) minor children of the person referred to in paragraph 1 or of his or her spouse or unmarried partner, including adoptive children;
- d) other close relatives who live together under the same roof and who are totally or largely dependent on the person referred to in paragraph 1 above.

It is noticeable that this last change narrowed the scope of those who shall be considered family members and are, therefore, entitled to benefit from these measures. In fact, Portuguese legislation now only encompasses minor children and close relatives (living under the same roof and totally/largely dependent), whereas, before December, it did not make such demands. Nevertheless, this curtailment does not encroach on the EU provisions on this matter. In fact, it is heavily inspired by Article 2, no. 4, of Decision 2022/382 (while, previously, the scope of the Portuguese legislation went beyond it).

These criteria were reviewed to adjust the protection mechanism to those who still require help and also to the outline of the persisting armed conflict. One can discern an approximation to the rules of most EU countries, with greater restraint regarding the granting of temporary protection to non-Ukrainian persons.¹³

¹² This stipulation is in line with Article 2, no. 4, a), of Decision 2022/382, since it covers an “unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its national law relating to aliens”. In fact, under Portuguese law, unmarried couples are considered to be in a situation comparable to married ones when their relation has lasted for more than two years (see Article 1, no. 2, Act no. 7/2001, available at https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=901&tabela=leis).

¹³ See Oliveira C., 2023, nt. (1), 89-90. It should be noted that, in 2022, Portugal was the second State, in the EU, to receive more displaced persons, from Ukraine, without Ukrainian nationality (following Germany).

In order to achieve the status of displaced person, pursuant to RCM no. 29-A/2022, any means of proof are admitted¹⁴ and the request can be made either in-person or digitally, from within or outside the national territory.¹⁵ Afterwards, the beneficiaries of temporary protection shall be issued a temporary protection document.¹⁶

Persons eligible, in principle, to this protection may be excluded from it:¹⁷

- a) when there are strong reasons to believe that:
 - i. they have committed a crime against peace, a war crime, or a crime against humanity, as defined in domestic law and international instruments of which Portugal is a party;
 - ii. they have committed a serious non-political crime outside the Portuguese territory before they can be admitted in Portugal as beneficiaries of temporary protection;
 - iii. they have committed acts contrary to the purposes and principles of the United Nations;
- b) when there are serious reasons to consider them a danger against national security, or when they have been convicted, by a final decision, of a serious common law crime,¹⁸ or when they constitute a serious threat to the national community.

The decision of exclusion from the temporary protection mechanism belongs to the Minister of Internal Affairs and is subject to appeal.¹⁹

In turn, the application of the temporary protection mechanism will end when it reaches its maximum period of duration, or anytime, following a decision of the Council (of the EU), based on the assessment that the situation in the country of origin allows a safe and lasting return of the beneficiaries of this measure.²⁰

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

All the information concerning these (and other) support measures regarding displaced persons from the conflict in Ukraine were made available on an online platform (<https://portugalforukraine.gov.pt/>) in three languages (Portuguese, English, and Ukrainian).

Being awarded temporary protection means that Ukrainian displaced persons will be provided with suitable accommodation,²¹ insofar as they lack their own necessary resources.²² Still, while Directive 2001/55 enshrines the right to access to suitable accommodation or, if

While Germany received 31.300 non-Ukrainians, Portugal welcomed 11.695. The Netherlands followed with 7000 non-Ukrainians – *see* Oliveira C.R., 2023, nt. (1), 85-86.

¹⁴ *See* § 4 of RCM no. 29-A/2022.

¹⁵ *See* § 7 of RCM no. 29-A/2022.

¹⁶ *See* Article 10, no. 1, of Act no. 67/2003.

¹⁷ *See* Article 6, no. 1, of Act no. 67/2003.

¹⁸ Which are crimes punishable with a prison sentence superior to three years – *see* Article 6, no. 5, of Act no. 67/2003.

¹⁹ *See* Article 6, nos. 6 and 7, of Act no. 67/2003.

²⁰ *See* Article 8 of Act no. 67/2003.

²¹ *See* Article 15, no. 1, of Act no. 67/2003.

²² *See* § 12 of RCM no. 29-A/2022.

necessary, to receive the means to obtain housing, Act no. 67/2003 only expressly refers the right to adequate housing.²³

Additionally, Article 5 of Decree-law no 24-B/2022,²⁴ of 11 March (on exceptional measures regarding the concession of temporary protection of displaced persons from Ukraine), deemed applicable, in this context, a pre-existent urgent housing programme (“Porta de Entrada – Programa de Apoio ao Alojamento Urgente”²⁵) to further assist displaced people with this matter.²⁶ Until the end of 2022, 109 municipalities had adhered to this mechanism and 2.372 accommodations were signalled as available. By the end of the year, 683 people (that is, 1.2% of the dislocated persons from Ukraine) benefited from this measure.²⁷

Furthermore, the High Commission for Migrations (“Alto Comissariado para as Migrações”), working with national and local authorities, as well as the civil society, tried to ensure other urgent housing solutions. These avenues (which included housing in youth hostels, municipal housing, among others) encompassed 3.671 people (that is, 6.7% of the dislocated persons from Ukraine).²⁸

Beneficiaries of temporary protection are also provided with the necessary support in terms of social benefits and means of subsistence, whenever lacking such resources.²⁹ In fact, beneficiaries of temporary protection shall be treated as beneficiaries with refugee status for the purposes of access to social benefits under the non-contributory regime.³⁰ This means that they will, namely, be entitled, when the legal conditions are met, to the Social Integration

²³ See Article 13, no. 1, of Directive 2001/55 and Article 15, no. 1, of Act no. 67/2003.

²⁴ Available at <https://diariodarepublica.pt/dr/detalhe/decreto-lei/24-b-2022-180398387> (last accessed 22 August 2023).

²⁵ This programme was established through Decree-law no. 29/2018 (available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2889&tabela=leis&so_miolo=, last accessed 22 August 2023) and it applies to situations of urgent need for housing, when people are deprived, in a temporary or definitive way, of their permanent housing or when they are in imminent threat of such loss due to an unpredictable or exceptional event (Article 2 of Decree-law no. 29/2018, available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=2889A0009&nid=2889&tabela=leis&fica=1&nversao=, last accessed 5 September 2023).

²⁶ As denoted in Literature, another mechanism was the spontaneous mobilization of civil society entities or individuals, finding accommodation in the real estate market directly, or using their own network of contacts with individuals, especially with members of the Ukrainian community previously resident in Portugal. “In the initial phase of the invasion and the massive displacement of people from Ukraine, there was a remarkable mobilization of both civil society organizations and private individuals. There were several offers of accommodation – some of which free of charge – from private individuals to displaced persons from Ukraine, either in their own (permanent home) or in a second home. However, there was the expectation that this situation would merely be short-term, which led to the loss of housing and, consequently, to the removal of war migrants from the places where they had already begun creating a social network – see De Angelis G., Challinor E., de Oliveira E., Lemos M., *The reception of displaced persons from Ukraine in Portugal*, NOVA Asylum Policy Lab, Lisbon, Policy Brief no. 1, January 2023, 11-13, <https://novaasylumclinic.fcsh.unl.pt/wp-content/uploads/sites/118/2023/03/Policy-Brief-Ukraine-EN-COMplete.pdf> (last accessed 22 August 2023). Furthermore, problems related to housing do not affect all dislocated persons in the same way. For people coming from Ukraine who are originally from Asian and African countries, this is a more sensitive issue. These persons are more likely to stay for an extended time in reception centres, and there have been reports of municipalities and individuals refusing to provide accommodation to them since they do not fulfil the phenotype of what is expected to be a Ukrainian national.

²⁷ See Oliveira C.R., 2023, nt. (1), 216.

²⁸ *Ibidem*.

²⁹ See Article 15, no. 2, of Act no. 67/2003 and § 12 of RCM no. 29-A/2022.

³⁰ See § 13 of RCM no. 29-A/2022.

Income (*a Rendimento Social de Inserção*) and to the Social Inclusion Benefit, respectively, aimed at situations of poverty and disability.³¹

In accordance with Article 13, no. 3, of Directive 2001/55, Article 15, no. 3, of Act no. 67/2003, points out that the possibility of providing for their own subsistence through professional activity is taken into account when determining the envisaged level of aid.

In addition, Ukrainians benefiting from temporary protection are also entitled to medical assistance as regards emergency care and basic treatment of illness, and medical or other assistance shall be provided to those who have special needs, such as unaccompanied minors or persons who have been victims of torture, rape, or other forms of moral, physical, or sexual violence.³² This means that, when enjoying temporary protection, displaced persons from Ukraine will have access to the Portuguese National Health System in the same conditions as Portuguese citizens (namely, the vaccination programme and the assignment of a family doctor).³³

Regarding access to education, minors enjoying temporary protection are granted access to the public education system under the same conditions as nationals.³⁴ In practice, this has led to the concession of equivalencies of foreign qualifications and/or the positioning within a certain school year, with simplified procedures, and the attendance, in a first moment, of the subjects that the school deems adequate. Multidisciplinary school teams were created, with the aim of devising and proposing adequate strategies to the specific situation of these students, among other measures, and Portuguese was taught as a non-native language.³⁵ During this time, several recommendations have been issued with the purpose of helping teachers and teaching staff adjust to these new students and their particular needs, in order to provide for a better and faster integration of these children in the Portuguese school system, ensuring their well-being, safety, and quality learning.³⁶

³¹ For more information on these benefits, their amounts, and their legal requirements, see Ministério do Trabalho, Solidariedade e Segurança Social, <https://en.seg-social.pt/citizen> (last accessed 22 August 2023). For detailed information on the number of assigned social benefits and their amounts, see Oliveira C.R., 2023, nt. (1), 209 ff.

³² See Article 15, nos. 4 and 5, of Act no. 67/2003.

³³ See <https://portugalforukraine.gov.pt/en/faqs-en/#a6> (last accessed 22 August 2023). For more details regarding access to vaccination, see Oliveira C.R., 2023, nt. (1), 205-206.

³⁴ See Article 16 of Act no. 67/2003.

³⁵ For further developments, see Oliveira C.R., 2023, nt. (1), 210 ff. For a description of the educational measures and recommendations provided to schools, see Directorate-General for Education (DGE), *Crianças e Jovens Refugiados – medidas educativas*, available at:

http://dge.mec.pt/criancas-e-jovens-refugiados-medidas-educativas#2_Medidas_de_Acolhimento

(last accessed 22 August 2023); Direção-Geral da Educação, Agência Nacional para a Qualificação e o Ensino Profissional, I.P., *Crianças e jovens beneficiários ou requerentes de proteção internacional. Guia de Acolhimento: Educação Pré-Escolar, Ensino Básico e Ensino Secundário*, August 2020:

https://www.dge.mec.pt/sites/default/files/Projetos/Criancas_jovens_refugiados/guia_acolhimento_requerente_de_asilo_e_beneficiarios_de_protecao_internacional.pdf (last accessed 22 August 2023).

³⁶ See Oliveira C.R., 2023, nt. (1), 210-211. For the recommendations for children in kindergartens: Direção-Geral da Educação, *Integração de crianças refugiadas na educação pré-escolar*, 2022, available at https://www.dge.mec.pt/sites/default/files/Projetos/Criancas_jovens_refugiados/integracao_de_criancas_refugiadas_na_educacao_pre-escolar.pdf (last accessed 22 August 2023), while for the recommendations for students in other school levels: Direção-Geral da Educação, *Orientações para o acolhimento, a integração e a inclusão de crianças e jovens ucranianos refugiados*, 2022, available at:

https://www.dge.mec.pt/sites/default/files/Projetos/Criancas_jovens_refugiados/orientacoes_para_o_acolhimento_a_integracao_e_a_inclusao_de_criancas_e_jovens_ucranianos_refugiados.pdf (last accessed 22 August 2023).

In turn, Article 14, no. 2, of Directive 2001/55 allows Member States to limit this access to public school, which was done by the Portuguese legislator.

It also declares³⁷ that Member States may authorize the access of adults benefiting from temporary protection to the general education system. The Portuguese act that transposes this directive does not allude to this circumstance. However, Article 3 of Decree-law no 24-B/2022³⁸ determines that those who benefit from temporary protection may request the application of the status of students in an emergency situation due to humanitarian reasons, which allows Universities and other higher education institutions to receive students from Ukraine who wish to conclude their studies in Portugal.³⁹

It should be noted that the statement that proves the application for temporary protection is communicated by the Portuguese **Immigration and Border Service** (“**Serviços de Estrangeiros e Fronteiras**” – SEF)⁴⁰ to the Social Security, the Tax and Customs Authority and the shared services of the Ministry of Health, for the purpose of automatic assignment of, respectively, a social security identification number, a tax identification number and a national user number.⁴¹ This statement shall also be provided to the Institute of Employment and Vocational Training (“**Instituto do Emprego e da Formação Profissional**” – IEFP), for the purposes of registration.⁴²

From this analysis, it is clear that the Portuguese legal regime is, in what concerns access to financial support, housing, healthcare, and education, in line with the requirements enshrined in the EU legislation.

In practice, however, Ukrainian displaced persons have been facing some difficulties regarding the enjoyment of these rights. Concerning housing, the greatest challenges relate to the scarcity of available housing and the high prices practiced in the Portuguese rental market, which make finding permanent accommodations difficult.⁴³ In turn, access to

³⁷ See Article 14, no. 2 of Directive 2001/55.

³⁸ Available at <https://diariodarepublica.pt/dr/detalhe/decreto-lei/24-b-2022-180398387> (last accessed 22 August 2023).

³⁹ This provision deemed Article 8-A of Decree-Law no. 36/2014 applicable to these cases (available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2014-115919453>, last accessed 5 September 2023). The General Direction of Higher Education released an information notice in Portuguese, English, and Ukrainian, clarifying how this access takes place and all the required steps – see Direção-Geral do Ensino Superior, *Situações de emergência humanitária decorrentes do conflito militar na Ucrânia*, 9 December 2022, <https://www.dges.gov.pt/pt/noticia/estudantes-em-situacoes-de-emergencia-humanitaria-nacionais-da-ucrania> (last accessed 22 August 2023). For more developments on this matter, see Oliveira C.R., 2023, nt. (1), 211-213.

⁴⁰ This service will be, in the meantime, replaced by another (regarding its administrative tasks), the Agency for **Integration, Migrations, and Asylum** (“**Agência para a Integração, Migrações e Asilo, I.P.**”), created through Decree-Law no. 41/2023 of June 2, 2023, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/41-2023-213881448> (last accessed 5 September 2023).

⁴¹ See § 8 of RCM no. 29-A/2022.

⁴² See § 9 of RCM no. 29-A/2022. These communications are preferably made by electronic data transmission (in respect of the general data protection scheme) – see § 10 of RCM no. 29-A/2022.

⁴³ *Acesso a habitação e saúde são principais dificuldades para refugiados, diz associação*, in *Observador*, 20 February 2023, <https://observador.pt/2023/02/20/acesso-a-habitacao-e-saude-sao-principais-dificuldades-para-refugiados-diz-associao/>; A.C. Pereira, *Só 382 famílias ucranianas beneficiam do Programa de Apoio ao Alojamento Urgente*, in *Público*, 1 March 2023, available at <https://www.publico.pt/2023/03/01/sociedade/noticia/so-382-familias-ucranianas-beneficiam-programa-apoio-alojamento-urgente-2040187>; *Habitação é o maior desafio para pessoas refugiadas em Portugal*, in *Público*, 22 February 2023, available at <https://www.publico.pt/2023/02/22/sociedade/noticia/habitacao-maior-desafio-pessoas-refugiadas-portugal-2039772> (all last accessed 18 August 2023).

healthcare is sometimes hampered by linguistic barriers.⁴⁴ And it has been reported that many Ukrainian children still do not attend Portuguese schools since their families have preferred to enrolled them on online classes provided by Ukrainian schools.⁴⁵

4. Social policy measures for Ukrainians: supporting professional activity.

Following Article 12 of Directive 2001/55, Act 67/2003 expressly states that beneficiaries of temporary protection on national territory may engage in employed or self-employed activities and participate in vocational training activities (for a period not exceeding that of the aforementioned protection).⁴⁶

Also, in accordance with the regime enshrined in Directive 2001/55, the aforementioned legal diploma further states that the beneficiaries' access to such activities cannot prejudice the priority given to nationals of the European Union and of the States bound by the Agreement on the European Economic Area, and to foreigners who reside in the national territory and who enjoy unemployment benefits.⁴⁷ In addition, as previously noted, the declaration providing temporary protection is communicated to the Employment and Vocational Training Institute.⁴⁸

This Institute makes the connection between employers and prospective employees. That means that employers can send demonstrations of interest, regarding the employment of Ukrainian displaced persons and the IEFP will make the connection. The Institute also provides courses of Portuguese to increase the integration of these potential workers. Furthermore, traineeship programmes, sponsored by the State, have more flexible rules regarding displaced persons⁴⁹ (among other categories), aiming at increasing the

⁴⁴ *Acesso a habitação e saúde são principais dificuldades para refugiados, diz associação*, in *Observador*, 20 February 2023, <https://observador.pt/2023/02/20/acesso-a-habitacao-e-saude-sao-principais-dificuldades-para-refugiados-diz-associacao/> (last accessed 18 August 2023).

⁴⁵ *Habitação é o maior desafio para pessoas refugiadas em Portugal*, in *Público*, 22 February 2023, <https://www.publico.pt/2023/02/22/sociedade/noticia/habitacao-maior-desafio-pessoas-refugiadas-portugal-2039772>; A.C. Pereira, *Crianças ucranianas entre dois mundos: quase dez mil fora do ensino português*, in *Público*, 21 February 2023, <https://www.publico.pt/2023/02/21/sociedade/reportagem/criancas-ucranianas-dois-mundos-quase-dez-mil-ensino-portugues-2039631> (last accessed 18 August 2023). According to the news, in February 2023, almost 4.500 Ukrainian children were enrolled in Portuguese schools, while almost 10.000 were not. Most of these are attending the Ukrainian distance learning system. In Oliveira C.R., 2023, nt. (1), 211, the author questions whether this scenario is also due to mental health reasons, difficulties regarding the application to the Portuguese school system, or irregular housing situations.

⁴⁶ See Article 14, no. 1, of Act no. 67/2003.

⁴⁷ See Article 14, no. 2, of Act no. 67/2003.

⁴⁸ See RCM no. 29-A/2022, § 9.

⁴⁹ In this act they are called “refugees”.

employability of these people.⁵⁰ To facilitate the understanding of these elements, the information is available, on the IEFP's website, in Portuguese and in Ukrainian.⁵¹

People encompassed by temporary protection may, therefore, engage in employed or self-employed activities, as well as in activities such as educational opportunities for adults, vocational training, and practical workplace experience.

According to the available data, at the end of 2022, there were 7,121 employment contracts entered into by workers displaced from Ukraine and 2,515 job offers.⁵² However, one problem that has been detected consists in the mismatch between job-seekers' superior qualifications and the search for non-qualified workers.⁵³

Finally, there are special rules for the recognition of degrees held by displaced persons from the war in Ukraine,⁵⁴ in the sense that they are given priority and are exempt from certain demands. In fact, they are not subject to formalities connected with the legalization of documents emitted by foreign entities; with the certification or authentication to Portuguese of documents in other languages; with the certification or authentication of copies of original documents; or with the payment of fees. And drivers who wish to exchange their driving licences for Portuguese ones are also exempt from certain formalities.⁵⁵

5. Final considerations.

Despite the distance and the language barrier, Portugal has welcomed a significant number of displaced persons due to the war in Ukraine (namely non-Ukrainians).

In order to provide an adequate welcome and integration of these war migrants in the Portuguese community, several measures were enacted, which, from a legal standpoint, globally met the demands arising from the EU legislation (and, at in some aspects, even went beyond what was required).

Even so, there are some difficulties regarding the enjoyment of the conditions offered to these persons due to language-related obstacles, namely concerning access to health services and/or the housing market (the latter being further hindered by the difficult conditions that characterise the current Portuguese housing market).

Particularly with respect to this last issue, it is clear that social answers must be reinforced in order to allow a full integration of displaced persons in the national community (since such integration depends on stability regarding housing). However, since the housing crisis

⁵⁰ This is achieved through the "ATIVAR.PT" programme – IEFP, *Estágios*, <https://www.iefp.pt/estagios?tab=estagios-ativar-pt> (last accessed 22 August 2023). Persons under temporary protection also qualify for other employability measures, such as a programme directed at increasing the employability of long-term unemployed people and another that aims to incentive the creation of employment in the country's interior zones (see IEFP, *Apoios à contratação*, <https://www.iefp.pt/apoios-a-contratacao?tab=compromisso-emprego-sustentavel>; IEFP, *Apoios à mobilidade geográfica*, <https://www.iefp.pt/apoio-mobilidade-geografica?tab=emprego-interior-mais>, respectively, last accessed 22 August 2023).

⁵¹ See IEFP, *Portugal for Ukraine*, <https://www.iefp.pt/portugal-for-ukraine> (last accessed 22 August 2023).

⁵² See Oliveira C.R., 2023, nt. (1), 218.

⁵³ *Ibidem*.

⁵⁴ See Article 6 of Decree-Law no. 24-B/2022.

⁵⁵ Article 4 of Decree-Law no. 24-B/2022.

is a problem currently felt across the whole Portuguese society,⁵⁶ this may hinder the efforts towards adequate responses in this domain. Nevertheless, any measures taken at this point must also consider the situation of war migrants and their particularly delicate situation.

Finally, it should also be noted that even though the Government has made an effort to provide information online in more than one language, some Literature reports that not all displaced persons are properly informed on the social benefits to which they are entitled.⁵⁷ It is, therefore, important to ensure that all the measures being put forward concerning these persons are being adequately divulged.

⁵⁶ See, for instance, *Crise da habitação em Portugal chega ao The Guardian que fala em "loucura"*, in *Diário de Notícias*, 31 July 2023, <https://www.dn.pt/dinheiro/crise-da-habitacao-em-portugal-chega-ao-the-guardian-que-fala-em-loucura-16784606.html> (last accessed 5 September 2023).

⁵⁷ See De Angelis G., Challinor E., de Oliveira E., Lemos M., nt. (26), 18.

Mass Influx of People from Ukraine: Social Entitlements and Access to the Labour Market: Romania.

Alexandra Porumbescu* - Anatolie Coşciug⁺

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education. 3.1. Housing. 3.2. Education. 3.3. Child and vulnerable individuals. 3.4. Healthcare. 4. Social policy measures for Ukrainians: supporting professional activity. 4.1. The right to work. 4.2. Main actors and activities supporting the employment of Ukrainian war migrants. 5. Final considerations.

1. General framework.

In the migration scholarship, Romania is commonly associated with its massive emigration phenomenon.¹ Being one of the countries neighbouring Ukraine, after the events that started on February 24th 2022, Romania was directly concerned by the massive influx of war migrants fleeing the conflict and has thus witnessed one of the largest immigration

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¹ Croitoru A., Vlase I., *Stepwise migration: What drives the relocation of migrants upon return?*, in *Population, Space and Place*, 28, 2, e2492, 2022, 2; Porumbescu A., *The European institutional actors in handling migration*, in *Sociology and Social Work Review*, 2, 1, 2018; Kacper S., Bertelli D., Bivand Erdal M., Coşciug A., Kussy A., Mikiewicz G., Tulbure C., *To vote or not to vote? Migrant electoral (dis) engagement in an enlarged Europe*, in *Migration Studies*, 9, 3, 2021; Voicu B., Rusu H., Comşa M., *Embedding Attitudes Toward Immigrants in Solidarity Contexts: A Cross-European Study*, in *International Migration Review*, 2022; Porumbescu A., Pogan L., *Social Change, Migration and Work-Life Balance*, in *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, 2018, 60; Ducu V., Nedelcu M., Telegdi-Csetri A., *Childhood and parenting in transnational settings*, Springer, Cham, 2018, Vol. 15.; Dolea A., *Transnational diaspora diplomacy, emotions and COVID-19: the Romanian diaspora in the UK*, in *Place Branding and Public Diplomacy*, 18, 1, 2022.

flows in its recent history.² In this context, it was created a decision-making and coordination structure aimed to enable agencies with different law enforcement and operational responsibilities, from all levels of Government, to plan, coordinate and interact effectively on the ground in response to the humanitarian crisis and provide assistance for war migrants. More specifically, a decision-making Task-Force, under the coordination of the Prime Minister, was constituted, and an operational Task Force, called the “Ukraine Commission”, coordinated by the head of the Prime Minister’s Office, was established to oversee the activities of the ministries involved in the management of the war migrants flow in all areas of intervention. In addition, at the level of the Prime Minister’s Chancellery, the Humanitarian Assistance Strategic Coordination Group was established, led by a State Counselor, to ensure the strategic framework for humanitarian response and to facilitate cooperation between agencies and partners at the national, European and international levels.

Romania’s response to this crisis is structured on two levels of intervention.³ The first response, emergency assistance, was led by the Department for Emergency Situations (DSU), within the Ministry of Internal Affairs, consisting in the deployment of resources and capacities at the main border crossing points, on the way into the country, in the provision of humanitarian transport, shelter emergency, food, basic healthcare, etc. The efforts undertaken by DSU were complemented by the legislative and administrative work of the various ministries within the Romanian Government, which issued a large number of legislative acts to meet the emergency needs of war migrants, as explained further in this chapter. Local authorities have also coordinated their efforts with government agencies, developing their own operational plans based on assessments of local needs. The public effort was energetically supported by Romanian civil society, international non-governmental organisations, UN agencies, and private actors.

The second type of response, the protection one, was developed as a mechanism aimed to ensure medium and long-term protection and inclusion measures for Ukrainian war migrants who choose to stay in Romania. For the second stage of intervention, the Government established six working groups with the role of developing policy measures for inclusion and protection in the following areas: health, education, job security, housing, vulnerable people, children and young people.

Notwithstanding, being a member state of the European Union, Romania has to comply with the European *acquis*, and the common normative provisions are being applied throughout either directly, or after being transposed in the national legislation. In this context, 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 thereof⁴ was implemented in the Romanian legal system by

² Coşciug A. (coord.), “*PERSPECTIVE EMPIRICE ASUPRA IMIGRAȚIEI ÎN ROMÂNIA De la țară de tranzit la țară de destinație*”, Editura de Vest, Timișoara, 2022.

³ Further information available at <https://www.gov.ro/ro/ucraina-impreama-ajutam-mai-mult>, (accessed 24 April 2023).

⁴ Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

the Law no. 122/2006 on Asylum in Romania.⁵ As explained in article 1, this law establishes the legal regime of foreigners who apply for international protection in Romania, such as the conditions for confirmation, excluding and terminating temporary protection.

The analysis presented in this chapter regards the conditions and situation of Ukrainian war migrants, holders of temporary protection status (TPS) in Romania, although some individuals benefit from other forms of international protection, or entered Romania with work visas or for family reunification reasons. However, the beneficiaries of temporary protection status represent, in terms of relative numbers, the most significant group.

Since February 24th, 2022, more than 2 million people have crossed the border from Ukraine to Romania,⁶ and a significant number of them have accessed the Romanian protection system, receiving temporary protection status. According to the data provided by United Nations High Commissioner for Refugees (UNHCR), as of April, 1st, 2023, there are 107.706 individuals from Ukraine living in Romania and 125.316 displaced persons from Ukraine have been registered for temporary protection, with a gender breakdown of 60% female and 40% male.⁷ In terms of age, most of the temporary protection status holders are adults (aprox. 59%), while around 6 % are elderly and 32 % children.⁸ The highest number of temporary protection confirmations were issued in the capital city, Bucharest (42,306), followed by the next counties: Constanța with 13,855, Maramureș with 12,647, Galați with 11,402, and Suceava with 6,692. The scale of the influx has fluctuated since the beginning of the war, with a peak of over 22.000 temporary protection confirmations issued in May 2022, and a relative stabilisation between 7.000 and 10.000 confirmations issued between June 2022 and January 2023. As of February, 2023, the total numbers has decreased and the number issued for March 2023 are around 6.000 confirmations.⁹

A recent study indicates that “the majority of refugees relied on remittances and social benefits from Ukraine as well as humanitarian assistance as main sources of income”,¹⁰ while in terms of future plans, a research conducted¹¹ with war migrants from Ukraine reveals that, for the respondents located in Romania, 31% of the people intend to return to Ukraine, 42% wish to remain in Romania, 16% want to move to another host country, and 11% are uncertain.

In terms of legislative measures aimed at addressing this situation, the Romanian Government has transposed the Council Implementing Decision (EU) 2022/382 of 4 March

⁵ See Romanian Parliament, LEGE nr. 122 din 4 mai 2006 privind azilul în România, <https://legislatie.just.ro/Public/DetaliiDocument/71808>, (accessed 24 April 2023).

⁶ UNHCR, *Ukraine situation: Romania, Population movement trends*, <https://data.unhcr.org/en/dataviz/236?sv=54&geo=10782>, (accessed 24 April 2023).

⁷ UNHCR, *Ukraine situation: Romania, overview of temporary protection Directive*, <https://data.unhcr.org/en/dataviz/234?sv=54&geo=10782>, (accessed 24 April 2023).

⁸ Data extracted from UNHCR, *Ukraine situation: Romania, overview of temporary protection Directive*, percents calculated by the authors.

⁹ *Ibidem*.

¹⁰ REACH, *Multi Sector Needs Assessment Romania*, December 2022, 54.

¹¹ The research was conducted by UNHCR and partners in the Czech Republic, Hungary, the Republic of Moldova, Poland, Romania and Slovakia between mid-May and mid-June 2022. UNHCR, *Lives on hold: Profiles and intentions of refugees from Ukraine*, July 2022, 16.

2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC¹² through the Emergency Ordinance (further noted in the text as GEO) no. 15 of February 27, 2022¹³ on providing humanitarian support and assistance by the Romanian state to foreign citizens or stateless persons in special situations, coming from the area of the armed conflict in Ukraine. This GEO was issued in order to implement the measures that can be adopted in the matters of granting facilities to Ukrainian citizens in Romania under the temporary protection regime.

Considering the need to continue undertaking measures of support and humanitarian assistance for foreign citizens or stateless persons coming from Ukraine,¹⁴ on March 7, 2022, GEO no. 20/2022¹⁵ regarding the modification and completion of some normative acts as well as for the establishment of some measures of support and humanitarian assistance, of modification and completion of GEO no. 15/2022 was adopted. In addition to the above-mentioned sources of law by which the Directive 2001/55 and Decision 2022/382 were implemented, the Romanian Government also issued the Government Decision no. 367/2022,¹⁶ regarding the establishment of conditions for ensuring temporary protection, as well as for the modification and completion of some normative acts in the field of asylum and immigration. The text of these legal documents includes no provisions regarding the period of time for which they are to be applied, as the situation was still ongoing at the time they were issued and it was difficult to estimate the future size of the population flow or any future developments. Furthermore, the information presented in this chapter reflects the legal and on field situation until April 2023, new changes being implemented as the needs of accommodating the Ukrainian refugee influx change. For instance, one of the most important programmes, the 50/20 housing scheme, is being changed as of May, 1st, 2023, and several other legislative modifications are expected in the near future.

¹² Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

¹³ Romanian Government, *Ordonanta de urgenta nr. 15 din 27 februarie 2022 privind acordarea de sprijin și asistență umanitară de către statul român cetățenilor străini sau apatrizilor aflați în situații deosebite, proveniți din zona conflictului armat din Ucraina* (on the granting of support and humanitarian assistance by the Romanian State to foreign citizens or stateless persons in special situations from the area of armed conflict in Ukraine), <https://legislatie.just.ro/Public/DetaliiDocument/251954>, (accessed 24 April 2023).

¹⁴ Valcu E. N., *The influx of refugees from Ukraine - unional and national mechanisms regarding temporary protection or asylum request*, The International Conference “European Union’s history, culture and citizenship” Pitesti, 2022.

¹⁵ Romanian Government, *GEO no. 20/2022 privind modificarea si completarea unor acte normative, precum și pentru stabilirea unor măsuri de sprijin și asistență umanitară* (regarding the amendment and completion of some normative acts as well as for the establishment of some measures of support and humanitarian assistance).

¹⁶ Romanian Government, *Government Decision no. 367 of March, 18th, 2022, privind stabilirea unor condiții de asigurare a protecției temporare, precum și pentru modificarea și completarea unor acte normative în domeniul străinilor* (on establishing certain conditions for granting temporary protection and amending and supplementing certain acts in the field of aliens), <https://legislatie.just.ro/Public/DetaliiDocument/252745>, (accessed 24 April 2023).

2. Personal scope of applicable support measures.

In the definition of Law no. 122/2006, temporary protection is an exceptional procedure intended to ensure, in the event of a massive flow or an imminent massive flow of displaced persons from third countries who cannot return to their country of origin, immediate and temporary protection for such persons, in particular if there is also the risk that the asylum system cannot process this flow without adverse effects for its effective functioning, in the interests of the persons concerned and other persons in need of protection.¹⁷ Registering for temporary protection in Romania gives Ukrainian people fleeing the war the right to stay in Romania for one year (with the right to renewal, as referred to further below), as well as grants them the right to access the labour market, benefit from free healthcare, and enrol in the education system, under the same conditions as Romanian citizens.

According to art. 131 paragraph 4 of Law no. 122/2006 on asylum in Romania, in the situation where temporary protection is granted by the Decision 2022/382, the Government of Romania, at the proposal of the General Inspectorate for Immigration, issues a decision in which the concrete conditions for ensuring the temporary protection will be provided to displaced persons on the territory of the Romania, as well as the source of financing for the expenses determined by the provision of temporary protection.

Regarding the option of applying art. 2 par. (2) of the Decision 2022/382, according to which the member states apply either the protection based on aforementioned Council decision or an adequate protection based on their national law, by GD no. 367/2022¹⁸ it was decided to include the persons provided for to that paragraph in the category of beneficiaries of temporary protection, as follows: stateless persons and third-country nationals, other than Ukrainians, who can prove that they had legal residence in Ukraine before February 24, 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and who cannot return under safe and stable conditions to their country or region of origin.

In the understanding of chapter IX of Law 122/2006 regarding asylum in Romania, the category of beneficiaries of temporary protection includes the persons provided for in art. 2 paragraph (1) and (2) of Decision 2022/382, namely: Ukrainian nationals residing in Ukraine before 24 February 2022, stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022, and family members of the persons referred to above, and, as paragraph 2 explains, “stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of

¹⁷ Romanian Parliament, *LEGE nr. 122 din 4 mai 2006 privind azilul în România*, art. 2 (i), <https://legislatie.just.ro/Public/DetaliiDocument/71808>, (accessed 24 April 2023).

¹⁸ Romanian Government, *Government Decision no. 367 of March, 18th, 2022, privind stabilirea unor condiții de asigurare a protecției temporare, precum și pentru modificarea și completarea unor acte normative în domeniul străinilor* (on establishing certain conditions for granting temporary protection and amending and supplementing certain acts in the field of aliens).

origin”.¹⁹ In application of art. 2 par. (3) of the Decision 2022/382, beneficiaries of temporary protection are also the people included in the above mentioned categories that were located on Romanian territory before February, 24th, 2022, the family members of the people included in paragraph 2, in the situation that these persons are beneficiaries of temporary protection according to the Romanian Government, and other close relatives who lived together, as a household, when the events leading to the massive influx of displaced persons occurred and on whom the person was wholly or mainly dependent at the time.

According to the information provided by the Romanian General Inspectorate for Immigration, the institution that is responsible with the registration of data and the issuance of residence permits to beneficiaries of temporary protection who present themselves to the competent authorities, temporary protection is granted for a period of one year from the date of issuance of Decision 2022/382, and can be automatically extended for periods of 6 months, for a maximum of one year, if the generating situation persists. If this continues, the Member State may send the European Commission a proposal addressed to the Council of the European Union to extend the temporary protection for up to one year. More specifically, the mechanism of temporary protection in Romania lasted until the 4th of March 2023 and could be renewed for two consecutive periods of 6 months each - i.e. until the 4th of March 2024. This period can be extended by another year depending on the situation in Ukraine. Temporary protection may end before the above terms, under conditions established by law, when this is decided by a decision of the Council of the European Union.

Regarding the mechanism of confirming the status of displaced persons, article 2 of GD 367/2022 indicates that temporary protection can be confirmed by the Romanian General Inspectorate for Immigration to the categories of persons described above, located in a Romanian state border crossing point, including in the transit zone, or on the territory of Romania and who are not in any of the exclusion cases provided for in Law no. 122/2006. The exclusion cases indicate the situations in which a foreigner is excluded from the granting of temporary protection if there are serious reasons to believe that the person in question has committed a serious crime against peace, a war crime or a crime against humanity as defined in international instruments established to regulate such crimes, has committed a serious crime, other than those enumerated, outside of Romania, before entering the Romanian state as a person enjoying temporary protection, or is guilty of acts contrary to the purposes and principles of the United Nations, or there are solid reasons for considering him/her as a danger to Romania's security or, having been convicted by a final judgement for committing a particularly serious crime, the foreigner represents a danger to public order in Romania.

The Romanian General Inspectorate for Immigration issues residence permits to beneficiaries of temporary protection, free of charge, and the beneficiaries of temporary protection are assigned a personal numerical code by the General Inspectorate for Immigration. According to Government Emergency Ordinance no. 15/2022, these documents are provided in the context of the rules of offering of humanitarian support and assistance by the Romanian state to foreign citizens or stateless persons in special situations,

¹⁹ The legal text was translated from Romanian by the authors and does not represent an official translation of the law.

originating from the area of armed conflict in Ukraine. In application of art. 134 of Law no. 122/2006, for the purpose of issuing residence permits, beneficiaries of temporary protection have their facial image taken and the following data recorded: name and surname, date of birth, citizenship, gender, marital status, family situation, family ties, the address in Romania, as far as it is known, data which is stored in the Informatic Systems for Foreigners' Management, called in Romanian "SIMS". Within 12 months from the termination of the application of the Decision 2022/382, the data provided for issuing these documents stored in SIMS, are deleted through an automatic and irreversible procedure, except in the case where the person who benefited from temporary protection was granted a right of residence or permission to stay on the territory of Romania or who has a request in this sense pending resolution.

Regarding the issuance of residence permits, several administrative aspects are to be noted. Given the very particular character of this type of protection, individuals will not be required to submit an application for the activation of temporary protection. By simply expressing the will to have their personal data processed, respecting the guarantees in this field, the will to benefit from this type of protection and, correlatively, from all related rights and obligations is considered manifested. In order to allow, however, the safe exercise of the rights enshrined in the legislation, beneficiaries of temporary protection will be assigned, by the General Inspectorate for Immigration, a personal numerical code, similar to that assigned to asylum seekers.

3. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education.

On March 7, 2022, the Government of Romania adopted Emergency Ordinance no. 20/2022 which modifies and supplements certain normative acts and establishes humanitarian support and assistance measures for beneficiaries of temporary protection. The ordinance extends the application of article 1 paragraph 1 of GEO 15/2022, which grants support and humanitarian assistance to foreign citizens or stateless persons in special situations, specifically those coming from the armed conflict in Ukraine. It also applies to beneficiaries of the Decision 2022/382. The provisions in GEO 20/2022 include reference to the provision of housing, food, clothing, hygiene materials, transport, medical assistance and treatment.

3.1. Housing.

Compared to GEO 15/2022, the GEO 20/2022 extends the possibility of payment for food and housing costs when foreign nationals or stateless persons are hosted by private landlords. The Department for Emergency Situations (DSU) or the county/Bucharest-IIfov inspectorates are responsible for reimbursing these costs. Thus, individuals and companies hosting foreign citizens or stateless persons in special situations from the armed conflict zone in Ukraine can benefit from the settlement of food and accommodation expenses in the

amount of 20 lei/day/person hosted for food and 50 lei/day/person hosted for accommodation (also known as the 50/20 programme).

3.2. Education.

GEO 20/2022 guarantees the right to education for minors from the armed conflict zone in Ukraine who do not request protection under the Asylum Law. These minors have the right to education in Romania's education units under the same conditions as Romanian preschoolers and students. They are also entitled to free accommodation in school boarding schools, food allowances, supplies, clothing, handbooks and other materials.

The Ministry of Education provides human resources for the inclusion of minors in educational programs. If these resources are insufficient, the didactic and school counselling activity can be carried out by students from state/private universities in Romania, retired teachers, and other volunteers.

The ordinance defines the audience status as students schooled in another country's education system who continue their studies in a Romanian education unit. These students are provisionally registered until their studies are equated and diplomas recognized. After the recognition of their studies from other countries they acquire a regular student status.

Audience students are also guaranteed the right to benefit from local transportation facilities similar to students enrolled in pre-university education units in Romania and they can benefit from the allocation of basic foods when enrolled in the primary and secondary education cycles granted through the existing social programs.

As a way to accommodate the students coming from Ukraine, the Ministry of Education can approve an additional number of places for students enrolled in higher education institutions from Ukraine during university years 2021-2022 and 2022-2023, up to a limit of 20% of the schooling capacity established by the Romanian Agency for Quality Assurance in Higher Education for the requested study program. Furthermore, refugees staying in the premises of (pre)university education units and institutions, state and private, are granted a subsidy for accommodation of 50 lei per day and meals amounting to 20 lei per day in a similar manner with the existing 50/20 programme.

3.3. Child and vulnerable individuals.

The emergency ordinance includes provisions for the protection of vulnerable children and individuals in Romania. Unaccompanied minors, defined as foreign citizens or stateless persons under 18 years old who arrive in Romania without a legal representative or supervision, are specifically protected by the law. In this regard the Operative Group for Unaccompanied Children is established at the county/sector-levels in Bucharest. This group is responsible for quickly identifying the most appropriate measure for their protection based on the particularities of each case. The Directorates for General Social Assistance and Child Protection are authorised to higher contractual staff for a maximum of three years to provide critical protection for children in need.

The emergency ordinance also provides protection for individuals with disabilities and elderly persons with reduced mobility or dependency who come from the conflict zone in Ukraine. Such individuals can benefit from social services of protection, including housing, training, rehabilitation, access at care centres upon request. Not only the individuals with disabilities but also their companions can also benefit from various social services.

Finally, local public administration authorities have the authority to hire social assistants within public social assistance services at the local and county level. These assistants will provide support for beneficiaries who come from the conflict zone in Ukraine and enter Romania for a fixed period, not exceeding three years, depending on their needs.

3.4. Healthcare.

For TPS holders seeking medical assistance in Romania, a number of guidelines apply. First, Ukrainian citizens, stateless individuals, and third-country citizens who have received international or national protection in Ukraine, along with their family members, are entitled to medical services, drugs, medical devices, and materials, except in emergency cases. The access is for the same services provided to Romanian citizens enrolled in the public health insurance system, without any previous payment obligations through the health insurance system. The medical assistance is available for the clinical specialties listed in the basic services package, without presenting a consignment note.

4. Social policy measures for Ukrainians: supporting professional activity.

4.1. The right to work.

Ukrainian citizens coming from the war zone who have legally entered Romania and do not request protection under Law no. 122/2006 on asylum may work without an employment permit. In this scope, Ukrainian citizens without documents proving professional qualification or experience can work in Romania based on a declaration of own-responsibility for 12 months, renewable for up to one year, declaring that they meet the professional training and experience requirements and have no incompatible criminal antecedents.

However, the self-responsibility declaration does not apply to Ukrainian citizens who wish to access or exercise professions such as doctor, dentist, pharmacist, general nurse, veterinarian, architect, security guard or other professions provided for in annexes no. 2, 4 and 8 of Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania.

At the same time, employed Ukrainian citizens have access to unemployment insurance, measures to prevent unemployment, and measures to stimulate employment, similar to national citizens.

A press release²⁰ issued by the Minister of Labour for the National Press Agency in the beginning of February 2023 states that 7477 Ukrainians were employed in Romania at the moment. Out of this number, 6130 have been employed after February 2022. Most of them work in the field of manufacturing (1862), building sector (882), retail (882), repair and maintenance (605), etc. In another press release²¹ it was announced that most of the Ukrainians employed (2249) are working in Bucharest, followed by Bistrița-Năsăud county (422), Timiș county (422), Argeș county (409), etc.

Ukrainian citizens who do not have documents proving their professional qualification or work experience must follow several steps to obtain a job:

1. they register at the county employment agencies or the Bucharest municipal agency with their identity card (passport or other identity document);
2. after registration, they receive free information and counselling services (see the next point);
3. they complete a declaration (in Romanian or Ukrainian language) on their own responsibility regarding the completed studies, the jobs they opt for and the assumption regarding the lack of criminal antecedents, under the guidance of the career guidance counsellor;
4. after completing the counselling activities, the persons are mediated according to the declaration for a vacant job and guided to an employer who organises an interview;
5. if Ukrainian citizens contact the employer directly, without the intervention of employment agencies, they complete the declaration with the help of the future employer.

4.2. Main actors and activities supporting the employment of Ukrainian war-migrants.

When referring to the institutional responsibilities and obligations that appear both at the national, county or local level, there are certain public entities that deal with the employment of foreigners in Romania, including refugees. The main institution for our discussion is the National Employment Agency with its county branches in the territory and that of the Bucharest municipality.

According to a press release of the national agency from February 2022, the services offered to Ukrainian war migrants by the territorial agencies, are: *work mediation, which connects employers with people looking for a job; information and professional advice that offers a set of services provided free of charge to people looking for a job, with the aim of providing information on the labour market and the evolution of jobs; professional training; assessment and recognition of professional skills obtained in the non-formal and informal system, etc.*

In addition to the organisations mentioned above, there are several NGOs that have supported the integration of Ukrainian war migrants into the labour market. Important to

²⁰ <https://www.g4media.ro/analiza-un-an-de-razboi-in-ucraina-pestre-6-000-de-cetateni-ucraineni-s-au-angajat-in-romania.html>, (accessed 24 April 2023).

²¹ <https://www.capital.ro/sute-de-cetateni-ucraineni-s-au-angajat-in-romania-in-ultima-luna-cei-mai-multi-lucreaza-in-bucuresti.html>, (accessed 24 April 2023).

mention are two main organizations that have been active for a long time in support of war migrants, namely: the Romanian National Council for Refugees and UNHCR, The UN Refugee Agency.

The mobilisation of Romanian civil society in order to support Ukrainian war migrants to integrate into the labour market, led to several partnerships between the entities mentioned above and new ones, with different expertise of activity. For example, the platform (dopomoha.ro) created by Code for Romania in partnership with the Department for Emergency Situations of the Ministry of Internal Affairs, UNHCR, The UN Refugee Agency, the International Organization for Migration, the Romanian National Council for Refugees, offers relevant information about several services for those seeking protection in Romania, including jobs. The first activity promoted on dopomoha.ro is the UA made in RO initiative, which offers Ukrainian war migrants the opportunity to start a business through the support of 11 prizes worth 4,000 euros and a series of workshops and training to help them in this regard. Then, there would be the option to apply for a job abroad on the Jobs4Ukrainein platform. Within the same initiative, a job fair was held on November 16, 2022 at the Palace of the Bucharest Chamber of Commerce and Industry by the Proiect Voiajor Association with the support of the International Organization for Migration (IOM). Another job fair was organized by AIDRom in partnership with ACT Alliance on September 23 2022 in Bucharest, with 5 employers from several fields of activity. Another career fair was attended by 150 Ukrainians on June 13 at the Zi de Bine community centre, organized by the association with the same name. There is another important initiative which belongs to the *Ateliere fără Frontiere* association, that frequently offers jobs in their own *remesh*, *eduelick* and *bio&co* workshops in Bucharest and in the surrounding areas.

5. Final considerations.

Following the analysis of the legislative provisions, including the legal changes imposed by the decisions at the EU level, we can state that the employment procedures and access to services of Ukrainian war migrants have been facilitated due to the special situation caused by the war. Many of the bureaucratic hurdles were simplified in order to encourage Ukrainian war migrants to adapt to Romanian society. This is an optimistic note in a country like Romania which so far lacked the experience and interest in long-term integration of foreigners (see for instance the MIPEX scores).

Although the legislative aspects seem to follow a trajectory of improvement, several problems persist. First, the legal framework in Romania undergoes frequent changes that can make it difficult not only to hire displaced individuals (including refugees), but also to keep them in a job. For example, in 2022 new rules imposed by the government regarding the status of foreign employees in Romania were implemented. Specifically, a foreign citizen who has a registered individual employment contract of less than one year will be able to take up a new job with another employer only on the basis of the written agreement expressed by the original employer. Several other changes are implemented as well, such as the changes of rules on taxation of incomes earned from part-time employment contracts which

significantly impacted the war migrants from Ukraine for whom part-time working contracts is one of the main forms of accessing the labour market in Romania.

Besides the frequent changes, the legal framework for the displaced individuals' (including refugees) integration in Romania is incomplete and unclear. There are important gaps regarding the rights of displaced individuals (including refugees) and the institutions' awareness of their responsibilities. This certainly affects public policies that are supposed to set out the integration services for displaced individuals as several studies highlighted. The applicability of the laws on integration in Romania has several shortcomings, such as institutions shifting responsibilities from one to the other²² or access to public services which is in fact limited most of the time.²³

Clarifying and completing the legislative aspects related to the displaced individuals' integration process would be a first improvement of the overall integration process. This improvement would not be feasible without the creation and implementation of practical and effective tools that are missing in the Romanian legislation. Such initiatives may include the obligation to attend language classes, actively seek employment, or participate in integration programs, in order to receive various forms of assistance. Moreover, there should be partnership and communication between local institutions to share data about displaced individuals, support and services. The integration issues have been nationally approached over time in Romania, the public policies addressed to local authorities being rather the result of the decentralisation process. In many situations, the NGOs act when the responsibilities of institutions are passed from one to other.

Another issue is related to the relatively easy procedures through which Ukrainian displaced individuals (including refugees) can apply for work and have their diplomas recognized, which raised significant concerns from the other displaced individuals' communities in Romania for whom this was and still is not possible. Similarly, more and more voices can be heard complaining in relation to all the efforts made by the public institutions and civil society to integrate the Ukrainian citizens on the job market with limited success considering the number of employed while similar initiatives aimed at vulnerable communities (such as Roma population) are ignored.²⁴

Nevertheless, most of the changes in the public policies framework regarding the Ukrainian war migrants do not directly involve them in the decision-making process via consultations. This would be an important step for several reasons:

1. Empowerment and Ownership: Including migrants in policy discussions gives them a sense of empowerment and ownership over their own lives and futures. When migrants have a say in shaping the policies that affect them, it enhances their dignity

²² Coşciug A., Hamberger A., *Governanța integrării imigranților în România., Nu este de competența acestei instituții*, in Coşciug, A. (coord.), "PERSPECTIVE EMPIRICE ASUPRA IMIGRAȚIEI ÎN ROMÂNIA. De la țară de tranzit la țară de destinație", Editura de Vest, 2022, 21-99.

²³ <https://www.who.int/europe/news/item/17-01-2023-understanding-the-obstacles-faced-by-ukrainian-refugees-in-romania>, (accessed 24 April 2023).

²⁴ Coşciug A. et. al., *One year later: needs and challenges faced by Ukrainian refugees and stakeholders in Romania*. Bucharest: Romania, 2023, forthcoming publishing.

and self-worth, as they are no longer seen solely as passive recipients of aid or policies.²⁵

2. Tailored Solutions: War migrants possess first-hand experience and unique insights into the challenges and opportunities they face during the integration process. Their perspectives can help policymakers design more effective and practical solutions that address the specific needs of war migrants communities. This ensures that policies are relevant and realistic, leading to better outcomes.²⁶
3. Cultural Understanding:²⁷ War migrants often come from diverse cultural backgrounds with their own values, customs, and ways of life. Involving them in policy discussions helps policymakers gain a deeper understanding of these cultural nuances. This understanding is essential for developing integration strategies that respect and accommodate the cultural identities of war migrants, fostering a more inclusive society.
4. Sustainable Integration:²⁸ When war migrants are actively engaged in shaping integration policies, they are more likely to buy into these policies and actively participate in their implementation. This sense of ownership contributes to the long-term success of integration efforts, as war migrants are more motivated to cooperate and contribute positively to their host communities.
5. Social Cohesion: Involving war migrants in policy discussions promotes social cohesion between host communities and refugees. It sends a message that war migrants are valued members of society with meaningful contributions to make. This can help dispel misconceptions and prejudices and build bridges between different groups, fostering a more harmonious society.²⁹
6. Effective Communication: When war migrants have a seat at the policy table, it facilitates effective communication between government officials, service providers, and the war migrants population. This open dialogue allows for better communication of expectations, rights, and responsibilities, reducing misunderstandings and conflicts.³⁰

²⁵ UNHCR, *Integration of refugees in Lithuania Participation and Empowerment. Understanding Integration in Lithuania through an age, gender and diversity based participatory approach*, 2014:

<https://www.refworld.org/pdfid/58a486e34.pdf>, (accessed 4 August 2023).

²⁶ Shultz C., Barrios A., Krasnikov A. V., Becker I., Bennett A. M., Emile R., Hokkinen M., Pennington J. R., Santos M., Sierra J., *The Global Refugee Crisis: Pathway for a More Humanitarian Solution*, in *Journal of Macromarketing*, 40, 1, 2020, 128-143.

²⁷ Lau L.S., Rodgers G., *Cultural Competence in Refugee Service Settings: A Scoping Review*, in *Health Equity*, 16;5, 1, 2021, 124-134.

²⁸ Androff D. K., *Local Integration in the Country of First Asylum*, in *Refugee Solutions in the Age of Global Crisis: Human Rights, Integration, and Sustainable Development*, 2022; online edn, Oxford Academic.

²⁹ UN World Food Programme, Turkey Country Office, *Social cohesion in Turkey: refugees and the host community Online survey findings rounds 1– 5*, <https://webcache.googleusercontent.com/search?q=cache:OaZlt3XDFNEJ:https://data2.unhcr.org/en/documents/download/78201&cd=8&chl=en&ct=clnk&gl=ro>, (accessed 4 August 2023).

³⁰ OECD, *“How to communicate on the Ukrainian refugee crisis and build on the support of host communities?”*, 2022, https://www.oecd-ilibrary.org/social-issues-migration-health/how-to-communicate-on-the-ukrainian-refugee-crisis-and-build-on-the-support-of-host-communities_db78fd32-en;jsessionid=CcaDVmI8fcajCjMD8yUAsYTTvCi2NllZ03g9W2.ip-10-240-5-183, (Accessed August 4 2023).

7. Accountability and Transparency: Involving war migrants in policy discussions increases transparency and accountability in the decision-making process. It holds governments and institutions responsible for their commitments to war migrants integration, as they can actively participate in monitoring progress and advocating for their rights.³¹
8. Policy Innovation: War migrants often bring with them a wealth of skills, talents, and experiences that can contribute to the development of innovative solutions to societal challenges. Their diverse backgrounds can spark creativity and fresh ideas in policy development, benefiting not only refugees but also the broader society.³²
9. Human Rights Perspective: Involving war migrants in policy discussions aligns with the principles of human rights and participatory governance. It recognizes their right to have a voice in decisions that impact their lives and upholds their dignity as individuals with agency.³³

Thus, involving war migrants in the changes of policies regarding their integration is not just a matter of ethical responsibility but also a practical approach that leads to more inclusive, effective, and sustainable outcomes for both refugees and their host communities.

To sum up, although the legislation and public policies adopted in Romania in order to accommodate the massive influx of Ukrainian war migrants after February, 24th, 2022, largely follow the rules established by the EU framework, since the situation is still unfolding, numerous legislative adaptations have appeared and will probably continue to do so. Furthermore, the on-field situation indicates that there are still issues that need to be addressed in a more organised manner, and a coherent approach to the state-civil society relationship in regard to the management of such flows is due to be improved in the Romanian legislation.

³¹ Cone D., Panayotatos D., *Preparing for the Unpredictable: Ensuring the Protection and Inclusion of Refugees from Ukraine in Romania and Moldova*, <https://www.refugeesinternational.org/reports-briefs/preparing-for-the-unpredictable-ensuring-the-protection-and-inclusion-of-refugees-from-ukraine-in-romania-and-moldova/>, (accessed 4 August 2023).

³² Betts A., Bloom, L., Weaver N., *Refugee Innovation Humanitarian innovation that starts with communities*, 2015, <https://www.rsc.ox.ac.uk/files/files-1/refugee-innovation-web-5-3mb.pdf>, (accessed 4 August 2023).

³³ Androff D., Mathis C., *Human Rights-Based Social Work Practice with Immigrants and Asylum Seekers in a Legal Service Organization*, in *Journal of Human Rights and Social Work*, 7, 2, 2022, 178-188.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Slovakia.

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1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 3.1. Housing for displaced persons and financial support to obtain it. 3.2. Healthcare measures. 3.3. Education measures. 3.4. Measures in social insurance, social aid and other areas of aid. 4. Social policy measures for Ukrainians: support professional activity. 5. Final considerations.

1. General framework.

The Slovak Republic joined the European Union on 1 May 2004. It thus became part of the European Union at a time when the cooperation of European nations was expanding to include the Baltic nations, the island states and all the partners of the Visegrad Group. The legislation of the Slovak Republic, which was rapidly brought into line with the legislation of the European Union, inevitably reacted to this fact. The social movements associated with membership in the European Union can be quantified in terms of the numerous increases in legislation that have emerged in the new millennium. In Slovakia, the year 2004 is even the most productive year for new legislation compared to the years of the first decade of modern statehood.

Social movements and integration have also necessitated changes in the area of asylum law. Despite the fact that the Slovak Republic had relatively new legislation in this area – Act No. 480/2002 Coll. on asylum, amending certain acts¹ (which entered into force on 1 January 2003), harmonisation linked to the membership in the European Union also required it to be amended. These amendments were made by Act No. 207/2004 Coll.²

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¹ “Asylum Act” (Azylový zákon).

² Act No. 207/2004 Coll. amending Act No. 480/2002 Coll. on asylum, amending certain acts and amending Act No. 29/1984 Coll. on the system of primary and secondary schools (School Act), as amended (“Act No. 207/2004”).

According to the Explanatory Memorandum to Act No. 207/2004 Coll., it was this Act that reflected the need to adopt the “*asylum acquis*”, also with a view to “ensuring the harmonisation of the legislation of the Slovak Republic with Council Directive 2001/55/EC of 20 July 2001”.³

Despite the fact that Act No. 207/2004 Coll. enriched the Asylum Act with amendments ensuring the implementation of Directive 2001/55, the institution of temporary protection has been an integral part of the Asylum Act since its inception. Thus, Act No. 207/2004 Coll. only clarified and adapted the national legislation to the standards of the European Union.

However, it seems that, in view of the situation related to the war beyond our borders, it was necessary to examine the quality and readiness of the legal regulation of the institution of temporary protection for its practical application. The unavoidable need to deal with the onslaught of the war migration crisis required an urgent amendment to the Asylum Act by Act No. 55/2022 Coll.⁴ (in force from 26 February 2022), even before the adoption of Council Implementing Decision (EU) 2022/382 of 4 March 2022.⁵ Act No. 92/2022 Coll.⁶ provided for a substantially revised legal regulation of the institution of temporary protection. However, the amendment contained in Act No. 92/2022 Coll. was not the last legislative change in the Slovak migration policy. The most recent legislative changes are contained in Act No. 199/2022 Coll.⁷ In the following chapter, on the basis of the above-mentioned laws, we present a picture of Slovak national legislation which, although based on European standards, also offers its own solutions and specific perspectives for dealing with the war migration crisis.

2. Personal scope of applicable support measures.

The definition of the personal scope of measures related to the institution of temporary protection is practically one of the broadest possible ways in the conditions of the Slovak Republic. A temporary protection is granted to “foreigners” who, for the purposes of granting a temporary protection, are considered third-country nationals pursuant to Section

³ 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, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55. Explanatory Memorandum to Act No. 207/2004 Coll. See: <https://www.epi.sk/dovodova-sprava/Dovodova-sprava-k-zakonu-c-207-2004-Z-z.htm> (accessed 8 May 2023).

⁴ Act No. 55/2022 Coll. on certain measures in view of the situation in Ukraine (“Act No. 55/2022”, Zákon o niektorých opatreniach v súvislosti so situáciou na Ukrajine).

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁶ Act No. 92/2022 Coll. on certain additional measures in view of the situation in Ukraine (“Act No. 92/2022 Coll.”, Zákon o niektorých ďalších opatreniach v súvislosti so situáciou na Ukrajine)

⁷ Act No. 199/2022 Coll. on certain social measures in view of the situation in Ukraine (“Act No. 199/2022 Coll.”, Zákon niektorých opatreniach v sociálnej oblasti v súvislosti so situáciou na Ukrajine)

2(4) of the Act on the Residence of Foreigners.⁸ According to this provision of the Act on the Residence of Foreigners, any person who is not a citizen of the Slovak Republic or a citizen of the European Union shall be considered a third-country national. A stateless person shall also be considered a third-country national. In theory, therefore, the possibility of using the institution of temporary protection applies to any human being who is not a citizen of the European Union and who is in a situation that objectively justifies the granting of a temporary protection. In practice, a displaced person under Section 2(j) of the Asylum Act is an foreigner who has been granted confirmation of a temporary protection by the Ministry of Interior on the basis of a decision of the Government of the Slovak Republic. In the case of Ukraine, this was done by Resolution No. 144/2022 of 28 February 2022 and subsequently by Resolution No. 185/2022 of 16 March 2022. The starting date for the granting of a confirmation of the temporary protection was 1 March 2022.⁹

Comparing the definition of the personal scope of the institution of temporary protection under the Asylum Act with the definition of the personal scope of the institution of temporary protection under Directive 2001/55, it can be concluded, in the light of the above, that the national legislation complies with the standards provided for in secondary EU legislation. However, can the same conclusion be drawn with regard to the material scope of the institution of temporary protection under the Asylum Act as compared with the definition of the material scope of the institution of temporary protection under Directive 2001/55? With regard to the content of this question, it can be said that, as far as the material scope of the above-mentioned institutions is concerned, the national legislation is, at first sight, in line with the European standards for defining the scope of factual situations that give rise to the applicability of support measures. But why have we used the words “at first sight”?

Section 29(1) of the Asylum Act defines exhaustively the situations in which the institution of temporary protection can be applied. A temporary protection is thus *de lege lata* only applicable to situations where “foreigners” are fleeing war, endemic violence, the consequences of a humanitarian disaster, or persistent or massive violations of human rights in their country of origin. In contrast, Article 2(c) of Directive 2001/55 considers “displaced persons” to be persons who have been in some of the situations enumerated non-exhaustively. This conclusion is indicated by the use of the word “in particular”, which, although directly linked to a narrower range of specific situations, should necessarily leave room for a wider application of support measures. This raises the question of whether the Slovak legislation deprives potential beneficiaries of the right to benefit from a temporary protection of the legal protection to which they would be entitled under European Union law.

The legal culture in the Slovak Republic is such that an exhaustive enumeration of factual situations inevitably implies a fundamental limitation of the application of the law. However, when assessing the material scope of the application of the institution of temporary

⁸ Act No. 404/2011 Coll. on the residence of foreigners, amending certain acts, as amended (“Act on the Residence of Foreigners”, Zákon o pobyte cudzincov a o zmene a doplnení niektorých zákonov).

⁹ Mičudová T., *Employment of foreigners from third countries in Slovakia*, in *Work, wages and remuneration (PaM)*, 5, 2022, available at <https://www.epi.sk/odborny-clanok/zamestnavanie-cudzincov-z-tretich-krajin-na-slovensku.htm> (accessed 8 May 2023).

protection within the meaning of Section 29(1) of the Asylum Act, it is necessary to depart from such an attitude. We base our position on the fact that the Slovak legislature, when enumerating the relevant factual situations justifying the implementation of the institution of temporary protection, also used the term “humanitarian catastrophe”. At first side, Directive 2001/55 does not provide for the term “humanitarian disaster”.

The term “humanitarian disaster” is a term that has a stable place in the legal framework of the institution of temporary protection. Despite several amendments, this term has been retained in all versions of the Asylum Act over time. However, the Asylum Act does not contain its legal definition. Nor does the relevant explanatory memorandum provide any interpretative opinions on this term. Nor is it helped by case-law, which simply does not provide this interpretation, given that the institution of temporary protection did not have a wider application until the beginning of the war beyond our borders.

In the absence of relevant case-law, it is necessary to resort to the usual methods of interpretation. A grammatical and appropriate interpretation of the term “humanitarian disaster” can include not only disasters caused by natural circumstances (droughts, earthquakes, floods, etc.), but also other disasters affecting the human race. These disasters can also include wars, endemic violence or systematic or massive violations of human rights. We come to this conclusion on the basis of the grammatical interpretation of the adjective “humanitarian”, which, according to the Slovak dictionary of foreign words, means human, helping people in need. Helping people in need is therefore inevitably linked to many social situations.

Finally, with regard to the practical application of the institution of temporary protection **and its purpose and meaning, the term “humanitarian disaster” sufficiently replaces the non-exhaustive enumeration of situations provided for in Article 2(c)(i) and (ii) of Directive 2001/55.** However, in order to avoid controversies over interpretation, we recommend that Section 29(1) of the Asylum Act be amended to read as follows: “A temporary protection shall be granted for the purpose of protecting foreigners, in particular from war, endemic violence, the consequences of a humanitarian disaster or systematic or massive violations of human rights in their country of origin; for the purpose of granting a temporary protection, an foreigner shall be understood to be a third-country national as defined in a special regulation”.

Taking into account the mechanism of application of Section 29(1) of the Asylum Act in practice, it is necessary to consider how the confirmation of the acquisition and loss of the status of “foreigners”/“displaced persons” meeting the criteria for the coverage by a temporary protection/temporary protection is implemented.

The procedure for coverage of the temporary protection begins with the foreigner’s declaration at the police department that he or she is applying for temporary protection confirmation in the Slovak Republic. If the foreigner has not reached the age of majority, the declaration shall be made on his or her behalf by his or her legal representative or a guardian appointed by the court. The minor foreigner must be present when the declaration is made. Since the Asylum Act does not provide for an interpretation of the term “majority”, such a person may be considered a person within the meaning of Section 8(2) of the Civil Code by

analogia legis.¹⁰ Any person who has reached the age of eighteen is therefore an adult. Before this age, majority can only be acquired through marriage. Majority acquired in this way is not lost by the dissolution of the marriage or by a declaration of nullity of the marriage (*matrimonium nullum*). However, a putative marriage (*non matrimonium*) cannot confer majority.

Although the Asylum Act does not provide a legal definition of an adult foreigner, it does provide a definition of a police department. Thus, depending on the factual situation, the foreigner must submit a declaration either to the police department at the border crossing point (if he or she is still entering the territory of the Slovak Republic) or to the police department competent for the place where he or she is staying (if he or she is applying for the status of “displaced person” when he or she is already staying on the territory of the Slovak Republic).

The foreigner’s declaration shall be recorded on an official form, the model of which is set out in Annex 1 to the Asylum Act. The completed official form shall be immediately sent to the Ministry of Interior of the Slovak Republic. In order to obtain the confirmation of the status of foreigner with a temporary protection granted, the foreigner shall also complete the questionnaire set out in Annex 3 to the Asylum Act. However, these are not the only acts performed by the “applicant for temporary protection confirmation” and by the competent police department in order to complete the mechanism for acquiring the confirmation of the desired status. Once the declaration has been made, the police department shall seize the foreigner’s passport or other proof of identity and issue a certificate to that effect. The police department shall immediately send a copy of the seized documents, together with the documents necessary for the assessment of the application for the confirmation of the temporary protection, to the Ministry of Interior of the Slovak Republic. Upon completion of the procedure for granting the confirmation of a temporary protection, the police department shall return the seized documents. However, it shall do so only if the foreigner so requests.

The police department shall also ensure that the foreigner’s fingerprints are taken. This is a measure to ensure public order *pro futuro*. However, taking into account the security risks, a personal search of the foreigner and a search of his or her personal belongings shall also be carried out to ensure public order for the time being. These shall be carried out in accordance with the same rules as in the asylum procedure.¹¹

However, even after these acts have been performed, the foreigner does not enjoy unrestricted freedom and, if he or she does not have accommodation, must report to a reception centre within 24 hours of making the declaration. Pending his or her arrival in the reception centre, the police department shall issue the foreigner with a transport document valid for 24 hours. Then, until the decision to grant the confirmation of a temporary protection is issued and becomes final, the foreigner shall be issued a card of an foreigner applying for the confirmation of a temporary protection upon arrival in the reception centre.

Only after the necessary acts have been performed and the necessary forms have been completed, the merits of the application shall be examined. The application process can be

¹⁰ Act No. 40/1964 Coll. Civil Code, as amended (“Civil Code”, Občiansky zákonník).

¹¹ For more details, see Hrnčárová N., Meššová B., Srebalová M., Macková D., *Zákon o azyle. Komentár*, C.H. Beck, Bratislava, 2012, 448.

completed in two ways. The first, the simpler one, is based on the need to issue a document on tolerated stay on the territory of the Slovak Republic with the designation “temporary protection” without an interview with an authorised employee of the Ministry of Interior of the Slovak Republic.

It is not necessary to conduct an interview if the Government has decided so or if the arrival of the foreigner on the territory of the Slovak Republic has been arranged by the Office of the High Commissioner or another international organisation, or if the foreigner is being transferred and has been granted a temporary protection by another State. If any of the above postulates is not met, it is necessary to examine the grounds for the application more thoroughly – through an interview with an authorised employee of the Ministry of Interior of the Slovak Republic. The purpose of the interview is to determine whether the foreigner meets the conditions for a temporary protection beneficiary.

If the purpose of the interview is to examine the merits of the application for confirmation of a temporary protection, the Ministry of Interior of the Slovak Republic shall decide on the granting the confirmation of a temporary protection to the foreigner within 30 days of the application. In justified cases, this period may be extended by 30 days, even several times.

The Ministry of Interior of the Slovak Republic may decide in several ways. If there are procedural grounds constituting an obstacle to the proceedings on the merits, the proceedings shall be discontinued.¹² If there are no such grounds, it shall grant or reject the application, but only if the applicant does not meet the conditions for protection through the institution of temporary protection. If the applicant meets the conditions for protection through the institution of temporary protection, the Ministry of Interior of the Slovak Republic shall not issue a decision declaring this fact, but shall only issue the foreigner with a document on tolerated stay in the Slovak Republic marked “TEMPORARY PROTECTION”. The document shall actually be issued by the competent police department.

The Ministry of Interior of the Slovak Republic decides on the granting a confirmation of a temporary protection also for the purpose of family reunification. This specific purpose of the application justifies the application for the status of foreigner with a temporary protection granted if the temporary protection cover the spouse of displaced person and the displaced person has agreed to the reunification in writing in advance. An application for confirmation of the status of displaced person for the purpose of family reunification is also justified if the applicant is the unmarried child of a displaced person or the unmarried child of the spouse of a displaced person (whether legitimate, illegitimate or adopted)¹³ and has not reached the age of 18. The application is also justified if there are other persons who have shared the household with a displaced person and who have been partially or wholly dependent on the displaced person as a result.

The loss of the status of displaced person is linked to the fulfilment of various objective or subjective reasons. The objective reasons for losing the status of displaced person include the death of the displaced person or the expiry of the period set by a government decision. The subjective reasons (directly linked to the manifestation of the displaced person’s will)

¹² For more details, see Section 31(7) of the Asylum Act.

¹³ For more details, see Hrnčárová N., Meššová B., Srebalová M., Macková D., nt. (11), 448.

include the following situations: the displaced person has applied for asylum, the displaced person has applied for subsidiary protection, the displaced person has been granted temporary or permanent residence in the Slovak Republic, the displaced person has renounced the temporary protection by a written declaration (the temporary protection terminates when the declaration is delivered to the Ministry of Interior of the Slovak Republic), the displaced person has been granted asylum or subsidiary protection by another Member State of the European Union, the displaced person has been granted unlimited residence by another State.

The Asylum Act deals in more detail with the situation where a displaced person is transferred to another EU Member State (e.g. for the purpose of family reunification). In this case, the Ministry of Interior of the Slovak Republic shall issue a special pass to the displaced person, the model of which is set out in Annex 4 to the Asylum Act and which contains, in particular, information on the Member State delivering the pass, the Member State to which the transfer is being made, the deadline by which the displaced person must present himself/herself on arrival in the second Member State, and the competent authority of that Member State where the displaced person must present himself/herself. A model of this pass is also set out in Annex 1 of Directive 2001/55 (Model pass for the transfer of persons enjoying temporary protection).¹⁴

A temporary protection may also terminate by cancellation. A temporary protection may be cancelled for the following reasons: there are serious reasons for considering that the displaced person has committed a crime against peace, a war crime, or a crime defined in international instruments, or a serious non-political crime outside the Slovak Republic prior to applying for temporary protection, or has been guilty of acts contrary to the purposes and principles of the United Nations; the temporary protection was granted only on the basis of false or falsified identity data; there are reasonable reasons for regarding him or her as a danger to the security of the Slovak Republic or, having been convicted of a particularly serious crime, he or she is a danger to the community.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

The Slovak legislation has tackled all the social policy requirements set out in Articles 13 and 14 of Directive 2001/55. This is evidenced by the extensive amendments to a number of pieces of legislation, which were implemented by Act No. 55/2022 Coll., Act No. 92/2022 Coll. and Act No. 199/2022 Coll. These Acts amend legislation in the areas of asylum policy and the housing, healthcare, education, as well as employment and social insurance for displaced persons.

¹⁴ For more details, see Hrnčárová N., Meššová B., Srebalová M., Macková D., *ibidem*, 448.

3.1. Housing for displaced persons and financial support to obtain it.

The issue of housing for displaced persons and financial support to obtain it is in principle covered by Sections 36 and 36a of the Asylum Act. However, this legislation would not be complete without the adoption of the relevant implementing regulations.

On the basis of the mechanism for assessing their application for temporary protection, displaced persons are initially provided with housing in reception centres. Once their application is granted, they are placed in humanitarian centres. If there is no room for their placement in humanitarian centres, housing is provided for them through other asylum facilities or by means of the displaced person's housing allowance, which is used to provide accommodation free of charge by natural or legal persons or self-government units to whom this allowance is paid. If housing cannot be provided even by means of the displacement person's housing allowance (Section 36a of the Asylum Act), the displaced person "shall be provided with the means to obtain housing of a quality comparable to that of a humanitarian centre".¹⁵

In the early stages of the war conflict, the displaced person's housing allowance was provided for directly in the Asylum Act, but in view of the greater flexibility of adoption and amendments to subsidiary legislation, from 7 June 2022 onwards, it began to be paid in the amount and in the manner set out in the Government implementing regulations. These Government regulations not only differentiate the amount of the allowance, taking into account the different quantification criteria of the housing provided and the beneficiaries of the allowance, but also establish the basic legal framework for the elements of the contracts on the provision of housing to displaced persons and their obligatory annexes.

3.2. Healthcare measures.

At present, it is common for a person who has public health insurance in the Slovak Republic and is also a Ukrainian national to be subject to conscription or a similar duty. In view of the above, a situation often arises in which such an insured person is granted unpaid leave by the employer for this period, whereby the insured person becomes a self-payer within the meaning of the Health Insurance Act. In application practice, this would mean that the insured person would have to pay insurance contributions in the Slovak Republic during his military service in Ukraine, or, if he did not pay them, he would become a debtor with all the consequences (limited reimbursement for healthcare provided). For this reason, the legislation stipulated that such a person should be exempted from the public health insurance system during his military service outside the Slovak Republic.

In order to facilitate access to healthcare for displaced persons from Ukraine and to simplify administrative and financial actions of healthcare providers, it was provided that for displaced persons from Ukraine a similar method of provision, reporting and reimbursement of healthcare should be introduced as for persons granted subsidiary protection and for persons included in the programme of the Ministry of Interior of the Slovak Republic for

¹⁵ For more details, see Section 36(1) of the Asylum Act.

the protection of victims of crimes – reporting and reimbursement through the health insurance company with the largest number of insured persons. The relevant procedures are already regulated in the relevant laws, as the proposed legislation only extends the group of persons already granted access to healthcare by the laws of the Slovak Republic.¹⁶

As a result of the war in Ukraine, the number of war migrants in the Slovak Republic who may require urgent healthcare is increasing. The proposed amendments to the legislation aim to ensure the continuous availability of urgent healthcare for these persons from the moment they enter the territory of the Slovak Republic until the moment they apply for asylum or temporary protection. According to the relevant provisions of the Asylum Act, healthcare and its reimbursement are provided by the Ministry of Interior of the Slovak Republic after the application has been submitted.¹⁷ In order to ensure that the proposed provision is not abused by persons who are not interested in being granted a temporary protection in the Slovak Republic, this entitlement is limited to a period of 30 days from the date of entry into the territory of the Slovak Republic.

3.3. Education measures.

It seems that no special legislation has been adopted in the field of education to respond to the extraordinary situation arising in connection with the war in Ukraine. This is justified by the fact that the education system has been prepared for teaching foreigners for some time in terms of its legislation. However, changes seem to have taken place in the subsidiary legislation and through the internal procedures of the founders of nursery, primary and secondary schools. However, lack of more substantial changes in education legislation does not in any way detract from the efforts of the Ministry of Education, Science, Research and Sport of the Slovak Republic and individual school establishments to adapt to the need to support the education of displaced minors. This is evidenced by the extensive information campaign informing the legal representatives of displaced minors about the possibilities of adequate education at all school levels. Data on the possibility of attending particular school establishments are regularly updated, and the actual participation of displaced persons in Slovak school education is consistently recorded.¹⁸

However, the legislation has not omitted the social status of pregnant students of Ukrainian nationality. The social status of female secondary school and university students of Ukrainian nationality is improved by granting them the right to a pregnancy allowance (financial support during the period corresponding to the second and third trimesters of pregnancy), similarly to other female students with permanent residence in the Slovak Republic.

¹⁶ For more details, see the Explanatory Memorandum to Act No. 92/2022 Coll., available at <https://www.epi.sk/dovodova-sprava/dovodova-sprava-k-zakonu-c-92-2022-z-z.htm> (accessed 8 May 2023).

¹⁷ Explanatory Memorandum to Act No. 92/2022 Coll., *ibidem*.

¹⁸ For more details, see <https://ukrajina.minedu.sk/> (accessed 8 May 2023).

3.4. Measures in social insurance, social aid and other areas of aid.

Compulsory sickness insurance and compulsory pension insurance of a self-employed person who is a Ukrainian national is interrupted for the period during which he is on the territory of Ukraine in connection with the war in Ukraine due to military service in Ukraine, conscription in Ukraine, or military enlistment in Ukraine. At the same time, however, such insured persons are given the possibility to pay the insurance contributions corresponding to the period of interruption of insurance at a later date in order to take full advantage of all the social insurance benefits associated with sickness insurance and, in particular, pension insurance.

However, the opposite situation should not be forgotten either, i.e. if a Ukrainian national who acquires the status of displaced person stays in the Slovak Republic and is interested in working and, in connection with this, in having the corresponding social insurance. The legislation of the Slovak Republic also takes these situations into account and it can be concluded from its legal provisions that if a Ukrainian national is granted a temporary protection, subsidiary protection or applies for or is granted asylum, he or she becomes an employee, regardless of the amount of income, for the purposes of social insurance, he or she is thus subject to compulsory social insurance in accordance with Section 20 of the Social Insurance Act. In addition, pursuant to Article 6 of the Treaty between the Slovak Republic and Ukraine on social security (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 53/2002 Coll.), the employee is subject to the legislation of the country in the territory of which the employment is performed. The employer is obliged to fulfil the reporting, contribution, registration and other obligations of the employer towards the Social Insurance Agency on behalf of the employee – a Ukrainian national, as in the case of employing a Slovak employee.¹⁹

Social aid is primarily implemented through Act No. 199/2022 Coll., which is specifically aimed at the above-mentioned issues. This Act lays down rules on the implementation of social measures on a relatively large scale. Under the Act, severely disabled displaced persons are to be granted aid in the form of lending returned functional medical devices and lifting devices. In order to promote the reconciliation of family and professional life, the provision of childcare in children's groups is introduced. To this end, amendments are also made regarding the childcare allowance.

Aid in the context of war is also provided in the form of exemptions from various fees or taxes. For example, vehicles and combinations of vehicles registered in Ukraine are exempted from the payment of vignettes during an emergency situation declared in connection with a mass influx of foreigners to the territory of the Slovak Republic caused by the war in Ukraine. This exemption from the payment of vignettes applies from 26 February 2022, and if the driver of a vehicle or a combination of vehicles has committed an offence or the operator of a vehicle or a combination of vehicles has committed an administrative offence because the vehicle or the combination of vehicles registered in Ukraine prior to the

¹⁹ Gášparová E., *Employment of expatriates - nationals of Ukraine*, in *Taxes and accounting (DaÚ)*, 10, 2022, available at: <https://www.epi.sk/odborny-clanok/1-zamestnavanie-odidencov-statnych-prislusnikov-ukrajiny.htm> (accessed 8 May 2023).

adoption of Act No. 92/2022 Coll. did not have a vignette when using toll road sections, the competent district office shall drop the case without initiating proceedings for an offence or administrative offence. Proceedings for an offence or proceedings for an administrative offence of the driver of a vehicle or the operator of a vehicle or a combination of vehicles registered in Ukraine which were initiated in the period from 26 February 2022 to the date of entry into force of Act No. 92/2022 Coll. and were not finally closed before the date of entry into force of this Act shall be discontinued by the competent district office.

The conclusions presented above regarding the amendment of the Vignette Act²⁰ also apply *mutatis mutandis* to the toll exemptions under the Toll Collection Act.²¹ However, it should be noted that these exemptions do not apply to all vehicles subject to tolls and registered in Ukraine, but only to vehicles transporting humanitarian aid and foreigners during an emergency situation declared in connection with a mass influx of foreigners to the territory of the Slovak Republic caused by the war in Ukraine, which the operator or driver of the vehicle proves by a certificate issued by a state authority.

It should also be noted that if a displaced person is the keeper or owner of a dog, the dog is not subject to the dog tax under the Local Taxes Act²² or the relevant municipal ordinances of general application. The same applies to the accommodation tax and the municipal waste tax. In these areas, too, the legal system of the Slovak Republic is friendly towards displaced persons.²³

Taking into account the above-mentioned facts (exemption from the dog tax, the accommodation tax, the municipal waste tax and exemption from the payment of vignettes), the Slovak legislature also took into account minor expenses associated with the basic necessities of life of displaced persons. As a result of extensive amendments to many pieces of legislation, a sophisticated system of support measures has been developed, which fulfils and goes beyond the provisions of Articles 13 and 14 of Directive 2001.

4. Social policy measures for Ukrainians: support professional activity.

The Government of the Slovak Republic may, for the duration of an emergency situation, a state of emergency or a state of exception and for a period of two months after their termination, by a Slovak Government regulation, lay down the conditions of employment of third-country nationals and the period of validity of a certificate on the possibility of filling a vacancy. The employer of a person who has been granted a temporary protection is obliged under the Employment Services Act to submit an information card to the competent Office

²⁰ Act No. 488/2013 Coll. on the vignette, amending certain acts, as amended (“Vignette Act”, *Zákon o diaľničnej známke*).

²¹ Act No. 474/2013 Coll. on the on the collection of tolls for the use of specified sections of roads, amending certain acts, as amended (“Toll Collection Act”, *Zákon o výbere mýta za užívanie vymedzených úsekov pozemných komunikácií*).

²² Act No. 582/2004 Coll. on local taxes and local fee for municipal waste and minor construction waste, as amended (“Local Taxes Act”, *Zákon o miestnych daniach a miestnom poplatku za komunálne odpady a drobné stavebné odpady*).

²³ For more details, see Ulaher J., *Lex Ukraine - choosing the most important*, in *EPI Technical articles*, 2022 available at <https://www.epi.sk/odborny-clanok/lex-ukrajina-vyber-toho-najdolezitejsieho.htm> (accessed 8 May 2023).

of Labour, Social Affairs and Family no later than 7 working days after the beginning and the end of the employment of that person, together with a copy of the employment contract or agreement concluded and a copy of the document on tolerated stay on the territory of the Slovak Republic.

It also applies that Ukrainian nationals and family members of Ukrainian nationals (spouse of a Ukrainian national or parent of a minor Ukrainian national) “may, for the duration of the emergency situation in connection with a mass influx of foreigners to the territory of the Slovak Republic caused by the war in Ukraine”, enter into employment relationships even before the expiry of nine months from the start of the asylum procedure.

Recent amendments to the Employment Services Act²⁴ have also provided for a more favourable legal regulation of the validity of the certificate on the possibility of filling a vacancy for various categories of foreign job applicants, as well as new possibilities in relation to the applications for relevant certificates and extended employment opportunities under more benevolent rules for the employment of foreigners. However, this legal regulation applies only in connection with the duration of the “emergency situation declared in connection with a mass influx of foreigners to the territory of the Slovak Republic caused by the war in Ukraine”.

For example, the validity of a certificate on the possibility of filling a vacancy corresponding to a highly qualified job, a certificate on the possibility of filling a vacancy and a work permit, which would otherwise expire during the emergency situation declared in connection with a mass influx of foreigners to the territory of the Slovak Republic caused by the war in Ukraine, will be extended until the expiry of two months from the date of the lifting of the emergency situation in connection with the war in Ukraine.

An employer is now also entitled to apply for a certificate on the possibility of filling a vacancy for the purpose of issuing the document “Additional data on the employee”. However, this application must be made on a special form, the model of which will be determined by the Central Office of Labour, Social Affairs and Family.

It should also be noted that during the emergency situation in connection with the war in Ukraine and for a period of two months from the date of the lifting of the emergency situation in connection with the war in Ukraine, an employer may continue to employ a third-country national whom he or she started to employ before the date of entry into force of Act No. 92/2022 Coll. in the same job position after the expiry of the six-week period until the end of the procedure for granting temporary residence for employment purposes.

An employer may also employ a third-country national in the same job position during the emergency situation in connection with the war in Ukraine and for a period of two months from the date of the lifting of the emergency situation in connection with the war in Ukraine even during the procedure for renewal of the temporary residence permit for employment purposes.

Pursuant to Act No. 92/2022 Coll., in connection with the amendment to the Act on Performance of Work in the Public Interest,²⁵ the possibility of proving one’s integrity by

²⁴ Act No. 5/2004 Coll. on employment services, amending certain acts, as amended (“Employment Services Act”, Zákon o službách zamestnanosti)

²⁵ Act No. 552/2003 Coll. on performance of work in the public interest, as amended (“Act on Performance of Work in the Public Interest”, Zákon o výkone práce vo verejnom záujme).

means of a statutory declaration of no criminal record submitted by a natural person to the employer before the commencement of the employment relationship is provided for. If a natural person has proven his or her integrity by submitting a statutory declaration of no criminal record, he or she is considered to be of good repute, unless the contrary is proven. The amendment provides for simplified access of Ukrainian nationals to job positions covered by the regime of performing work in the public interest (dependent work performed for employers having the status of state authorities, self-government units – municipalities and higher territorial units, etc.). Without the adoption of this amendment, a significant number of Ukrainian nationals would not be able to be employed in the field of various services consisting in the performance of activities for the benefit of society using only standard mechanisms (submission of an extract from the criminal record, etc.). Taking into account the fact that the institution of the statutory declaration can be easily abused, the legislature established the possibility for the employer to immediately terminate the employment relationship with an employee if the statutory declaration proves to be false.

The employment opportunities for employees who have worked in the healthcare sector are enhanced by the possibility of temporary internships under the amended Act on Healthcare Providers and Healthcare Workers.²⁶

The issue of income tax is also inextricably linked to the performance of work in the Slovak Republic. Naturally, this issue should also be resolved in such a way as to ensure a fair system for the exercise of the State's right to receive performance for the purpose of transforming part of the revenue into the provision of services connected with the proper functioning of the State. If a Ukrainian national (including a displaced person – *author's note*) is employed by an employer established in the Slovak Republic, he or she is considered a taxpayer with limited tax liability for income tax purposes pursuant to Section 2(e) of the Income Tax Act²⁷ and the Convention between the Government of the Slovak Republic and the Government of Ukraine for the avoidance of double taxation.²⁸ This legislation, of course, eliminates any tax disadvantage for Ukrainian nationals that could affect their motivation to work in the Slovak Republic and have a fundamental impact on their social situation.²⁹

The above-mentioned measures have significantly contributed and continue to contribute to the effective integration of displaced persons into the work process and the possibility to perform dependent work on the Slovak labour market. These facts are also confirmed by statistical data, which indicate that several thousand Ukrainian nationals have been integrated, at least temporarily, into the labour market in the Slovak Republic.

In December 2022, a total of 11,045 Ukrainian nationals were employed in the Slovak Republic with a work permit granted. Nationals of other countries lagged far behind in this category. **The number of “other” Serbian nationals employed with a work permit was “only”**

²⁶ Act No. 578/2004 Coll. on healthcare providers, healthcare workers and professional healthcare organisations, amending certain acts, as amended (“Act on Healthcare Providers and Healthcare Workers”, *Zákon o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch*).

²⁷ Act No. 595/2003 Coll. on income tax, as amended (“Income Tax Act”, *Zákon o dani z príjmov*).

²⁸ Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 173/1997 Coll. and No. 488/2019 Coll.

²⁹ Gášparová E., nt. (19).

3,826. The other countries, with the exception of Georgia, did not exceed the threshold of 1,000 employees with a work permit. Although a comparison of the number of Ukrainian and Serbian employees working on the basis of work permits in relation to the total number of nationals of these countries might suggest that the Slovak Republic does not place sufficient emphasis on employment opportunities for Ukrainian nationals, particularly in view of their current situation in relation to the war, the opposite is true.³⁰

When assessing the relatively high number of Serbian nationals employed, it must be taken into account that there is a relatively large community of foreign Slovaks living in Serbia who are interested in working in their ancestral homeland, which is currently more economically advanced than their native Serbia.

Therefore, in order to assess the total share of employees working on the basis of work permits, it is necessary to assess the share of employed Ukrainian nationals (11,045 employees) in relation to the total number of third-country nationals working on the basis of work permits (22,107 employees). Comparing these figures, it can be concluded that Ukrainian nationals account for about half of the employed third-country nationals. This figure realistically shows that Ukrainian nationals are the most significant element in the employment of foreigners with work permits and that they are provided with a favourable environment for their personal development and the opportunity to work.

The conclusion presented above is reinforced by the statistical data on the employment of foreigners with an information card (without a work permit). According to data from December 2022, more than two thirds of these employees are Ukrainian nationals (22,374 out of 34,769). Traditionally, Serbian nationals are in second place with a total of 5,972 employees.³¹

On the basis of the above, it can be concluded that the labour market as well as the legislation provide sufficient scope for the realisation of work opportunities for Ukrainian nationals and sufficiently ensure the fulfilment of the provisions of Article 12 of Directive 2001/55, both in theory and in practice.

Moreover, the legislation of the Slovak Republic does not prevent displaced persons who are granted a temporary protection and work in the Slovak Republic from also working in other countries. However, it should be noted that the status of displaced person and the granting of temporary protection can terminate for reasons related to their integration in another country. This fact also has a direct impact on their status in relation to the exercise of the right to work in the Slovak Republic. Therefore, if an foreigner wishes to maintain his or her status as a displaced person in the Slovak Republic, he or she must ensure that he or she is not granted asylum or subsidiary protection by another Member State of the European Union or granted an unlimited residence permit by another State.

³⁰ For more details, *see*:

https://www.upsvr.gov.sk/statistiky/zamestnavanie-cudzincov-statistiky/zamestnavanie-cudzincov-na-uzemi-slovenskej-republiky-za-rok-2022.html?page_id=1156941 (accessed 8 May 2023).

³¹ For more details, *see*:

https://www.upsvr.gov.sk/statistiky/zamestnavanie-cudzincov-statistiky/zamestnavanie-cudzincov-na-uzemi-slovenskej-republiky-za-rok-2022.html?page_id=1156941 (accessed 8 May 2023).

5. Final considerations.

When assessing the quality of the national legislation of the Slovak Republic, which is based on Directive 2001/55 and Decision 2022/382, it can be noted that it meets the standards ensuring a dignified implementation of the institution of temporary protection.

Taking into account the amendment to the Asylum Act, which was primarily ensured by Act No. 55/2022 Coll., we have concluded that the Slovak Republic responded to the need for effective and rapid implementation of the institution of temporary protection earlier than the European institutions. As a result of these amendments, the possibility of declaring a temporary protection was restored even without a decision of the Council of the European Union. The Government of the Slovak Republic can now decide independently and at its own discretion that there are grounds for declaring a temporary protection.

We have come to the conclusion that although the definition of the material scope of the institution of temporary protection could be broadened by means of a non-exhaustive enumeration of the situations in which it can be declared, this issue is not crucial for the purposes of assessing the quality of the relevant legislation. On the other hand, it can be said that the definition of the personal scope of the institution of temporary protection is practically as broad as possible and therefore, when compared to the standards provided for in secondary EU legislation, there is nothing to complain about.

The effectiveness of the mechanism for confirming the status of displaced person could have been tested at the very outset of the humanitarian crisis resulting from the war in Ukraine. We believe that the move away from a rigorous assessment of the application for temporary protection in favour of a simple procedure is a logical consequence of the onslaught of and the need for rapid support to persons fleeing the territory of Ukraine. Tough times call for tough decisions, and therefore the final consequences of the absence of a more rigorous procedure for examining the reliability of an applicant for temporary protection can only be assessed after a longer period of time has elapsed, which will show us whether this deficiency could and can cause a more serious security threat to the public order of the Slovak Republic.

Finally, when assessing the effectiveness of the implementation of the granting of a temporary protection, it is also necessary to assess the quality of life of displaced persons, who must be provided with aid to meet their basic needs, such as housing, food, education for displaced minors or support for socially disadvantaged groups. The Slovak legislation provides for these at a sufficiently sophisticated level and also takes into account the small steps of aid that facilitate the social situation of the displaced persons.

Last but not least, it is necessary to provide opportunities for displaced persons to exercise their right to work. Ensuring the possibility of work is aimed not only at the possibility of personal development of displaced persons, but above all at their independence in providing for their basic needs of life. Therefore, if the Slovak Republic, through the legislation on employment services, provides the possibility for displaced persons to perform dependent work, it is making a fundamental contribution to easing the burden of the social system. Further progress in this area is also a key factor in ensuring the long-term protection of foreigners. It is clear that, in view of the developments in the fighting in Ukraine so far, long-term aid from EU Member States in the area of asylum policy will be really needed.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Spain.

Gustavo de la Orden Bosch*

1. General framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. General framework.

On 5th April 2022, Volodimír Zelenski spoke before the Spanish Parliament and said that since 24th February 2022 Ukrainian bombed cities have become the new “Gernika” in 21st century.¹ The Ukrainian president was referring to the city of Gernika, located in the Basque Country, which was bombed during the Spanish Civil War on 26th April 1937. The Spanish insurgent army, led by the later dictator Francisco Franco, attacked Gernika aerially with the support of Adolf Hitler and the Nazi “Condor Legion” and of Benito Mussolini and the Italian fascist “Aviazione Legionaria”. It was the first massive aerial bombing to an entire city and its civil population. The cruelty of this attack and of the war was then reflected by Pablo Picasso in his famous painting “Gernika”.

Since the start of the invasion of Ukraine in February 2022, the war has triggered a remarkable open-armed response from the Spanish civil society. Taxi drivers have travelled to the Ukrainian borders and taken people seeking safety to Spain.² Many Spanish citizens

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¹ Zelenski compara la guerra en Ucrania con el bombardeo de Gernika: “Parece que estamos en abril de 1937”, in *Público*, 5 April 2022, available at <https://www.publico.es/politica/zelenski-al-congreso-parece-abril-1937-estuvieramos-gernika.html> (last accessed 13 April 2023).

² Farnos A., *Un convoy de taxistas parte a Ucrania para trasladar un centenar de refugiados a Madrid*, in *El Confidencial*, 23 March 2022, available at https://www.elconfidencial.com/espana/madrid/2022-03-07/taxistas-madrid-frontera-ucrania-convoy_3387390/ (last accessed 13 April 2023).

have offered housing (in the framework of a governmental initiative)³ and donations⁴ and have participated in demonstrations against the war.⁵ Likewise, institutional responses have been generous and supportive with the Ukrainian government and people. One of the first political reactions has been providing weapons and military equipment.⁶ At the same time, the latter raised several argues inside the Spanish government itself – a coalition of left-wing parties– and critiques from civil society.⁷

As for the legal protection of Ukrainian people, in line with the European Union (EU) policy, for first time the mechanism of temporary protection was activated. Spain has transposed the EU Directive on Temporary protection in 2003.⁸ At that time, the Spanish Parliament passed the Royal Decree Number 1325/2003,⁹ approving a Regulation on the temporary protection regime, providing the requirements, conditions and rights recognized. This is a general Regulation establishing that the Ministries of Social Security and Immigration, Interior, and Foreign Affairs will develop it in each case after the decision of EU institutions on the activation of temporary protection.¹⁰

In 2022, five days after the Decision of the Council of the EU, of 4th March,¹¹ the three aforementioned Spanish Ministries approved two Special Orders establishing the personal scope and the procedure for the recognition of temporary protection to people displaced due to the conflict in Ukraine: i) Order PCM/169/2022,¹² of 9th March 2022, regulates the

³ Corbatón A., *132 familias españolas han acogido en casa a refugiados de Ucrania*, in *Cadena Ser*, 21 September 2022, <https://cadenaser.com/nacional/2022/09/21/solo-132-familias-espanolas-han-acogido-a-refugiados-de-ucrania-cadena-ser/> (last accessed 13 April 2023). See, e.g., Ministry of Inclusion, Social Security and Migration, *Soy ciudadano español y quiero acoger a una persona desplazada de Ucrania*, 7 June 2022, available at <https://ucraniaurgente.inclusion.gob.es/w/acoger-desplazados-ucrania> (last accessed 13 April 2023).

⁴ Ortiz A.M., *La guerra de la solidaridad: los españoles donan más de 25 millones de euros para Ucrania en tres semanas*, in *El Mundo*, 17 March 2022, <https://www.elmundo.es/espana/2022/03/17/62322b68fdddfc70d8b4605.html> (last accessed 13 April 2023).

⁵ *Miles de personas se manifiestan en varias ciudades de España en apoyo a Ucrania*, in *El País*, 27 February 2022, <https://elpais.com/espana/2022-02-27/miles-de-personas-se-manifiestan-varias-ciudades-de-espana-en-apoyo-a-ucrania.html> (last accessed 13 April 2023).

⁶ González M., *España es 22º país donante de armas a Ucrania, pero sube hasta el 15º en ayuda humanitaria*, in *El País*, 4 March 2023, <https://elpais.com/espana/2023-03-04/espana-es-22-pais-donante-de-armas-a-ucrania-pero-sube-hasta-el-15-en-ayuda-humanitaria.html> (last accessed 13 April 2023).

⁷ Romero A., Muñoz M., *Del furor de la OTAN al gasto militar: un año de disputas entre PSOE y UP por la guerra en Ucrania*, in *Público*, 16 February 2023, <https://www.publico.es/politica/furor-otan-gasto-militar-ano-disputas-soe-up-guerra-ucrania.html> (last accessed 13 April 2023).

⁸ 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 (later on as: Directive 2001/55).

⁹ Real Decreto 1325/2003, de 24 de octubre, por el que se aprueba el Reglamento sobre régimen de protección temporal en caso de afluencia masiva de personas desplazadas, in *Boletín Oficial del Estado (BOE)* 256, 25 October 2003, available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2003-19714>.

¹⁰ *Ibidem*. “Disposición final primera. Habilitación de desarrollo. 1. Se autoriza a los Ministros de Asuntos Exteriores, del Interior, de Trabajo y Asuntos Sociales y de Administraciones Públicas para dictar, en el ámbito de sus respectivas competencias y, en su caso, previo informe de la Comisión Interministerial de Extranjería, las normas que sean necesarias para la ejecución y desarrollo de lo dispuesto en este real decreto.”

¹¹ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (later on as: Decision 2022/382).

¹² Orden PCM/169/2022, de 9 de marzo, por la que se desarrolla el procedimiento para el reconocimiento de la protección temporal a personas afectadas por el conflicto en Ucrania (developing the procedure for the recognition of temporary protection for persons affected by the conflict in Ukraine), in *Boletín Oficial del*

application for confirmation and recognition of protection procedures, and (ii) Order PCM/170/2022,¹³ of 9th March 2022, extends the personal scope of temporary protection to all categories provided for the EU Council Decision. Within the Spanish domestic legal system, both orders are executive measures regulating the Royal Decree 1325/2003 in the particular case of massive influx of Ukrainian displaced people in Spain.

Within the Spanish legal regime on protection to third country nationals, temporary protection is one of the four mechanisms to grant protection. Three of these mechanisms are related with the Common European Asylum System (CEAS). According to the Spanish Law on asylum and subsidiary protection (Law 12/2009),¹⁴ protection could be granted through:

- a) the recognition of the refugee status (in accordance with the EU Directive on Qualification¹⁵ and the 1951 Refugee Convention and its Protocol);¹⁶
- b) the recognition of subsidiary protection (in accordance with the EU Directive on Qualification);¹⁷
- c) the recognition of temporary protection (in accordance with the Council Directive 2001/55).

These three mechanisms derive from the obligations of Spain provided by International Law and EU Law. Instead, the last mechanism is provided by the Spanish Immigration Law.¹⁸ It consists of:

- d) An extraordinary residence permit called “residence permit for humanitarian reasons”,¹⁹ in which the discretionary power of the State is broader.

Estado (BOE) 59, 10 March 2022, 28304 – 28307, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-3715.

¹³ Orden PCM/170/2022, de 9 de marzo, por la que se publica el Acuerdo del Consejo de Ministros de 8 de marzo de 2022, por el que se amplía la protección temporal otorgada en virtud de la Decisión de Ejecución (UE) 2022/382 del Consejo de 4 de marzo de 2022 a personas afectadas por el conflicto de Ucrania que puedan encontrar refugio en España (publishing the Agreement of the Council of Ministers of 8 March 2022 extending the temporary protection granted under Council Implementing Decision (EU) 2022/382 of 4 March 2022 to persons affected by the conflict in Ukraine who are able to find refuge in Spain), in Boletín Oficial del Estado (BOE) 59, 10 March 2022, 28308 – 28310, available at <https://www.boe.es/eli/es/o/2022/03/09/pcm170>.

¹⁴ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria (regulating the right to asylum and subsidiary protection), in Boletín Oficial del Estado (BOE) 263, 31 October 2009, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242>.

¹⁵ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 9–26.

¹⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, 189, 137; UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, 606, 267.

¹⁷ Directive 2011/95/EU, nt. (15).

¹⁸ Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (on the rights and freedoms of foreigners in Spain and their social integration), in Boletín Oficial del Estado (BOE) 10, 12 January 2000, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>; Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, in Boletín Oficial del Estado (BOE) 103, 30 April 2011, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>.

¹⁹ Ley Orgánica 4/2000, nt. (18), art. 31.3; Real Decreto 557/2011, nt. (18), art. 126.

For instance, this is the protection granted nowadays to Venezuelans residing in Spain.²⁰

On 9th March 2023, when the EU Commission has decided to extend temporary protection, Spain was the 5th country to receive applications for protection by Ukrainians. Until 9th March 2023, around 170,000 Ukrainian had been covered by temporary protection in Spain.²¹ It has been mainly granted for women (63%). In total, considering both men and women, 98.2% have been Ukrainian nationals and 1.8% **foreigners' residents in Ukraine** before 24th February 2022. By age: 33% have been under 18 years old, 26% between 19 and 35, 34% between 34 and 64, and 7% over 65. As for refugee status and subsidiary protection, there is still not available data on the specific case of Ukrainian displaced people in Spain. The statistics published by the Ministry of Interior only identify the five leading nationalities of protection seekers and refugees, and Ukraine is not in this list.²² Before the beginning of the war in 2022, the Ukrainian population in Spain was about 112,000, concentrated on the Mediterranean coast and Madrid.²³ Likewise, Spain had granted residence permits for humanitarian reasons to Ukrainians fleeing those Ukrainian areas affected by the invasion of Crimea and political turmoil since 2014.²⁴

Against this framework, this chapter seeks to determine to what extent the activation in Spain of temporary protection for Ukrainians fleeing war since 24th February 2022 has been effective and in more favourable conditions than the general standards established in the Directive 2001/55 and its subsequent Decision 2022/382. In this regard, the Directive does not prevent States from improving the benefits granted to persons residing within the State with temporary protection status. Based on this objective, the chapter focuses on the characteristics of temporary protection in Spain within the national system of international protection, paying special attention to the social and employment benefits of Ukrainians residing in Spain.

2. Personal scope of applicable support measures.

The Spanish Government has broadened the personal scope of EU temporary protection in Spain. According to the Order PCM/170/2022,²⁵ temporary protection is provided to

²⁰ UNHCR, *ACNUR da la bienvenida a la residencia por razones humanitarias para venezolanos con solicitudes de asilo rechazadas en España*, 1 March 2019, <https://www.acnur.org/noticias/press/2019/3/5c794bee4/acnur-da-la-bienvenida-a-la-residencia-por-razones-humanitarias-para-venezolanos.html> (last accessed 13 April 2023).

²¹ Ministry of Interior, *Statistics on temporary protection to Ukrainian displaced people*, 24 January 2023.

²² In 2022, top five nationalities of protection seekers in Spain were Venezuela, Colombia, Perú, Morocco and Honduras; in 2023 (until April): Venezuela, Colombia, Perú, Honduras and Cuba. *See* Ministry of Interior, *Statistics on temporary protection to Ukrainian displaced people*, nt. (21).

²³ Ministry of Inclusion, Social Security and Migration, *Plan de Acogida para personas desplazadas procedentes de Ucrania*, 15 March 2022, 9, available at: https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Documents/2022/150322-plan_acogida-ucrania.pdf (last accessed 13 April 2023).

²⁴ *See*, e.g., Ministry of Interior, *Asilo en cifras. 2020*, Madrid, November 2021, available at: https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/oficina-de-asilo-y-refugio/datos-e-informacion-estadistica/Asilo_en_cifras_2020.pdf (last accessed 13 April 2023).

²⁵ Orden PCM/170/2022, nt. (13).

Ukrainian nationals, foreigner residents, and stateless people who were long-term residents in Ukraine, and have fled due to the invasion on 24th February 2022. In addition, the Spanish legislation also includes Ukrainians who were already residing in Spain before the invasion, including irregular Ukrainian migrants in Spanish soil. Therefore, the Order expands the scope of protection provided by Article 2 of the Decision 2022/382. The former covers all additional categories of displaced persons who could be discretionally benefited by EU Member States according to Article 7.1 Directive 2001/55.

Technically, people entitled with temporary protection in Spain are:

- a) Ukrainian nationals residing in Ukraine before 24th February 2022;
- b) stateless persons and third countries nationals (other than Ukraine) granted with international protection or equivalent national protection in Ukraine before 24th February 2022;
- c) Ukrainian nationals who were residing legally in Spain before 24th February 2022 and who, as a result of the armed conflict, are unable to return to Ukraine;
- d) third-country nationals or stateless persons who were legally residing in Ukraine on the basis of a valid legal residence permit (permanent or other, such as students) issued in accordance with Ukrainian legislation and are unable to return safely and permanently to their country of origin or principal place of residence;
- e) family members of those referred to in (a) to (d), including: i) their spouse or civil partner; ii) their (or their spouse's) minor unmarried children; and iii) other relatives who were living together as part of the family unit at the beginning of the armed conflict and who were wholly or mainly dependent on them;
- f) Ukrainian nationals who were residing irregularly in Spain before 24th February and who, as a result of the armed conflict, cannot return to Ukraine.

In addition, Ukrainian displaced persons have been exceptionally allowed to enter Spain with their pets and to stay with them in the reception centres, without any special prior permission, except for identification of the animal with a microchip and vaccination against rabies.

According to the Order, temporary protection provides a residence and work permit for one year, which may be extended up to a maximum of three years. During this time, the mechanism also recognizes the freedom of movement and residence, the access to social and health services, the right to family reunification, and it does not preclude of applying for asylum. After the first year of residence in Spain, if temporary protection is extended by the Council of the EU, the permit and all its benefits may be automatically extended for one year more. Once this extension has expired, it may be renewed for a third year if the reasons that led to its adoption persist. **In this case, the Council of Ministers (“Consejo de Ministros”), at the proposal of the Minister of the Interior, after hearing the Interministerial Committee on Aliens (“Comisión Interministerial de Extranjería”),²⁶ may extend temporary protection for**

²⁶ According to the Royal Decree 645/2022 (Real Decreto 645/2022, de 5 de julio, por el que se modifica el Real Decreto 1946/2000, de 1 de diciembre, por el que se regula la composición y el funcionamiento de la Comisión Interministerial de Extranjería (amending Royal Decree 1946/2000 of 1 December 2000 regulating the composition and operation of the Interministerial Commission on Aliens), in Boletín Oficial del Estado (BOE) 167, 13 July 2022, 25650-25650, available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2022->

a maximum of one more year. At any time, the Council of Ministers, upon the proposal of the Minister of the Interior, after hearing the Interministerial Commission on Aliens, may terminate the temporary protection when the conflict which led to its adoption is settled and there are favourable conditions for the return of the beneficiaries.

With regard to the application and recognition procedures, as an important difference within immigration and asylum procedures in Spain, the one for temporary protection is highly simplified and speedy. Individual applications of temporary protection should be done before National Police stations or in reception centres. Then, the Asylum and Refuge Office (“Oficina de Asilo y Refugio” – OAR), a body under the Ministry of Interior, shall process applications for confirmation of the temporary protection under the emergency procedure. The resolution is delivered within 24 hours by the Minister of Interior, upon the proposal of the Interministerial Commission on Asylum and Refuge (“Comisión Interministerial de Asilo y Refugio”).²⁷ The applicant shall just prove Ukrainian nationality, or residence in Ukraine, and to indicate an address, telephone number and email.

The refusal and revocation of temporary protection confirmation can result from the non-compliance with the conditions for temporary protection, the use of false documents to gain access to protection, or reasonable grounds for considering that the person concerned:²⁸

- a) represents a danger to national security;
- b) having been convicted of a particularly serious crime, he or she constitutes a threat to public order;
- c) has committed a crime against peace, a war crime or a crime against humanity, as defined in International Law;
- d) has committed a serious non-political crime outside Spain prior to the confirmation of temporary protection;²⁹
- e) has been found guilty of acts contrary to the purposes and principles of the United Nations.

As mentioned above, applying for confirmation of temporary protection does not preclude from requesting refugee status, according to Article 3.1 Directive 2001/55. Following Article 17 Directive the two procedures could be simultaneously initiated, though both statuses are mutually exclusive. However, in practice, the functioning of the Spanish asylum system might deter Ukrainians from applying for international protection in Spain other than temporary protection. Procedures for recognition of refugee status at police stations and at the Asylum and Refuge Office can take a year or more. In the meantime,

13978), the Interministerial Commission on Aliens is a joint interministerial body attached to the Ministry of the Interior, with the task of analysing, debating and reporting on the proposals of the ministerial departments that have an impact on the treatment of aliens, immigration and asylum.

²⁷ See Law 12/2009, nt. (14). According to the Spanish Asylum Law, the Interministerial Commission on Asylum and Refuge is a joint body attached to the Ministry of the Interior, made up of one representative from each of the departments with competence in foreign and domestic policy, justice, immigration, reception of asylum seekers and equality (Art. 23.2).

²⁸ Real Decreto 1325/2003, nt. (9), Articles 12, 25; Orden PCM/169/2022, nt. (12), Art. 8.

²⁹ This applies both to the participants in the crime and to the instigators of the crime. The severity shall be considered in relation to the nature of the crime allegedly committed. Particularly cruel actions, even if committed with a purportedly political aim, may be classified as serious non-political crimes (Real Decreto 1325/2003, nt. (9), Art. 12.1.a.2).

asylum seekers are not allowed to work until six months after the formal application. In contrast, the application for temporary protection confirmation is processed in less than 24 hours and provides immediate work permission.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

Applying for confirmation of temporary protection grants the same rights and benefits provided by the Spanish asylum system. Nevertheless, in the special case of Ukrainians some special benefits are established, specifically related with work permission and financial support. Therefore, rights and benefits stipulated by Articles 13 and 14 of the Directive 2001/55 are fully recognized to Ukrainian displaced people in Spain.

According to Article 20 of the Royal Decree 1325/2003, beneficiaries of temporary protection in Spain who do not have financial resources may access social and health services provided by asylum legislation. Article 30 of Asylum Law 12/2009 establishes that applicants for international protection without financial resources shall be provided with social and reception services to ensure that their basic needs are met in conditions of dignity. Therefore, Ukrainian people with no financial resources can benefit from the general reception system for asylum seekers, regulated by the Royal Decree 220/2022³⁰ and managed by the State Secretary for Migration (a body under the Ministry of Inclusion, Social Security and Migration). The reception system is made up of a set of resources and services provided along an itinerary. This itinerary, which consists of three phases, is a process aimed at the gradual acquisition of autonomy of the beneficiaries. In particular, protection seekers and beneficiaries could access to public housing, education and healthcare system.

Notwithstanding, the governmental response to the Ukraine crisis initially took place outside the general reception system, as an emergency measure created specifically to cover the basic needs of people who arrived in mass influx from Ukraine, and who could not be properly incorporated into the reception system, both because of the size of the system itself and the needs to be covered.

In this regard, firstly, according to information provided by the Ministry of Inclusion, Social Security and Migration,³¹ only a small number of beneficiaries of temporary protection have been assisted via the emergency mechanism or the international protection reception system. On 22nd February 2023, 35.000 Ukrainians had been assisted in the reception system

³⁰ Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional (adopting the Regulation on the reception system for international protection), in Boletín Oficial del Estado (BOE) 76, 30 March 2022, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2022-4978>.

³¹ Real Decreto 673/2022, de 1 de agosto, por el que se regula la concesión directa de subvenciones a las comunidades autónomas para financiar la prestación de una ayuda económica directa a las personas beneficiarias del régimen de protección temporal afectadas por el conflicto en Ucrania que carezcan de recursos económicos suficientes (regulating the direct award of grants to the Autonomous Communities to finance the provision of direct financial assistance to beneficiaries of the temporary protection regime affected by the conflict in Ukraine who lack sufficient financial resources), in Boletín Oficial del Estado (BOE) 184, 2 August 2022, 111654 – 111664, available at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-12938.

for people without financial resources.³² Most of Ukrainians displaced in Spain have used their own economic resources or have relied on other support networks (family, friends, acquaintances, etc.). For those in a situation of lack of material resources, who are outside the reception system, the national government granted subsidies to the Autonomous Communities, according to the number of beneficiaries residing in them. Through such subsidies, the Autonomous Communities grant a monthly financial aid of 400 euros per person, plus 100 euros per dependent child, for a period of up to 6 months.³³

On the other hand, the initial objective of the emergency response to the war in Ukraine was not, as is the reception itinerary, to achieve the autonomy and gradual integration of the arrivals, but simply to cover basic needs. It was envisaged that the duration of the emergency reception arrangements would be as short as possible, depending on the volume of arrivals of displaced persons, so that they could be quickly **incorporated into the reception system's** itinerary. Furthermore, as another response to the humanitarian emergency, exceptional measures not foreseen in Royal Decree 220/2022 have been adopted, such as the creation of four specific reception centres for Ukrainians, called Reception, Care and Referral Centres (“**Centros de Recepción, Atención y Derivación**” - CREADE), which function as centres of documentation and care services for people in transit.

Public housing within the reception system consists of a progressive system. A first stage in RCR Centres (in the cities of Madrid, Barcelona, Alicante and Valencia), or in reception centres or shelters for migrants (in other cities). The stay in RCR Centres is temporary in order to carry out the identification procedures and application for temporary protection, detect particular needs and refer the person concerned to the most appropriate accommodation and other services. There are four RCR centres: in the cities of Madrid, Barcelona, Alicante and Malaga, as those with the largest Ukrainian population. In other cities, people are attended directly in reception centres for migrants or shelters, managed by officers or by non-governmental organisations under collaboration agreements with the government.³⁴

RCR Centres include the following services: accommodation and maintenance, financial aids, schooling and Spanish classes, psychosocial attention, employment assistance (training,

³² *Escrivá: “La emergencia de Ucrania ha supuesto un gran reto para el sistema de acogida y hemos respondido de forma ejemplar”*, in *La Moncloa*, 22 February 2023, available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/paginas/2023/220223-ayuda-ucrania-balance.aspx> (last accessed 13 April 2023).

³³ Real Decreto 673/2022, nt. (31), Article 7. In addition, the Spanish Government has granted subsidies to Autonomous Communities to finance the increase in resources aimed to attend Ukrainians beneficiaries of temporary protection: *see* Real Decreto 672/2022, de 1 de agosto, por el que se regula la concesión directa de subvenciones a las comunidades autónomas para promover y fomentar una mejor atención de las necesidades básicas de las personas beneficiarias del régimen de protección temporal afectadas por el conflicto en Ucrania que carezcan de recursos económicos suficientes (regulating the direct award of grants to the Autonomous Communities to promote and encourage better care for the basic needs of beneficiaries of the temporary protection regime affected by the conflict in Ukraine who lack sufficient financial resources), in Boletín Oficial del Estado (BOE) 184, 2 August 2022, 111643 – 111653, available at: https://www.boe.es/diario_boe/txt.php?lang=en&id=BOE-A-2022-12937.

³⁴ *See*, e.g., Ministry of Inclusion, Social Security and Migration, *Red Estatal de acogida para desplazados ucranianos* (List of non-governmental organisations members of the Spanish Reception Network for Ukrainians displaced people), 14 June 2022, <https://ucraniaurgente.inclusion.gob.es/w/red-estatal-acogida-desplazados-ucrania> (last accessed 13 April 2023).

employment guidance, homologation of professional qualifications and workshops), health assistance, recognition of Ukrainian driving licences for one-year, legal assistance, and free telephone coverage (roaming).

On the other hand, a second stage of the reception system consists of the transfer to individual or shared apartments, with financial aid for rent and basic needs for those who continue to need it. Finally, a third stage in individual apartments is aimed to those who have found a job and could live more independently.

Access to healthcare and education is fully available for Ukrainian displaced people. They are incorporated into both public systems, at national and regional levels, under the same conditions established for the local population.

Regarding healthcare, Autonomous Communities are the entities in charge of its management. Therefore, although access to the public health system is universally guaranteed across the national territory, specific requirements may vary depending on the Autonomous Community of residence but usually consist of **address registration** (“empadronamiento”). Concerning the protocol for Ukrainians, upon arrival to the reception centres, health needs are assessed and determined on an individual basis. This first test aims to detect any illnesses or injuries, and to inform of the usual preventive strategies within the Spanish health system. Particularly, people are informed about vaccinations and regular visits to basic health centres, especially in certain sensitive groups such as children, pregnant women or dependent persons. In this regard, the Ministry of Public Health has been particularly concerned because of the poor vaccination rates in Ukraine before the war. According to the Guidelines on Healthcare of the Ministry of Public Health,³⁵ the Ukrainian population is at risk of polio and measles, due to low vaccination rates (80%), especially in children under 6 years old. A national polio vaccination campaign had restarted in Ukraine on 1st February 2022 following a polio outbreak in 2021, but was interrupted by the Russian aggression. Likewise, a special vaccination campaign against Covid-19 for Ukrainians in Spain was also conducted due to the low numbers of vaccinated people in Ukraine.

With regard to education, Ukrainian children are included in the public education system, free of charge between 3 and 16 years old. The Spanish system establishes a compulsory period for all children between 6 and 16 years old. Pre-school, for children under 6 years old, and high-school, for children over 16, are optional. In order to enter the Spanish education system, up to compulsory secondary education (“Educación Secundaria Obligatoria” – ESO), Ukrainians are not required with any previous homologation or validation procedures. On the other hand, although non-mandatory, Ukrainians can be enrolled by their parents or tutors in pre-school and high school levels. For Ukrainian children, the second cycle of pre-primary education (3-6 years old) is free of charge. In addition, compulsory enrolment in the

³⁵ Ministry of Public Health, *Guía de actuación ante la llegada de personas refugiadas desde Ucrania*, 21 March 2022, available at https://www.sanidad.gob.es/en/gabinetePrensa/ucrania/docs/Guia_de_actuacion_desplazados-Ucrania_21.03.2022.pdf (last accessed 13 April 2023).

Spanish education system is compatible with online educational courses and services provided by the Government of Ukraine³⁶ and the European Commission.³⁷

Furthermore, according to the Ministry of Education, both the latter and Autonomous Communities (subnational entities responsible for the management of education policy) have approved several measures to facilitate the integration of Ukrainian students.³⁸ These measures are financed from unspent European cohesion funds from the 2014-2020 period, REACT-EU funds and also Erasmus+. They consist of:

- a) recruitment of conversation assistants in Spanish;
- b) recruitment of Ukrainian teachers;
- c) development of educational materials in Ukrainian.

In addition, one or two Spanish classmates per class are selected as host assistants assigned to Ukrainian children at school, with the aim of providing newcomers support to integrate into the school.

There are not specific psychological programmes for Ukrainians at schools, but they may be included in other programmes managed by Autonomous Communities and educational centres for the integration of students with special needs, such as medication, therapy or additional help at school due to physical, cognitive, sensory or psychological differences. Depending on each case, education may be provided in special education centres or in specialised units within schools.

Special protection is foreseen for unaccompanied Ukrainian children, i.e. those under 18 years old who: a) have arrived in Spain unaccompanied by an adult responsible for him or her, according either to its national law or custom; or b) have arrived in Spain accompanied by an adult who has not effectively assumed the responsibility for the minor, so there is a risk for the child of being unprotected. In these cases, the Royal Decree Law 6/2022 has established that protection offices of Autonomous Communities will provide immediate care and assume provisional custody by administrative resolution.³⁹

As for university studies, in June 2022 the Spanish Ministry of Universities decided to accelerate the process of homologation of university studies enabling professional work. To this end, a special email for accessing the homologation process was established for Ukrainian displaced people, to automatically examine all applications received.⁴⁰

³⁶ Ministry of Education and Science of Ukraine, *Remote platforms for learning, self-development and receiving assistance and verified information*, 17 March 2022, available at <https://mon.gov.ua/ua/news/distancijni-platformi-dlya-navchannya-samorozvitku-ta-otrimannya-dopomogi-j-perevirenoyi-informaciyi> (last accessed 13 April 2023).

³⁷ European Commission - European Education Area, *Support for people affected by Russia's invasion of Ukraine*, available at <https://education.ec.europa.eu/support-for-people-affected-by-russias-invasion-of-ukraine> (last accessed 13 April 2023); European Commission – European School Education Platform, available at <https://www.schooleducationgateway.eu/en/pub/latest/news/online-ed-resources-ua.htm>.

³⁸ Ministry of Inclusion, Social Security and Migration, *Trámites para escolarizar a los niños desplazados de Ucrania*, 7 June 2022, <https://ucraniaurgente.inclusion.gob.es/w/escolarizar-desplazados-ucrania> (last accessed 13 April 2023).

³⁹ Real Decreto-Ley 6/2022, de 29 de marzo, por el que se adoptan medidas urgentes en el marco del Plan Nacional de respuesta a las consecuencias económicas y sociales de la guerra en Ucrania (adopting urgent measures in the framework of the National Response Plan to the economic and social consequences of the war in Ukraine), in Boletín Oficial del Estado (BOE) 76, 30 March 2022, Art. 49.3, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2022-4972>.

⁴⁰ Email address for accessing the homologation process by Ukrainians:

4. Social policy measures for Ukrainians: supporting professional activity.

Beneficiaries of temporary protection in Spain are allowed to engage in employed or self-employed activities, on an equivalent footing to Spanish workers. Employment can be either public or private; the former with the exception of those that directly or indirectly involve participation in the exercise of public power or in functions whose purpose is the safeguard of the interests of the State or of Public Administrations.

In addition, beneficiaries of temporary protection can apply for guidance and employment at Labour Offices of the Autonomous Communities. Usually, Autonomous Communities also provide courses in Spanish and other official languages (Catalan, Euskera, Galego), digital skills or training for employment and entrepreneurship. Beneficiaries also have access to job search workshops and may receive assistance for the procedure of homologation and recognition of diplomas.

Particularly, to encourage social and labour integration of displaced persons from Ukraine, the Ministry of Inclusion, Social Security and Migration provides job counselling services in RCR Centres for Ukrainians located in Madrid, Barcelona, Alicante and Malaga. These services are run by the CEOE Foundation (“Confederación Española de Organizaciones Empresariales”) as part of its initiative “Companies for Ukraine” (“Empresas por Ucrania”)⁴¹. The CEOE Foundation has also launched an employment platform in Spanish and Ukrainian, where more than 2,000 vacancies are offered throughout the country and for different profiles. Similarly, there are other platforms managed by private entities where special job offers are published for the Ukrainian population in Spain (e.g. Jobandtalent, Ilunion, Randstad)⁴².

According to statements of the Minister of Inclusion, Social Security and Migration, on February 2023, 14,000 Ukrainian workers were registered in the Spanish Social Security system, 56% of whom are women.⁴³ This rate is very low when compared to the total number of Ukrainian displaced persons who have arrived in Spain to date: of the 170,000 beneficiaries of temporary protection, 60% are of active working age (between 19 and 64), but only 8.24% are registered as workers (employed or self-employed) in the Social Security system.

Those beneficiaries of temporary protection who are employed or who are registered as self-employed have access to Social Security system and are entitled to all its services and social benefits, under the same conditions as Spanish citizens (e.g. benefits for temporary or permanent disability, unemployment, parental leave, etc.).

titulos.protecciontemporalucrania@universidades.gob.es.

⁴¹ <https://jobboard.universia.net/empresasporucrania>.

⁴² Job&Talent, available at https://uk.jobandtalent.com/en/hero_keyvisual_ukr/; Ilunion, available at <https://www.ilunion.com/es/actualidad/ilunion-pone-disposicion-de-los-refugiados-ucranianos-las-ofertas-de-empleo-que-tiene-abiertas>; Randstad, available at <https://www.randstad.es/randstad-por-ucrania/>.

⁴³ E srivá: “La emergencia de Ucrania ha supuesto un gran reto para el sistema de acogida y hemos respondido de forma ejemplar”, in *La Moncloa*, 22 February 2023, available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/paginas/2023/220223-ayuda-ucrania-balance.aspx> (last accessed 13 April 2023).

5. Final considerations.

In addition to the solidarity shown by the Spanish population, the Spanish government's response, on the whole, can be qualified as swift and effective. In terms of legal protection **for the displaced population, Spain responded urgently to the EU's decision** on the activation of temporary protection. Firstly, the government extended protection to all categories of persons eligible for this mechanism. As a result, temporary protection in Spain covers not only Ukrainians and foreigners legally residing in Ukraine until 24th February 2022, but also Ukrainian nationals who were already residing on Spanish soil before the Russian invasion, including those in a situation of irregular migration.

The rights and benefits recognised by the Directive 2001/55 have been guaranteed in Spain. The residence permit for temporary protection in Spain automatically grants the right to stay for a period of one year, renewable up to a maximum of three years. The first renewal, for one year, occurs automatically if the EU Council Decision on the activation of temporary protection is upheld. Likewise, the permit can be extended in Spain exceptionally for another year, when the grounds for the activation of temporary protection persist.

In this regard, the question is what will happen if the conflict in Ukraine continues after three years. The point will be, at the EU level, whether temporary protection will be replaced ad-hoc by another mechanism for displaced persons. On this matter, the negotiations of the European Pact on Migration and Asylum may entail a change due to the proposal to reform temporary protection with the so-called immediate protection,⁴⁴ which has similar characteristics but whose conditions may vary. At the Spanish level, the question is whether a legislative reform will be feasible to maintain temporary protection, or whether the latter will have to be modified to another type of residence permit already available under Spanish law.

On the other hand, the application and recognition of temporary protection in Spain give Ukrainians access to all the rights and benefits of the general reception system for protection seekers and refugees. In addition to those rights, as a special benefit, the temporary protection status automatically grants a work permit for salaried or self-employed activities. It also allows access to both public education and healthcare systems, under the same conditions as Spanish citizens. However, the still very low rate of Ukrainians affiliated to Social Security as workers (8.24%, employed or self-employed) is noteworthy, although most of those who have arrived in Spain are of active working age (60%).

Furthermore, for those beneficiaries without economic resources, Spanish legislation guarantees access to housing (in reception centres, shelters or shared or individual homes, depending on the stage reached in the reception process). In addition to these benefits of the reception system, Ukrainians without financial resources receive a monthly financial aid of 400 euros, plus 100 euros per dependent child, and have free access to pre-school education, for children between 3 and 6 years old. Nevertheless, over the last year, a small number of Ukrainian applicants have benefited from the reception system. In practice, most Ukrainians

⁴⁴ European Commission, Proposal for a Regulation of the European Parliament and the Council addressing situations of crisis and force majeure in the field of migration and asylum, COM/2020/613 final, 23 September 2020, Art. 10.

displaced in Spain have only benefited from entry, residence and work permits, but have settled by their own means and with the support of their own networks, such as relatives or other Ukrainians already residing in Spain prior to the war.

Within the Spanish response, particularly remarkable has been the swiftness and effectiveness of the procedures of temporary protection for Ukrainians. On the contrary, in practice, immigration and international protection procedures in Spain are characterised by lengthy delays. Likewise, the rate of recognition of protection in Spain is characterised by very low rates when compared to the number of applications.⁴⁵ In contrast, in the temporary protection procedure, the application has been responded immediately within a maximum period of 24 hours, allowing automatic access to all the rights and benefits derived from it.

Overall, the effectiveness of temporary protection in the EU is striking, even in the absence of a solidarity mechanism between Member States, unlike what happened mainly in the face of the increase of migrant arrivals from 2015 onwards in the so-called “refugee crisis”. Nevertheless, the response to the displaced Ukrainian population has demonstrated the key influence that EU decisions and policies have to improve national protection systems, based on common protection mechanisms between States. In particular, in the domestic Spanish realm, it has shown that the efficiency of immigration and protection procedures depends mainly on political will.

⁴⁵ See Ministry of Interior, *Data and statistics of international protection in Spain*, available at <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/> (last accessed 13 April 2023).

Mass influx of people from Ukraine: social entitlements and access to the labour market: Sweden. Niklas Selberg*

1. Preliminary remarks. 2. Personal scope of applicable support measures. 2.1 National temporal expansion of persons covered. 2.2. National expansion of scope of family reunification. 2.3. Confirming and losing the status as displaced person. 2.4. Temporary protection and other residence permits: what possibility to change grounds and receive permanent residence permit? 2.5. Documents confirming status as displaced person. 2.6. Identity, status, population registration and the right to work. 3. Social policy measures for Ukrainians in Sweden. 3.1. Introduction. 3.2. Financial support. 3.3. Social security. 3.4. Housing. 3.5. Access to healthcare. 3.6. Access to education. 3.7. **Incentives for ‘integration’** – curtailing free choice of place of residence. 4. Swedish policy measures in support of professional activities of persons displaced from Ukraine. 4.1. Introduction. 4.2. Program upon arrival and at the refugee facility. 4.3. Access to training in the Swedish language. 4.4. Access to the Swedish labour market. 4.5. Access to public employment services. 4.6. Terms and conditions of work on the Swedish labour market. 4.7. Ukrainians on the Swedish labour market. 4.8. Ukrainian qualifications and diplomas. 5. Final considerations.

1. Preliminary remarks.

What is the Swedish response to the mass influx of displaced persons from Ukraine? Which social and labour market policies have been implemented in relation to the Ukrainian diaspora in Sweden? This is the topic of the present chapter.

Council Directive 2001/55/EC 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 was decided on 20 July 2001.¹

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

The Directive 2001/55 was implemented into Swedish law through amendments to the Aliens Act (*Utlänningslag*; 2005:716) and the Aliens Regulation (*Utlänningsförfordning*; 2006:97).² The standing of displaced persons from Ukraine in relation to the labour market and social rights such as housing, access to healthcare and education is however regulated through several other laws and regulations: the Reception of asylum seekers Act (*Lag om mottagande av asylsökande m. fl.*; 1994:371), the Reception of asylum seekers Regulation (*Förordning om mottagande av asylsökande m.fl.*; 1994:361), Act on healthcare for asylum seekers and others (*Lag om hälso- och sjukvård åt asylsökande m.fl.*; 2008:344), the Population Register Act (*Lag om ändring i folkbokföringslagen*; 1991:481), and the Social Insurance Code (*Socialförsäkringsbalk*; 2010:110).

The Council established – in Council Implementing Decision (EU) 2022/382 – on the 4th of March 2022,³ that a mass influx of displaced persons from Ukraine existed in the meaning of Article 5 of the Directive 2001/55. The council thus decided to introduce temporary protection for displaced persons from Ukraine.

As of May 2023, 8 240 289 war migrants from Ukraine were recorded across Europe out of which 5 124 575 were registered for temporary protection or similar protection schemes. Sweden had by May 2023 recorded 55 020 war migrants from Ukraine, and all had been registered for temporary protection or similar protection schemes.⁴

In sum, this chapter charts, from a legal point of view, some of the Swedish responses to the mass influx of displaced persons from Ukraine to Sweden. The chapter covers the extent to which this group has a right to entry to the labour market and support in different respects. Furthermore, the chapter describes access to housing, healthcare and education for displaced Ukrainians. Before entering into these discussions the chapter describes procedural aspects of receiving confirmation of the temporary protection. The chapter ends with a discussion on the level of protection and some final considerations. Because of space restraints the analysis cannot go into matters regarding international aid, trade and foreign policy, **unaccompanied childrens' specific needs for social services**, income taxation of Ukrainians in Sweden and prerequisites for starting a business in Sweden.

2. Personal scope of applicable support measures.

2.1. National temporal expansion of persons covered.

The Swedish Parliament (The Riksdag) has delegated to the Government to expand the scope of the category of persons beyond the demands of the Directive 2001/55 [Ch. 21, Sect. 3 of the Reception of asylum seekers Act (1994:371)]. In April 2022 the Swedish Government decided to expand the group of persons entitled to residence permit from

² Travaux préparatoires are prop. 2001/02:185, Ds 2001:77, bet. 2002/03:SfU4, rskr. 2002/03:47.

³ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

⁴ <https://data.unhcr.org/en/situations/ukraine> (accessed 20 May 2023).

temporary protection to cover also persons who arrived in Sweden from 30 October 2021 until 23 February 2022, and who have remained in Sweden since then. It is assumed that the expansion will cover very few people, but nevertheless that it would be unreasonable to refer this group to the general asylum system.⁵ In sum, national law covers the persons indicated in the Decision 2022/382 as well as those mentioned above.

2.2. National expansion of scope of family reunification.

If a residence permit with temporary protection has been granted to a displaced person from Ukraine, such a residence permit can be given to the following persons (foreigners) based on Ch. 21, Sect. 4 of the Aliens Act (2005:716):

- spouse or cohabiting partner;
- unmarried children of either the person granted residence permit, or that person's spouse or cohabiting partner;
- a parent of a child who arrived in Sweden unaccompanied by any parent (or from another adult who have taken the place of parents) or if the child was left alone upon arrival.

The Swedish regulation of family reunification for displaced persons according to the Directive 2001/55 does not reflect the wording in Art. 15.1 of this Directive where the concept of the family is qualified as “cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx”. Possibilities for family reunification are thus wider in Sweden compared to the Directive 2001/55. A family must not necessarily have existed in Ukraine for reunification to be possible. Children born in Sweden by parents displaced from Ukraine are to be granted a residence permit based on Ch. 21, Sect. 4 of the Aliens Act (2005:716).⁶

2.3. Confirming and losing the status as displaced person.

It is possible and necessary to apply for residence permit for temporary protection from within Swedish territory [Ch. 21 and Ch. 5, Sect. 18 of the Aliens Act (2005:716)]. A Ukrainian ID-card, driver's licence, birth certificate, documentation from military service or citizenship is sufficient for the purposes of the application and to meet the burden of proof (plausible; likely) as regards the question of belonging to the protected group of persons.⁷ A passport is not necessary.⁸ The applicant can either use an e-service and apply online (access

⁵ A new rule in Ch. 4, Sect 19 h in the Aliens Regulation (2006:97). SFS 2022:256; decided April 7, 2022; entered into force April 26, 2022. Regeringens skrivelse 2021/22:271 Anmälan av föreskrifter om att ytterligare kategorier av fördrivna personer ska ges tillfälligt skydd.

⁶ Rättsligt ställningstagande, Tillfälligt skydd, asyl och avslag i ärenden om uppehållstillstånd samt frågan om verkställighet för personer från Ukraina, RS/004/2022; RA/020/2022.

⁷ Rättsligt ställningstagande, Ordningen för prövningen enligt 21 kap. Utlänningslagen (2005:716), RS/005/2022; RA/027/2022.

⁸ Ch. 2, Sect. 1 of the Aliens Regulation (2006:97). Cf Rättsligt ställningstagande, Kraven på klarlagd identitet och pass i ärenden om uppehållstillstånd, RS/037/2021; RA/178/2021.

to e-mail, mobile phone and an electronic copy of passport or ID-card is necessary) or visit one of the regional offices of the Swedish Migration Agency. The applicant shows his or her ID/passport, leaves biometrical data (i.e. fingerprints and photo) and is subject to a short interview. The procedure is entirely free of charge [(Ch. 8, Sect. 5 of the Aliens Regulation (2006:97)]. The Swedish Migration Agency claims that decisions on the application only takes a few days. A similar procedure is used for applying for prolongation of the temporary protection.

The Swedish Migration Agency has decided that residence and work permits – both new ones and applications for prolongation – shall be valid until March 4, 2024. The Agency claims that this stance is the result of a teleological interpretation of the Directive 2001/55.⁹

The Swedish Migration Agency decided on February 24, 2022, to temporarily stop deportations to Ukraine and to halt processes and decisions regarding applications for international protection for persons from Ukraine.¹⁰ International protection is instead provided by the Directive 2001/55 as activated by the Council. In effect Ukrainians in Sweden apply for the, as compared to temporary protection, more beneficial asylum, while the Directive 2001/55 is activated. According to the Swedish Refugee Law Center, the Swedish Migration Agency has stated that it will not decide on applications from Ukrainians regarding residence permit for work or for family reunification for the same time period as temporary protection is granted.¹¹

As a general principle, a person covered by the Directive 2001/55 is to be granted a temporary residence permit on that ground. In other words, national law on other grounds for residence permits are subsidiary to national law implementing the Directive 2001/55. A person holding such a permit can, however, apply for a protection status declaration.¹²

If an application for residence permit for temporary protection is rejected, the authorities will decide that the migrant is to return to the Ukraine, however, the decision will not be enforced. Instead, the war migrant can apply for other types of residence permits.¹³

During the temporary protection, deportation because of criminal activity is reserved for extreme cases (Ch. 8 a, Sect. 4 of the Act).

With the status of temporary protection comes free movement rights in the EU. Furthermore, returning to Ukraine does not imply that the residence permit is invalidated. The right to social services in Sweden might however be cancelled. As of today the Swedish state does not provide financial support for those who want to return to Ukraine.

The residence permit expires upon transfer of the person granted temporary protection (Ch. 21, Sect. 8 of the Act).

⁹ Rättsligt ställningstagande, Uppehållstillståndets längd för personer som omfattas av 21 kap. Utlänningslagen, RS/003/2022 (version 2); RA/017/2022; RA/084/2022.

¹⁰ Migrationsverket, Rättsligt ställningstagande, Asylärenden och verkställigheter till Ukraina, RS/002/2022; RA/013/2022.

¹¹ *See* <https://sweref.org/vanliga-fragor-om-massflyktsdirektivet-och-att-soka-asyl-fran-ukraina/> (accessed 25 May 2023).

¹² Ch. 4, Sect. 3 c of the Aliens Act (2005:716); Rättsligt ställningstagande, Ordningen för prövningen enligt 21 kap. Utlänningslagen (2005:716), RS/005/2022; RA/027/2022.

¹³ Rättsligt ställningstagande, Tillfälligt skydd, asyl och avslag i ärenden om uppehållstillstånd samt frågan om verkställighet för personer från Ukraina, RS/004/2022; RA/020/2022.

2.4. Temporary protection and other residence permits: what possibility to change grounds and receive permanent residence permit?

It is, according to the Swedish Migration Agency, not possible for a displaced person from Ukraine who have found employment in Sweden to apply for a change of the grounds of the residence permit from temporary protection to residence permit for work.¹⁴ A person enjoying temporary protection cannot have a permit for the purposes of i.a. research, studies, training and au pairing¹⁵ [Ch. 5b, Sect. 10, p. 3 of the Aliens Act (2005:716)].

According to the Swedish Refugee Law Center it is not entirely clear that it will be possible to apply for residence permits on the basis of work or family reunification from the Swedish territory [indeed the main rule is that applications for residence permits must be handed in

before entering Sweden (Ch. 5, Sect. 18 of the Act)]. There is a possibility to allow for applying for residence permit while present in Sweden if there are compassionate or exceptional grounds (Ch. 5, Sect. 18, p. 11 of the Act). A person who has been granted a residence permit with temporary protection might thus need to leave Sweden in order to apply for other types of residence permits for Sweden. After temporary protection it is however possible to apply for a change in status through the ordinary venues: work permit (Ch. 6, Sect. 2 of the Act), Blue Card¹⁶ (Ch. 6 a of the Act; cf Ch. 6a, Sect. 2 of the Act), seasonal work¹⁷ (Ch. 6 c of the Act) and family reunification (Ch. 5 Sects. 3–3 g of the Act).

Temporary protection is not in and of itself a venue towards a permanent residence permit or citizenship in Sweden. The time during which the displaced person from Ukraine was granted temporary protection and working in Sweden does not count when applying the rules about permanent residence permit on the grounds of work (Ch. 5, Sect. 5 of the Act). It is only after the temporary protection is cancelled and the displaced person gets a new temporary residence permit that he or she starts accumulating the time needed for ultimately receiving the permanent residence permit.

2.5. Documents confirming status as displaced person.

When the application for temporary protection confirmation is approved, the applicant is provided with a particular ID-card (**‘residence permit card’**) which communicates the status of enjoying temporary protection and the rights according to the Reception of asylum seekers Act (1994:371) as well as the right to work in Sweden. This ID-card has the photo of the

¹⁴ See <https://www.migrationsverket.se/Privatpersoner/Skydd-enligt-massflyktsdirektivet/Fragor-och-svar-om-massflyktsdirektivet.html> (accessed 25 May 2023).

¹⁵ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

¹⁶ Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC.

¹⁷ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

displaced person and is sent to him or her. The financial support (see sect. 3.2. below) granted to persons enjoying international protection is provided through a debit card which accompanies the ID-card.

2.6. Identity, status, population registration and the right to work.

The financial support for displaced persons from Ukraine (see sect. 3.2. below) is reduced if the applicant complicates the legal proceedings regarding the residence permit by not being active in order to clarify his or her identity or stays away from authorities [Sect. 10 of the Reception of asylum seekers Act (1994:371)].

A displaced person from Ukraine enjoying temporary protection will not be registered in the population register [Sect. 4 of the Population Register Act (1991:481)]. Instead of a personal identity number, the displaced person will be afforded a coordination number [the Act on coordination numbers (*Lag om samordningsnummer*, 2022:1697)¹⁸ which entered into effect September 1, 2023]. Swedish government agencies can apply for a coordination number for displaced persons [Sect. 5 of the Population Register Regulation (*Folkbokföringsförordning*, 1991:749)].

A coordination number is necessary if the displaced person wants to exercise his or her right to work in Sweden. It is not allowed to employ a person who does not have a coordination number. A prerequisite for being assigned a coordination number is that the applicant is able to either clarify his or her identity, or at least meet the standard of proof of ‘plausible’ as regards his or her identity [Sects. 2 and 5 of the Act (2022:1697)] on coordination numbers [cf the demand that the identity is not uncertain in Sect. 5 a of the Population Register Regulation (1991:749)]. Thus, a person who wants to be employed must in relation to Swedish government authorities be active in order to clarify his or her identity. If the applicant cannot at least make his or her identity plausible, the right to work cannot be exercised.

3. Social policy measures for Ukrainians in Sweden.

3.1. Introduction.

EU law provides that Member States shall ensure persons enjoying temporary protection access to several social rights already present in national law (Arts. 13 and 14 of the Directive 2001/55). Member States must include displaced Ukrainians in social schemes and policies; access to suitable accommodation, necessary assistance in terms of social welfare and means of subsistence, medical care and accommodation to different special needs. Furthermore, Member States shall include displaced Ukrainian children in their general education system and may also give adults access to the general education system.¹⁹

¹⁸ Government Bill 2021/22:276.

¹⁹ During the early stages of the war the initial support for displaced persons from Ukraine in Sweden was governed by a particular government regulation. This system is now replaced with what is described in this

Displaced persons from Ukraine granted temporary protection in Sweden are not part of the otherwise generally applicable system concerning measures to enable migrants to establish themselves in Sweden [the Act on the responsibility for establishing measures for certain newly arrived migrants (*Lag om ansvar för etableringsinsatser för vissa nyanlända invandrare*; 2017:584)]. Displaced persons with temporary protection in Sweden are covered by fewer measures and have fewer rights, as is described in the following sections of the chapter.

During 2022 and 2023 the Government has allocated funds for supporting civil society organizations active in supporting the population displaced from Ukraine to Sweden.²⁰

3.2. Financial support.

A person who has applied for, or have been granted, a residence permit with temporary protection according to the Directive 2001/55 receives financial support on the same level as asylum seekers, as is proscribed by the Reception of asylum seekers Act (1994:371) (Sects. 1, 2 p., 8 and 11). This financial support is a state responsibility, and does not imply social welfare, which is a municipal responsibility (Sect. 1, part 2 and Sect. 3 a of the Act).

A displaced person who cannot support him- or herself has a right to a daily allowance (Sect. 17 of the Act). This allowance is meant to cover costs for food, clothing, leisure, personal hygiene etc.²¹ The allowance is 6 Euro per day for a single adult (or 2 Euro if food is provided for by the asylum center), two co-habitant adults receive 5 Euro each and a small additional sum is provided for children – ranging from 3 to 4 Euro [Sect. 6 of the Reception of asylum seekers Regulation (1994:361)]. The amount of money in this allowance has not been raised since 1994. When deciding if a displaced person has a right to the daily allowance **the Agency considers the applicant’s cash savings, bank accounts and other means he or she actually has access to or can gain access to. However, an asset or resource which it is “not reasonable” to demand that the person sells, is not to be considered.**²²

Displaced persons also have a right to extra support for specific needs (Sect. 18 of the Act). **This extra support covers costs “necessary for a bearable way of life”, such as winter clothing, glasses, dietary supplements, equipment for disabled persons and baby equipment** (Sect. 7 of the Regulation).

Chapter. See Förordning (2022:354) om inledande bistånd till utlänningar som ansökt om uppehållstillstånd med tillfälligt skydd, förordning (2022:1010) om upphävande av förordning (2022:354) om inledande bistånd till utlänningar som ansökt om uppehållstillstånd med tillfälligt skydd. MIGRFS 2022:6 Migrationsverkets föreskrifter om inledande bistånd till utlänningar som ansökt om uppehållstillstånd med tillfälligt skydd and MIGRFS 2022:7 Migrationsverkets föreskrifter om upphävande av föreskrifterna om inledande bistånd till utlänningar som ansökt om uppehållstillstånd med tillfälligt skydd (MIGRFS 2022:6).

²⁰ Förordning (2022:1212) om statsbidrag till vissa organisationer som arbetar med mottagande av människor från Ukraina som söker skydd i Sverige.

²¹ See Sect. 5 of the Reception of asylum seekers Regulation (1994:361).

²² Sect. 22 of MIGRFS 2023:4 Migrationsverkets föreskrifter om mottagande av asylsökande m.fl. (April 11, 2023).

3.3. Social security.

The Swedish social security system is divided into two parts: *residence-based* and *work-based* benefits, respectively.²³

A foreigner is generally speaking considered to reside in Sweden upon arrival, if it can be assumed that his or her stay will be longer than one year [Ch. 5, Sect. 3 of the Social Insurance Code (2010:110)]. However, this rule does not apply to persons enjoying temporary protection according to the Directive 2001/55. For persons belonging to this category to be considered as residing in Sweden, it must be assumed that the stay in Sweden on the basis of this permit will be longer than three years [Ch. 5, Sect. 3 of the Code as compared to Sect. 4 of the Population Register Act (1991:481)]. Given present circumstances as regards the duration of permits, displaced persons from Ukraine do not have a right to residence-based social security benefits. This category of benefits includes i.a. (Ch. 5, Sect. 9 of the Code): parental benefit either at basic level or minimum level, child allowance, maintenance support, care allowance for children with special needs, activity compensation and sickness compensation in the form of guaranteed benefit, additional cost allowance, car allowance, guarantee pension, assistance benefit, and housing supplement.

Work-based social security benefits are granted to everyone who is working in Sweden (Ch. 6, Sect. 2 of the Code). Those who do not work are not afforded support from social security benefits of this category. Depending on whether a displaced person from Ukraine has work or not, he or she will be eligible for i.a. the following (Ch. 6, Sect. 6 of the Code): pregnancy benefit, parental benefit at basic and sickness benefit level, temporary parental benefit, income related sickness compensation, income related activity compensation, occupational injury compensation, benefit for care of closely related persons, rehabilitation allowance, income-based general old-age pension, survivor's pension, survivor's benefits from workers' compensation insurance.

3.4. Housing.

A person benefiting from temporary protection has a right to housing [Sects. 1 and 14 of the Reception of asylum seekers Act (1994:371)]. The agency must ask about any special needs and must provide for a minimum of private sphere in agency run facilities.²⁴ This type of housing will be provided by either the Swedish Migration Agency or one of Sweden's 290 municipalities (Sect. 3 of the Act). When assigning displaced persons a place on Agency operated facilities, families must "to the largest extent possible" be kept intact [Sect. 2 c of the Reception of asylum seekers Regulation (1994:361)].

When the Agency tasks municipalities with housing displaced persons from Ukraine consideration shall be taken to labour market conditions, population size, the total amount

²³ See Ch. 4, Sect. 2 of the Social Insurance Code (2010:110).

²⁴ Detailed regulation about temporary housing in agency run facilities and the assignment process is found in agency level regulation; MIGRFS 2023:4 Migrationsverkets föreskrifter om mottagande av asylsökande m.fl. (April 11, 2023).

of newly arrived persons and the size of the asylum-seeking population in the municipality (Sect. 3 b of the Act). Housing of displaced persons is carried out by municipalities, but costs are borne by the State.²⁵ As of July 2022, the policy is to distribute displaced persons more evenly in Sweden.²⁶ The Agency is tasked with defining factors which is to be used to create **an even distribution of the displaced Ukrainian population over Sweden's municipalities** resulting in lists covering the assigned number of persons per each of the municipalities.²⁷ Thus, the Government has in different ways assumed quite strict control of distribution of displaced persons in Swedish municipalities (Sect. 23a of the Act).

Displaced persons with income e.g. from employment must **pay a "fair amount"** for housing (Sect. 15 of the Act). Also, displaced persons can arrange for housing themselves, and in some cases a small allowance – some 29 Euros per month is afforded for this (Sect. 16 of the Act and Sect. 4 of the Regulation).

3.5. Access to healthcare.

Displaced persons from Ukraine benefiting from temporary protection have some rights to healthcare in Sweden [Act on healthcare for asylum seekers and others [(Sects. 1 and 4, Act on healthcare for asylum seekers and others (2008:344)].

Persons in this group younger than 18 years have a right to the same healthcare services as children residents (Sect. 5 of the Act).

Persons older than 18 years have a right to the following healthcare services: maternal and obstetric care, abortion, counselling on contraceptives and urgent healthcare **which "cannot wait"** (Sect. 6 of the Act). This standard puts the rights to healthcare of displaced persons from Ukraine on par with that of undocumented migrants (i.e. deportable migrants) in Sweden [Sect. 7 of the Act on healthcare for some foreigners present in Sweden without the necessary permits (*Lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd*, 2013:407)]. **The concept of 'healthcare which cannot wait'** is debated and contested among health professionals who claim that it is not compatible with the ethos of the medical community, and that it puts patients at risk. It is, according to critics, not suitable to produce lists of conditions or diagnoses covered. Essentially, the medical community argues that the concept is incompatible with ethical commitments to human dignity.²⁸ Ultimately it is up to the individual physician to decide what is to be included in **the standard "healthcare which cannot wait"**.²⁹

²⁵ Förordning (2017:193) om statlig ersättning för asylsökande m.fl.

²⁶ Government Bill 2021/22:250.

²⁷ Förordning (2022:1008) om anvisning av en kommun som ska ordna boende för vissa utlänningar. Fördelningstal för skyddsbehövande 2023: <https://www.migrationsverket.se/download/18.32a1d403184e817fdee6a8/1679922262414/Fördelningstal%20för%20skyddsbehövande%202023.pddf> (accessed 25 May 2023).

²⁸ Socialstyrelsen, *Vård för papperslösa. Vård som inte kan anstå, dokumentation och identifiering vid vård till personer som vistas i landet utan tillstånd*, 2014 (art. 2014-2-28).

²⁹ Government Bill 2012/13:109, 19.

All displaced persons have a right to healthcare in relation to infectious diseases [the Act on Communicable Diseases (*Smittskyddslag* 2004:168)].

Fees for doctor's appointments are low, ranging from 2 to 4 Euro. Children do not pay any fees at all. Healthcare is organized by, and a responsibility of the 20 Regions in Sweden, but they are reimbursed by the state.³⁰

As soon as a displaced person has established him or her in housing, he or she must be offered a health exam which includes testing, information and advice (Sect. 7 of the Act). The health exam is voluntary and conducted with the assistance of an interpreter. The essential purpose of the exam is to establish if there is a need for healthcare services. A particular focus is directed towards potentially traumatic experiences and subsequent needs for psychiatric healthcare.³¹

3.6. Access to education.

Children displaced from Ukraine have rights to education [the Education Act Ch. 29, Sect. 2, part 2 of the Education Act, Skollag, (2010:800)]. From six or seven years of age children benefiting from temporary protection have a right to attend compulsory school for ten years without charge (Ch. 7, Sects. 2, 3, 10 and 12 of the Act). In contrast to Swedish children, children benefiting from temporary protection do not have an obligation to attend school (Ch. 7, Sect. 2, part 3 of the Act). Displaced persons have a right to attend upper-secondary school only if they start this education before they turn 18 years of age, and they do not have a right to attend municipal adult education (Ch. 29, Sect. 3 of the Act). Municipalities are responsible for arranging education and are reimbursed by state funds.³²

At the request of Ukraine, the Swedish government organizes the tests that are used for admission to higher education in Ukraine. In 2022 and 2023 Stockholm University supplied the practicalities (computers, staff, venues, control) needed for displaced persons to take the Ukrainian national standardized admissions test without having to return to the site of war.³³

3.7. Incentives for 'integration' – curtailing free choice of place of residence.

Refugees' right to organize their own housing was identified as a source of social problems by the Swedish government just before the Russian war against Ukraine started. The government noted that it was unable to influence the distribution of asylum seekers and that this group was unevenly distributed in Sweden. The possibility to freely choose one's own housing in practice often led to asylum seekers moving in with relatives or countrymen,

³⁰ Förordning (1996:1357) om statlig ersättning för hälso- och sjukvård till asylsökande.

³¹ Detailed regulation is found in agency level regulation; SOSFS 2011:11 Socialstyrelsens föreskrifter och allmänna råd om hälsoundersökning av asylsökande m.fl. (as amended by SOSFS 2013:25).

³² Förordning (2017:193) om statlig ersättning för asylsökande m.fl.

³³ See: <https://www.regeringen.se/pressmeddelanden/2023/04/stockholms-universitet-far-i-uppdrag-att-genomfora-prov-for-tilltrade-till-ukrainsk-hogskoleutbildning/> (accessed 25 May 2023).

particularly in some parts of Sweden. This, the government argued, led to serious negative social consequences for both individual asylum seekers and the local community. **Municipalities with many asylum seekers is said to suffer from “socioeconomic challenges”** and difficulties to provide social services in the wake of strained budgets. The housing situation will also be dire for the asylum seekers, which in turn is likely to lead to psychological problems, difficulties to keep up with school and unemployment.³⁴

Against this backdrop a change in the law was introduced implying that the asylum seeker, and also the person seeking temporary protection according to the Directive 2001/55, will not be eligible for financial support (see sect. 3.2.) if he or she settles in a part of a **municipality which is “socially and economically challenged”** according to particular standards (Sect. 10 a of the Act).³⁵

4. Swedish policy measures in support of professional activities of persons displaced from Ukraine.

4.1. Introduction.

EU-law demands that Member States authorizes, for a period not exceeding that of the temporary protection, persons enjoying temporary protection to engage in i.a. employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training, and practical workplace experience (Art. 12 of the Directive 2001/55). The general law in force in the Member States applicable to remuneration for work, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply to persons displaced from Ukraine to Sweden.

4.2. Program upon arrival and at the refugee facility.

The Swedish Migration Agency shall on its facilities provide newly arrived persons benefiting from **temporary protection courses in Swedish, maintenance work and “other activities which contributes to a meaningful stay”** at the facility [Sect. 4 of the Reception of asylum seekers Act (1994:371)]. Should the displaced person refuse to participate in these activities, this could constitute grounds for reduction of the daily allowance (see sect. 3.2.) (Sect. 10 of the Act).

³⁴ Government Bill 2019/20:10, 7.

³⁵ Municipalities are to report to the Swedish Migration Agency who will maintain a list for the purposes of the Regulation. Cf MIGRFS 2020:3 Migrationsverkets föreskrifter om förteckning över kommundelar som ska anses ha sociala och ekonomiska utmaningar (April 22, 2020).

4.3. Access to training in the Swedish language.

The 290 municipalities in Sweden are responsible for arranging basic level courses in the Swedish language for people who recently arrived in the country and do not speak Swedish – ‘Swedish for immigrants’ [Ch. 20, Sects. 24–33 b of the Education Act (2010:800)]. This course is free of charge for the student. Other categories of migrants (i.e. those legally resident in Sweden) have a right to take part in this language course. As of August 30, 2023 municipalities are allowed to provide displaced persons over the age of 18 from Ukraine this course [Ch. 7, Sect 8 a of the Regulation on adult education (*Förordning om vuxenutbildning* 2011:1108)]. Displaced persons do not have a right to this course in the Swedish language. However, many municipalities have chosen to offer this language course to Ukrainians. In March 2023 the Government allocated 100 million SEK to municipalities for providing Ukrainians with courses in the Swedish language.³⁶

4.4. Access to the Swedish labour market.

A foreign national benefiting from temporary protection is given a work permit for the duration of the residence permit [Ch. 21, Sect. 7 of the Aliens Act (2005:716)].

Being employed in Sweden demands registration for paying taxes. Therefore, it is necessary to have a coordination number (see sects. 2.6. and 4.5c).

It is the responsibility of the employer to make sure that a prospective employee has the right to work in Sweden. Being employed without a work permit is a criminal offence (Ch. 20, Sect. 3 of the Act).³⁷ Employing a person without a work permit is a criminal offence which might be sanctioned with fines or imprisonment, or financial sanctions (Ch. 20, Sects. 5 and 12 of the Act).

An employer may not discriminate against a person who is enquiring about or applying for work or traineeship [Ch. 2, Sect. 1 of the Discrimination Act (*Diskrimineringslag* 2008:567)]. The prohibition against discrimination includes i.a. direct and indirect discrimination and harassment (Ch. 1, Sect. 4 of the Act). The grounds for discrimination include i.a. sex, ethnicity, disability, and sexual orientation (Ch. 1, Sect. 5 of the Act). The prohibition against discrimination applies between trade union and a person who seeks membership in the organization (Ch. 2, Sect. 10 of the Act). Excessive demands on part of employers regarding the ability to speak the Swedish language might, according to case law from the Labour Court, constitute indirect discrimination on the basis of ethnicity.³⁸

³⁶ See <https://www.regeringen.se/pressmeddelanden/2023/03/regeringen-foreslar-100-miljoner-kronor-for-sfi-for-ukrainska-medborgare/> (accessed 25 May 2023).

³⁷ See also the Act (2013:644) on right to salary and other remuneration for work performed by an alien without the right to reside in Sweden.

³⁸ AD 2002 no 128, AD 2005 no 98, AD 2008 no 47.

4.5. Access to public employment services.

Assistance from the Swedish public employment services is available for displaced persons from Ukraine. It is necessary to bring means for identification (e.g. ID-card or passport) and a coordination number (see sects. 2.6. and 4.4.). After registration with the agency the Ukrainian job seeker is offered an introductory meeting during which the job seeker and an agency official analyze which supporting measures might be necessary in the individual case. The job seeker is encouraged to bring grades, letters of recommendation and documentation of previous experiences. This meeting is done in English or through the services from an interpreter.³⁹

Several of the support programs in effect on the Swedish labour market are available for persons benefiting from temporary protection. *Nystartsjobb* ('Fresh start jobs') is directed towards persons who have been away from employment for a prolonged period of time. The employer is partially subsidized for the costs for salary.⁴⁰ *Yrkesintroduktionsanställning* ('Introduction to profession employment') provides an opportunity to learn a trade on the job while being paid. Each person is assigned a mentor and at least 15 % of working time consists of training or mentoring. The employer is partially subsidized for the costs for salary, and the employment can last from six months up till one year.⁴¹ *Introduktionsjobb* ('Introductory employment') is a subsidized form of employment providing an opportunity to enter into the labour market. The employer is partially subsidized for the costs for salary. This type of program is available on part-time and also for disabled people.⁴² *Lönebidrag* ('Salary allowance') is directed towards persons with disability and allows for the employment relationship to be adapted to the needs of the worker. The employer receives subsidies for the costs for salary. This type of program applies to both private and public employers and employment can be either full-time or part-time, as well as open-ended or short-term.⁴³

The prohibition against discrimination (see sects. 4.4. and 4.6.) is applicable also on labour market policy activities and employment services under public contract [Ch. 2, Sect. 9 of the Discrimination Act (2008:567)]. Furthermore, the prohibition against discrimination applies to decisions regarding financial support, permits, registration, or similar arrangements that are necessary or can be of importance for someone to be able to start a business (Ch. 2, Sect. 10 of the Act).

4.6. Terms and conditions of work on the Swedish labour market.

The Swedish labour market is heavily regulated, primarily through semi-mandatory legislation covering almost all aspects of the employment relationship and the relationship

³⁹ <https://arbetsformedlingen.se/other-languages/ukrainska-ukrainska/svenska/ar-du-fran-ukraina> (accessed 25 May 2023).

⁴⁰ Förordning (2018:43) om stöd för nystartsjobb.

⁴¹ Förordning (2013:1157) om stöd för yrkesintroduktionsanställningar.

⁴² Förordning (2018:42) om särskilt anställningsstöd.

⁴³ Förordning (2017:462) om särskilda insatser för personer med funktionsnedsättning som medför nedsatt arbetsförmåga.

between employer and employers' organizations and trade unions.⁴⁴ Collective bargaining agreements applies to 90 % of employees in Sweden and about 70 % of the work force is unionized.⁴⁵ Labour laws and collective bargaining agreements applies to displaced persons from Ukraine on the same prerequisites as goes for any other group of employee. The prohibition against discrimination (see sects. 4.4. and 4.5.) is applicable to the exercise of the employer prerogative and the setting of terms and conditions of work in individual employment contracts and collective bargaining agreements [Ch. 2, Sect. 1 of the Discrimination Act (2008:567)].

4.7. Ukrainians on the Swedish labour market.

As of about one year from the start of the war, approximately 30 000 displaced persons from Ukraine in working age (18–64) have entered the Swedish labour market, with about 5 600 persons enrolled with the Swedish Public Employment Service. Reports indicate that about a quarter of the enrolled persons – 1 500 persons – have become employed through this venue.⁴⁶ Representatives for civil society organisations supporting displaced persons from Ukraine in Sweden mention that about 30 % of this group has employment in Sweden.⁴⁷

A survey conducted by the International Organization for Migration on behalf of the Swedish government (circa 20 % of the displaced population responded) provides insights into the situation, needs and challenges of Ukrainians in Sweden in the beginning of the second year of temporary protection.⁴⁸ 63 % have a tertiary education and 56 % of the economically active population report that they are employed. 28 % think they will return to Ukraine when possible – 19 % do not wish to, 18 % feel they cannot and 35 % are uncertain. About 41 % have an autonomous housing solution, 39 % are in short-term housing provided by the Swedish authorities and about 20 % are hosted for free by friends and NGOs. The top five stated needs are language courses (51 %), employment support (43 %), financial support (33 %), healthcare services (31 %) and training opportunities for adults (29 %).

The government has tasked the Swedish Public Employment Service with charting the competences of the displaced population from Ukraine and launch an intense information campaign directed to them about the Swedish labour market.⁴⁹

The Swedish Public Employment Service notes that displaced persons from Ukraine do not have a strong incentive to enrol with the Service. This incentive is furthermore smaller

⁴⁴ Sigeman T., Sjödin, E., *Arbetsrätten. En översikt*, Norstedts Juridik, Stockholm, 2022.

⁴⁵ Medlingsinstitutet [The Swedish National Mediation Office], *Avtalsrörelsen och lönebildningen 2022. Medlingsinstitutets årsrapport*.

⁴⁶ See <https://news.cision.com/se/arbetsformedlingen/r/farre-ukrainska-flyktingar-an-vantat-har-skrivit-in-sig-pa-arbetsformedlingen,c3717872> (accessed 25 May 2023); Grosshög H., *Sämre villkor för ukrainska flyktingar i Sverige än i övriga Norden*, in *Dagens nyheter*, 10 April 2023.

⁴⁷ Sunden A., et al., *Sverige fortfarande sämst i klassen på att stötta de ukrainska flyktingarna*, in *Dagens industri*, 5 May 2023.

⁴⁸ International Organization for Migration (IOM), June 27, 2023, DTM Sweden – Ukrainians and Third-Country Nationals under Temporary Protection – Needs, Intentions

⁴⁹ Regeringsbeslut 2022-04-07, A2022/00579 Uppdrag om information om svensk arbetsmarknad, Regeringsbeslut 2023-02-23, A2023/00309 Regleringsbrev för budgetåret 2023 avseende Arbetsförmedlingen.

for Ukrainians than for asylum seekers and their relatives. For the latter group the financial support depends on enrolling with the Service, while for persons from Ukraine there is no demand for being an active jobseeker (the financial support is however withheld if the person moves to certain municipalities, see sect. 3.7). The possibility to take part in labour market programmes provides an incentive to enrol with the service.⁵⁰

4.8. Ukrainian qualifications and diplomas.

The Swedish Council for Higher Education is tasked with administering admission to higher education and recognition of foreign qualifications. The agency has developed a “Qualifications Assessment Tool” which can be used for comparing Ukrainian qualifications to Swedish ones. The system produces a document that is to be shown to potential employers. It is also possible to apply for a recognition statement from the Swedish Council for Higher Education in which the agency assesses the documentation of education in Ukraine.⁵¹ Several professions in Sweden – ca 60; e.g. lawyer, teacher, real estate agent, diver, lift contractor, dentist, blaster foreman, veterinary et cetera – are regulated, which means that certain requirements for employment (qualifications and/or authorizations) must be met by the applicant.⁵² No special rules have been enacted because of the mass influx of displaced Ukrainians to Sweden.

Furthermore, the prohibition against discrimination covers decisions regarding the recognition, certification, authorization, registration, or similar arrangements that are necessary for, or can be of importance for someone to be able to exercise a certain profession [Ch. 2, Sect. 10 of the Discrimination Act (2008:567)].

5. Final considerations.

In conclusion Sweden cannot be said to have assumed a generous position in relation to displaced persons from Ukraine with temporary protection.⁵³ The financial support afforded this group is extremely low and has not been raised since 1994. It is obviously time to raise it, not least in the light of the contemporary strong tendency for inflation. Ukrainians are clearly supposed to support themselves but are nevertheless not fully included in the labour

⁵⁰ Arbetsförmedlingen, *Arbetsmarknadsutsikterna våren 2022, Utvecklingen på arbetsmarknaden 2022–2023* (Af-2022/0042 0464), Arbetsförmedlingen analys 2022:13.

⁵¹ <https://www.uhr.se/en/start/about-the-council/information-regarding-ukraine/> Last visited May 25, 2023.

⁵² See <https://www.uhr.se/en/start/recognition-of-foreign-qualifications/before-you-apply/i-want-to-work-in-sweden/regulated-professions/> (accessed 25 May 2023).

⁵³ This has been met with some criticism. Cf Nordic Council of Ministers, *Implementation of temporary protection for refugees from Ukraine, A systematic review of the Nordic countries*, Nord 2022:026; Carnestedt D., *Dags att förbättra de ukrainska flyktingarnas rättigheter*, in *Dagens arena* 14 October, 2022;

<https://www.dagensarena.se/opinion/massflyktsdirektivet-behover-andras/> (accessed 25 May 2023). Olseke R., *Ett parallellsambälle för flyktingar från Ukraina*, in *Tidningen Syre*, 14 April, 2023;

<https://tidningensyre.se/2023/14-april-2023/orimligt-daligt-mottagande-av-flyktingarna-fran-ukraina/> (accessed 26 May 2023).

market programs organised by the Swedish Public Employment Service. Ukrainians are not really incentivized to enrol at the Service, since they cannot make use of all its measures. Consequentially, unemployment is high among newly arrived Ukrainians, and more efforts must be made for this group.

Up until recently Ukrainians were not offered courses in Swedish language. It remains to be seen if the allocated funds will be sufficient for the needs for knowledge of the Swedish language among newly arrived Ukrainians. It would be beneficial to include displaced persons enjoying temporary protection in the general system supporting migrants in establishing themselves in Sweden and to match them with employers on the Swedish labour market.

The personal identity number is essential in everyday life in Sweden (e.g. for different online services and banking). Lacking such a number creates countless severe problems for a person living and working in Sweden.

Since displaced persons from Ukraine are not legally residing in Sweden, they are left outside of the many social security measures that are based on residence. Ukrainians have fewer social rights than persons with status as refugee or subsidiary protection status in Sweden.

The right to subsidized healthcare is potentially circumscribed inasmuch as the law allows displaced persons only healthcare which cannot wait. Since it is entirely up to the individual physician to interpret this norm, it is not clear what healthcare services this group actually is able to enjoy. Hopefully the professional ethos of physicians demands that they provide extensive healthcare for Ukrainians in need.

An important area for change which would be possible to provide on national/Member State level considers the possibility to change from temporary protection to other more beneficial grounds for protection and residence permit, e.g. work or family reunification, should the prerequisites for the respective ground otherwise be fulfilled. Persons who would be entitled to more robust grounds for stay in Sweden – i.e. longer lasting residence permits and stronger social rights – should be able to apply for a change in status. The right to work and social rights must then remain in play during the examination and processing of the application.

Sweden has certainly transposed the Directive 2001/55 into the national legal system but has chosen to do so on a minimum level as regards the right to social security and social rights. During the transposition process, the Swedish government consistently emphasized that displaced persons benefiting from temporary protection from the Directive 2001/55 are not a sub-category of refugee or person eligible for subsidiary protection, and that their stay in Sweden is always to be considered temporary.⁵⁴ It seems reasonable to revisit and rethink this short-termism and the notion of ‘temporality’ and facilitate a stronger inclusion of displaced persons in Swedish social law. Enabling displaced persons from Ukraine to make long time plans for their stay in Sweden allows for better integration into their new country of residence and make better use of their capacities and knowledge. Win-win, as it is sometimes phrased.

⁵⁴ Government Bill 2004/05:170, 275.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Switzerland. Sylvie Pétremand*

1. General framework. 2. The personal scope of applicable support measures. 3. Social policy measures for Ukrainians. 4. The labour policy measures for Ukrainians. 5. Final considerations.

1. General framework.

As a preliminary remark, it is worth noting that the Temporary Protection Directive 2001/55/EC¹ and Council Implementing Decision 2022/382² were not formally adopted in Switzerland. The source of law according to which the relevant solutions relating to the inflow of Ukrainian nationals are regulated in Switzerland includes the following acts:

- (i) Federal Act on Foreign Nationals and Integration of 16 December 2005 (*Bundesgesetz über die Ausländerinnen und Ausländer und über die Integration*; FNIA);³
- (ii) Asylum Act of 26 June 1998 (*Asylgesetz*; AsyLA);⁴
- (iii) Asylum Ordinance 1 relating to the Procedure of 11 August 1999 (*Asylverordnung 1 über Verfahrensfragen*; AsyLO 1);⁵

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¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the European Communities, L 212/12-23, later on as: Directive 2001/55.

² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1-6, later on as: Decision 2022/382.

³ SR 142.20.

⁴ SR 142.31.

⁵ SR 142.311.

(iv) Ordinance on Admission, Residence and Gainful Employment of 24 October 2007 (*Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit*).⁶

These acts are listed under topic 1 “State - People – Authorities”, number 14 “Citizenship, residence, permanent residence”, sub-number 142 “Migration” in the systematic compendium of Swiss Federal legislation (SR) and the social security legislation is classified under topic 8 “Health - Employment - Social security”.

Regarding the scale of the influx of Ukrainian war migrants into Switzerland and its changes, it should be pointed out that between 24 February 2022, when Russian troops invaded Ukraine, and 20 May 2022, *i.e.* less than three months later, more than 50.000 people from Ukraine were granted protection by Switzerland. Despite the ongoing war, 7.621 people had permanently left Switzerland at the end of 2022.⁷ As of 22 September 2023, 66.065 war migrants from Ukraine were recorded in Switzerland according to the latest figures of the United Nations High Commissioner for Refugees.⁸

On 12 March 2022, the Federal Government activated for the first time ever the protection status S for war migrants from Ukraine.

The Swiss government will withdraw the protection status S if the security situation allows for people to return home,⁹ which will ultimately depend on decisions to be taken by the Schengen countries.¹⁰ Protection status S, which is broadly in line with the temporary protection initially granted to people from Ukraine, was further adjusted in the course of 2022 by the Federal Government to the Directive 2001/55 to ensure uniformity of the applicable rules (see point 2 below).¹¹ The protection status S also aims to prevent the Swiss asylum system from becoming overstretched. As a result, Ukrainian war migrants are not required to go through a lengthy asylum procedure and are granted protection status S in a fast-track procedure. The S permit is limited to a maximum of one year, subject to possible extensions.¹² According to the Federal Government’s decision of 9 November 2022, the protection status S and the specific support measures for people with protection status S adopted on 13 April 2022, will not be lifted until 4 March 2024 unless circumstances change fundamentally before then.¹³ The time frame resulting from national protection is therefore similar to the one provided by Art. 4 of the Directive 2001/55.¹⁴

⁶ SR 142.201.

⁷ State Secretariat for Migration SEM, *Asylum: statistics 2022*, available at: <https://www.sem.admin.ch/sem/it/home/sem/medien/mm.msg-id-93006.html> (accessed 11 October 2023).

⁸ Operational Data Portal, *Ukraine Refugees Situation*, available <https://data.unhcr.org/en/situations/ukraine> (accessed 11 October 2023).

⁹ Art. 4 AsylA.

¹⁰ Art. 76 AsylA.

¹¹ Federal Department of Justice and Police (FDJP), *Interim Report of the Status Evaluation Group*, 30 November 2022, Bern, 3.

¹² Art. 45 AsylO 1.

¹³ Federal Department of Justice and Police (FDJP), *War in Ukraine: Switzerland grants protection to people fleeing the war*, available at <https://www.ejpd.admin.ch/ejpd/en/home/topics/ukraine.html> (accessed 11 October 2023).

¹⁴ Hummer B., *Report on the situation of Ukrainian refugees in Switzerland*, in *MoveS*, 2023.

2. The personal scope of applicable support measures.

The entry rules for nationals of countries outside the Schengen area apply to Ukraine¹⁵ but, given the circumstances, Switzerland has granted exemptions to Ukrainian citizens unless there are compelling reasons in individual cases for refusing entry.¹⁶

According to the Federal Government's general ruling of 11 March 2022,¹⁷ the following persons are eligible for protection status S:

- (i) Ukrainian citizens seeking protection and their family members (partners, minor children and other close relatives who were fully or partially supported at the time of flight) who were resident in Ukraine before 24 February 2022;
- (ii) other nationals and stateless persons seeking protection and their family members as defined in point 1), who held international or national protection status in Ukraine before 24 February 2022;
- (iii) other nationals seeking protection and stateless persons as well as their family members as defined in point 1), who can prove by means of a valid residence permit that they have a valid right of residence in Ukraine and cannot return to their home countries safely and permanently.

The personal scope of application is therefore equivalent to the one set out in Art. 2 of the Decision 2022/382 based on Art. 5, 7 and 15 of the Directive 2001/55. The State Secretariat for Migration (SEM) suspended the processing of pending asylum applications of Ukrainian citizens who have been granted protection status S since 24 February 2022.¹⁸

As a general rule, people who were already granted protection status in another EU/EFTA state are not eligible for protection status S in Switzerland. By way of exception, this rule does not apply where applicants have another nationality and can safely and permanently return to their own country - or have a reasonable alternative to seek protection in an EU/EFTA state or in Australia, New Zealand, Canada, the United States or the United Kingdom¹⁹- or when the other EU/EFTA state is overburdened by the consequences of the Ukraine crisis, such as Poland.²⁰ Should the application be rejected, an appeal can be submitted to the Federal Administrative Court and/or an asylum application may be filed if returning to the home country poses a personal risk.

Ukrainian war migrants entering Switzerland can apply for temporary protection status S online via the RegisterMe web portal or at one of the six Federal Asylum Center (FAC). Ukrainian nationals with biometric passports do not require a visa and may enter Switzerland

¹⁵ Annex CH-1, list 2: ID and visa provisions – particularities regardless of nationality, version of 01.01.2023. For stays not exceeding 90 days within a 180-day period, no visa is required for holders of biometric passports except if they exercise gainful occupation without holding a long-term residence permit or a national visa of a Schengen member state (D visa), nor a recognized and valid travel document. For stays of more than 90 days, no visa is required for holders of a valid residence permit or D visa and a recognized and valid travel document (Annex EU-10 to the Visa Handbook I and SEM Supplement, Annex EU-2 and list of residence permits issued by Schengen states).

¹⁶ Art. 73 AsylA. See Switzerland and Ukraine, *Visa – Entry to and residence in Switzerland*, available at <https://www.eda.admin.ch/countries/ukraine/en/home/visa/entry-ch.html> (accessed 11 October 2023).

¹⁷ Art. 4 and 66 AsylA.

¹⁸ Art. 69 para. 3 AsylA.

¹⁹ Ukraine nationals with dual citizenship, binational couples and families.

²⁰ Art. 67 para. 1 AsylA.

and apply for protection status S themselves. People seeking protection who require an entry visa must first contact the Embassy of Switzerland in Bucharest, Romania.²¹ If the independent entry requirements are not met, they may submit a written application to SEM for family reunification.²² In the second stage, online applicants are requested to proceed to a FAC for registration,²³ which includes the collection of all personal data and fingerprints. Each application is assessed individually by SEM and a security check is carried out before a decision is taken as to whether the applicant needs protection.²⁴ Pending a decision, war migrants from Ukraine are usually requested to stay a few days at the FAC. Where further clarifications are required before a decision can be made by SEM, applicants are notified by post.

Upon registration at a FAC, SEM assigns the Ukrainian war migrants to one of the twenty-six Swiss Cantons and notify them accordingly.²⁵ The assignment decision becomes legally binding 30 days from the date of the decision on protection status S. The assignment to a Canton is decided according to a distribution ratio: each Canton is allocated a number of persons with protection status S pro rata to its population. The distribution ratio includes people who are already living in cantonal accommodation or in private households. If temporary protection is denied, the Canton to which the Ukrainian war migrants are assigned is responsible for enforcing their departure from Switzerland. If the protection status S is granted, the Canton must provide the social policy measures (see points 3 and 4 below) and individuals are assigned to a specific Commune. The extended nuclear family²⁶ and vulnerable persons with close connections outside of the extended nuclear family²⁷ are entitled to be assigned to the same Canton as their relatives or close contacts. Requests for assignment to another Canton can be submitted to SEM if the distribution ratio is maintained with/to more distant relatives or close friends. Assignment decisions made by SEM may only be appealed for family reunification with the Federal Administrative Court.

Eligible Ukrainian war migrants receive a one-year S permit²⁸ that can be renewed year after year during five years. The S permit serves as identification document for all federal and cantonal authorities, but does not confer any right of residence, regardless of its period of validity. **In accordance with the legislator's intention, the protection status S is temporary and oriented towards return²⁹** and it is therefore not linked to specific integration benefits. Where the temporary protection status S is still in force after five years, the persons in need of protection shall be issued by the Canton a residence permit valid until the revocation of

²¹ Switzerland and Ukraine, *Site map*, available at:

<https://www.eda.admin.ch/countries/ukraine/en/home/visa/entry-ch.html> (accessed 11 October 2023).

²² Family reunification concerns spouses, persons living together in a permanent relationship, registered partners and minor children who are abroad. They will be granted entry to Switzerland, provided that the family was separated by events in Ukraine and there are no special circumstances to the contrary.

²³ Art. 24 AsyIA.

²⁴ Art. 72 AsyIA.

²⁵ Art. 27 AsyIA. Art. 22 and 44 AsyIO 1.

²⁶ Art. 71 AsyIA. Spouses, parents and their minor children, parents and their adult children if these are seeking protection without their own families, grandparents.

²⁷ Unaccompanied minors, persons with disabilities, serious health problems or age-related condition.

²⁸ Art. 45 AsyIO 1.

²⁹ Art. 77 AsyIA.

that status.³⁰ Ten years after protection status S has been granted, the Canton may issue a permanent residence permit.³¹

People covered by the Federal Government's decision of 11 March 2022 may travel abroad and return to Switzerland without any travel authorization.³² The relevant entry requirements of the destination country must be met, which means that travelling within the Schengen area with a biometric passport is possible for a maximum of 90 days within a period of 180 days (see above). A stay abroad may result in protection status S being rescinded according to Art. 79 let. a AsylA, which provides that temporary protection expires if the person in need of protection transfers the focus of their living conditions abroad. A shift in **the focus of a person's living arrangements** is deemed to occur if the stay abroad exceeds two months, but the presumption can be rebutted in the case of a temporary stay of more than two months for study or work-related assignments abroad. Each case is reviewed individually by SEM. Travelling back to Ukraine is not prohibited in principle. However, if the stay in country of origin or native country lasts more than 15 days per quarter, SEM may revoke the protection status S.³³ No revocation will be decided by SEM if the trip lasts more than 15 days in any quarter and is due to coercion or intended to prepare for a definitive return to the country of origin or native country.

Anyone who no longer needs protection status S in Switzerland can notify in writing their new situation to SEM. SEM will then terminate their protection status S,³⁴ which means that the individuals concerned are no longer subject to the Asylum Act but to the general provisions for foreign nationals.

3. Social policy measures for Ukrainians.

The Federal Government, Cantons, Communes and private initiatives are working together to find housing solutions for Ukrainian in Switzerland. FACs are the first point of contact for Ukrainian war migrants (see point 2 above) and offer up to 9'000 accommodation places.³⁵ War migrants are usually accommodated in a FAC during a few days until they are assigned to a Canton that will be responsible for looking after them. According to Art. 24d para. 2 AsylA, the Canton or the Commune concerned must organize suitable accommodation, care and activities for the asylum seekers, and provide assistance or emergency aid, medical care and primary school education for children, while taking the appropriate security measures. The Canton or the Commune concerned may outsource these tasks to third parties, either partially or in full.

³⁰ Art. 74 para. 2 AsylA.

³¹ Art. 74 para. 3 AsylA.

³² Art. 9 para. 8 of the Ordinance on the Issue of Travel Documents for Foreign Nationals (*Verordnung über die Ausstellung von Reisedokumenten für ausländische Personen*; SR 143.5).

³³ Art. 78 para. 1 let. c AsylA and Art. 51 AsylO 1.

³⁴ Art. 79 let. b AsylA.

³⁵ The conditions of accommodation in a civil protection shelter are not contrary to human dignity within the meaning of Article 3 of the European Convention on Human Rights according to the *Swiss Federal Court* (ATF 139 I 272 c.4).

Ukrainian war migrants with a S permit who are unable to support themselves by their own means receive social assistance benefits, unless third parties have a duty to provide maintenance according to statutory or contractual obligation, or may request emergency aid.³⁶ The level of support is lower than that given to local residents and, wherever possible, is provided in the form of non-cash benefits.³⁷ Cantons provide social assistance to people staying in Switzerland according to chapter 5 of the AsylA and their own cantonal law.³⁸ Social assistance benefits can be totally or partially refused, reduced or withdrawn if the beneficiary fails to cooperate or endangers public safety,³⁹ and reimbursement may be ordered.⁴⁰ Anyone who is not assigned to a Canton is granted emergency aid by the Canton responsible for removal,⁴¹ which is lower than the level of social assistance for people with protection status S.⁴² The federal authorities allocates to the Cantons a monthly global lump sum per capita, including health insurance premiums, to compensate them for the administrative, staff and other costs which arise from fulfilling the legal tasks.⁴³

Accommodation is provided in cantonal and communal centers or in private homes. To help accommodate Ukrainian war migrants with private host families, some Cantons coordinate these activities with the Swiss Refugee Council (SRC) or join forces with the Swiss Refugee Aid Organization (OSAR). Each Canton determines the compensation paid to providers of private accommodation.

In terms of access to healthcare, all residents in Switzerland are legally required to take out insurance within three months of their arrival (or birth) in Switzerland.⁴⁴ The medical costs for any uninsured Ukrainian war migrant in need of urgent treatment before applying to protection status S are covered by the Cantons in the form of emergency aid.⁴⁵ Anyone accommodated at FACs and suffering from psychological trauma have access to appropriate care via Medic-Help and partner therapists. The FACs offer also the possibility of being vaccinated against COVID-19 with vaccines approved in Switzerland.

Ukrainians staying up to three months in Switzerland with relatives or third parties without needing a visa or permit (see point 2 above) must take out travel health insurance, or be insured by their hosts, because the Ukrainian healthcare insurance is not sufficient to cover medical treatment in Switzerland.

People who are not dependent on social welfare support must fulfil the health insurance obligation independently by taking out insurance with a Swiss healthcare insurance organization within three months of submitting the application for protection status S, with

³⁶ Art. 81 AsylA.

³⁷ Art. 82 para. 3 AsylA. See also Art. 86 FNIA. The basic right to a minimum standard of living according to Art. 12 of the Federal Constitution does not guarantee a minimum income, but only the coverage of the basic needs for survival in a way that meets the requirements of human dignity, such as food, shelter, clothing and basic medical care (see judgment of the Swiss Federal Court ATF 139 I 272 c. 3.2). Illes R., *Asylsozialhilfe auf dem Prüfstein*, in *Terra Cognita – Schweizer Zeitschrift zu Integration und Migration*, 39, 2022, 76-78.

³⁸ Art. 24d para. 4 and 82 para 1 AsylA.

³⁹ Art. 83 AsylA.

⁴⁰ Art. 83 para. 2 and 85 AsylA.

⁴¹ Art. 80a AsylA.

⁴² Art. 82 para. 4 AsylA.

⁴³ Currently about CHF 1'500.-. Art. 24d para. 5, 88 and 89 AsylA. Art. 20 of the Asylum Ordinance 2 on Financing (*Asylverordnung 2 über Finanzierungsfragen*, SR 142.312).

⁴⁴ Art. 3 of the Federal Act on Health Insurance (*Bundesgesetz über die Krankenversicherung*, HIA, SR 832.10).

⁴⁵ Art. 24d para. 2 let. c AsylA.

retroactive effect to the date of filing the application. They must pay the premiums and co-payments (deductibles and retention fees). Social welfare recipients are retroactively registered for compulsory health insurance by the Canton to which they are assigned from the date on which the application was submitted.⁴⁶ The premium costs and co-payments borne by the Cantons are subsidized by the Federal Government with global lump sums.⁴⁷

Healthcare insurance coverage allows Ukrainian war migrants with protection status S to access basic medical care. According to Art. 82a AsylA, healthcare coverage for anyone in need of protection is primarily based on the Federal Act on Health Insurance, with some adjustments allowing Cantons to limit the choice of insurers and to select one or more insurers offering a special form of insurance,⁴⁸ and limit the medical service providers,⁴⁹ or appoint one or more insurers offering insurance with a limited selection of providers.⁵⁰ The relevant authorities in the Canton to which Ukrainian war migrants are assigned specify where they should go to receive care in the event of illness, mental health issues, pregnancy, or accident. As for all non-salaried residents in Switzerland, the healthcare insurances of Ukrainian war migrants with protection status S must include coverage against accidents and it is only in the case of employees that a separate accident insurance policy is taken out by their employer.⁵¹

All children have a fundamental right to education in Switzerland. Children and young people have the right to basic education regardless of their nationality or residence status and the requirement to attend school is enshrined in the Federal Constitution.⁵² It implies that school attendance is compulsory and free of charge for all children who remain in one place for a certain period. Compulsory schooling lasts eleven years (including nursery school) and is divided into primary and lower secondary level in all Cantons. The twenty-six Swiss Cantons and their Communes are responsible for compulsory school attendance and thus for the enrolment of children and young people from Ukraine. The Canton or the Commune to which they are assigned decide when the child can attend school after taking up residence in a Commune according to the relevant cantonal school law. Children are usually enrolled as soon as possible in the public school at their place of residence. Children are either admitted directly to a standard class and receive an intensive course in the local school language (German, French or Italian, depending on the language region) or admitted to a class for foreign speakers.

People with protection status S are allowed to study in Switzerland. Access to studies is arranged directly with the universities. In addition to secondary schools⁵³ and tertiary level

⁴⁶ As soon as a person in need of protection registers at a FAC and files an application for protection status S, he or she is registered for compulsory health insurance retroactive to the date of filing the application. See SKOS CSIAS COSAS, *Arrivée en Suisse de réfugiés ukrainiens*, available at: <https://skos.ch/fr/themes/migration/refugies-dukraïne> (accessed 11 October 2023).

⁴⁷ Art. 82a para. 7 AsylA.

⁴⁸ Art. 41 para. 4 HIA.

⁴⁹ Art. 36 to 40 HIA.

⁵⁰ Art. 41 para. 4 HIA.

⁵¹ ZHAW Soziale Arbeit, *Übersicht zu den sozialversicherungsrechtlichen Ansprüchen von Flüchtlingen / Staatenlosen und vorläufig Aufgenommenen*, 2022, 74.

⁵² Art. 19 and 62 of the Federal Constitution of the Swiss Confederation (*Bundesverfassung der Schweizerischen Eidgenossenschaft*; SR 101).

⁵³ High schools and schools of general education.

education,⁵⁴ initial vocational education and training (apprenticeship) is a common form of education and training in Switzerland at secondary level II.⁵⁵ This system allows young people to learn a profession with an employer while attending a vocational school. The cantonal careers advisory services provide advice and guidance on choosing a vocation or career, what education and training is available and what preparatory courses are offered. The apprenticeship requires a B1 level language proficiency⁵⁶ in German, French or Italian, depending on where the vocational school or the training company is located. The employer is responsible for obtaining the required work permit from the competent cantonal labour market and migration authority. Once the work permit is granted, the employer must submit the apprenticeship contract to the respective cantonal vocational education and training office for approval. In agreement with the Cantons and the social partners, Federal Councilor Elisabeth Baume-Schneider decided on 1 March 2023 that the young people involved will be able to stay in order to complete their apprenticeship in Switzerland even if their protection status S is withdrawn before the end of their training.⁵⁷ Currently, some 1'700 young Ukrainians are offered transitional training for an apprenticeship or a school of general culture and 300 attend secondary school.⁵⁸

In every Canton, in cities and in many Communes, there are services,⁵⁹ courses and programs, such as language courses, to support migrants including people with protection status S, and to provide them with information about life in Switzerland.

4. The labour policy measures for Ukrainians.

As a rule, people in need of protection are not allowed to be gainfully employed during the first three months following their arrival in Switzerland, in accordance with Art. 75 AsyIA. Subsequently, the requirements for authorizing gainful employment are governed by the FNIA.⁶⁰ Article 11 FNIA provides that foreign nationals who wish to work in Switzerland must - irrespective of the period of stay - have a work permit, which must be applied for with the competent authorities at the contemplated place of employment. Gainful employment is defined as any form of salary-earning or self-employed activity that is usually remunerated, irrespective of whether payment is actually made.

⁵⁴ Universities of applied sciences, universities, Federal Institutes of Technology, higher vocational education and training.

⁵⁵ State Secretariat for Migration (SEM), Adolescents and young adults with protection status S, available at <https://www.sem.admin.ch/sem/en/home/integration-einbuengerung/integrationsfoerderung/programm-s/jugendliche-s.html> (accessed 11 October 2023).

⁵⁶ The cantons offer bridge-year courses in preparation for a vocational education and training program to close gaps in a person's education, but a A2 level language proficiency is required for attending such course.

⁵⁷ Secretariat d'Etat aux migrations, *Les jeunes en provenance d'Ukraine doivent pouvoir suivre un apprentissage complet en Suisse*, available at <https://www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-93363.html> (accessed 11 October 2023).

⁵⁸ Secretariat d'Etat aux migrations, *ibidem*.

⁵⁹ Usually the social welfare support services for asylum seekers.

⁶⁰ See also Art. 64 to 65c of the Ordinance on Admission, Residence and Gainful Employment.

The undertaking of any professional activity is therefore subject to authorization issued by the Cantons, and not to a mere reporting obligation.⁶¹

The Federal Government may stipulate more favorable conditions for gainful employment⁶² and, given the context of the situation in Ukraine, it made use of this option by lifting the legal three-month restriction for taking up a job and by allowing access to self-employment.⁶³ In addition, the Swiss Government decided to pay the Cantons a one-off package of CHF 3'000.- per capita to sponsor language learning. Ukrainian war migrants with protection status S are therefore allowed to work immediately, subject to the granting of a permit to be issued by the competent cantonal authorities. However, no work permit is required for anyone working from home for a foreign employer⁶⁴ or continuing a preexisting self-employed business with no influence on the Swiss labour market, but the resulting income must be declared to the relevant authorities.

Ukrainian with protection status S can take on a traineeship, which implies a training program as well as a fixed-term employment contract providing a level of pay customary for the location, industry and role considering **the person's qualifications and experience**. This temporary employment relationships with a training element is regarded as gainful employment (see below) and a prior work permit must therefore be obtained from the Canton of the place of work.

In the case of salaried employment, the application for a permit must be submitted by the employer to the cantonal authorities at the place of work.⁶⁵ This application can be made immediately after protection status S is granted. The Canton periodically checks compliance with the applicable wage and working conditions.⁶⁶

People with protection status S may be allowed to work on a self-employed basis if they apply for a work permit from the cantonal authorities at the place of work. The appropriate cantonal authorities then assess whether the necessary financial and operational requirements are fulfilled and they have an adequate and independent source of income.⁶⁷

Ukrainian war migrants with protection status S who are professionally active are allowed to work outside their Canton of residence.⁶⁸ As already mentioned, the work permit must be requested from the cantonal authorities at the place of work. Under certain circumstances, the persons concerned may request SEM to change their Canton of residence, which is not possible if they are granted social assistance.⁶⁹ SEM makes its decision in consultation with both the Cantons concerned.⁷⁰

People with protection status S can sign on with a Regional Employment Center (RAV) which may help them to enter the Swiss labour market. They may in some circumstances be eligible to participate in labour market measures to brush up their skills or expertise through

⁶¹ Art. 40 FNIA.

⁶² Art. 75 para. 3 AsylA.

⁶³ FDJP, nt. (11), 10.

⁶⁴ *E.g.* the current employer in the person's native country.

⁶⁵ Art. 11 para. 3 FNIA.

⁶⁶ Art. 18 and 22 FNIA.

⁶⁷ Art. 19 let. b and c FNIA.

⁶⁸ Art. 38 FNIA.

⁶⁹ Art. 37 FNIA.

⁷⁰ Art. 27 para. 3 and 72 AsylA.

training measures or to gain work experience through an employment measure, provided that they have basic local language skills.

Access to the Swiss labour market is possible for all professions from the point of view of immigration law. For non-EU/EFTA states, Art. 68 of the Federal Act on Vocational and Professional Education and Training (*Bundesgesetz über die Berufsbildung*: VPETA)⁷¹ and Art. 69 to 69b of the Ordinance on Vocational and Professional Education and Training (*Verordnung über die Berufsbildung*: VPETO)⁷² govern the recognition of foreign diplomas. If the foreign qualification complies with national legal or governmental regulations and was issued by the corresponding authority or institution of the country of issuance and the holder of the foreign qualification can prove proficiency in an official language of the Confederation that is required in order to work in the profession concerned in Switzerland, the foreign qualification is compared to a corresponding Swiss vocational or professional qualification.⁷³ The relevant conditions for professional recognition include therefore local language skills and no more favorable rules have been adopted in this respect for Ukrainian war migrants with protection status S.

A distinction is made between regulated and non-regulated occupations and professions. Diploma recognition is only required for regulated occupations and professions,⁷⁴ such as practicing as a medical doctor in Switzerland. The mandatory authorization can be obtained after a thorough review of the situation on a case-by-case basis. In Switzerland, many regulated professional activities fall within the scope of cantonal law. However, there are a few professional activities that are regulated under federal legislation. A foreign qualification will generally be recognized as equivalent to a corresponding Swiss qualification if it has the same level of training, the same duration of training, a comparable training content and the foreign training program covers both theoretical and practical aspects or significant work experience is involved.⁷⁵ In some cases, supplementary measures can be taken, such as aptitude tests or special adaptation courses. If the activity is not regulated, no recognition is required and working in Switzerland with the foreign qualification is possible. A level certificate can be issued upon request.⁷⁶

In terms of statistics, out of 65'837 Ukrainians with protection status S, 6'122 are employed, that means 9.3%. Out of 39'099 people of working age (18-64 years), there are 6'017 people in employment, which represents an employment rate of 15.39%. In terms of sectors, 24% work in the hotel and restaurant industry, 18% in planning, consulting and information technology, 7% in teaching, 7% in service personnel, 3% in social housing and social work, 41% in other sectors.⁷⁷

People seeking protection are relatively well educated. 66% have a tertiary education and 92% have at least a secondary education. Considering the highest level of education completed and the last professional activity, the most represented professional fields are,

⁷¹ SR 412.10.

⁷² SR 412.101.

⁷³ Art. 69 VPETO.

⁷⁴ Riconoscimento.swiss, *Lavorare in Svizzera con qualifiche professionali estere?*, available at: www.reconnnaissance.swiss (accessed 11 October 2023).

⁷⁵ Art. 69a para. 1 VPETO.

⁷⁶ Art. 69b VPETO.

⁷⁷ Weekly statistics of the State Secretariat for Migration, as of 28 March 2023.

firstly, “Commerce, administration and law” and, second, “Engineering, processing industries and construction”. This observation applies equally to people with and without tertiary education.⁷⁸

As far as language skills are concerned, 30% have a good knowledge of English. The figures are much lower for knowledge of German (68% have no knowledge), French (82%) and Italian (89%).⁷⁹

Compared to the rest of the migrant population, working-age holders of protection status S have a comparable or better level of education. The largest occupational group (almost 39%) is the intellectual and scientific professions, which itself includes 11% of people working in computer-related occupations. In the case of medical professions, 12% of the staff belong to the major group “intellectual and scientific professions” and 23% to the major group “intermediate professions”.⁸⁰ The structure of the population (gender, age groups and occupational groups) hardly changed between the first wave of refugees and the second.⁸¹

5. Final considerations.

The Swiss Government faces difficulties in finding the appropriate political compromise necessary to fully adhere to European directives on major issues, such as granting temporary protection to the population of a large European country threatened by war, even though Switzerland shares the fate of the European continent and the democratic values of European nations. Swiss people are eager to preserve the country’s independence from the European institutions. However, Switzerland is showing its solidarity with Ukraine by hosting a number of Ukrainian war migrants, according to its own protection status S, that has been brought in line with the Directive 2001/55. This strategy provides the flexibility to adapt the Swiss system to changing circumstances.

Since 2011, Members of Parliament called for the abolition of the protection status S and the application of regulations on temporary admission. Their request was unsuccessful because it appeared unnecessary to change the law for an exceptional solution that had never been applied before.⁸² The experience with Ukrainian war migrants shows that without protection status S, they would have had to go through the lengthy asylum process, at the end of which their applications would have been rejected.

The fact that protection status S is return-oriented and limited in principle to one year hinders integration of Ukrainian war migrants in Switzerland. The limited level of social assistance benefits granted does not allow them to live a decent life in Switzerland. As a result, more and more war migrants will be pushed to find a job in Switzerland. In order to ensure equal treatment with other social assistance recipients, the authorities decided in March 2023 that the Ukrainian war migrants’ cars, when valuable, should be regarded as an

⁷⁸ State Secretariat for Migration, *Protection status S: language skills, education and occupation of applicants*, Bern 28 March 2023.

⁷⁹ State Secretariat for Migration, *ibidem*.

⁸⁰ State Secretariat for Migration, *Fact Sheet: Assessment of Professional Qualifications*, 31 May 2022, Bern.

⁸¹ State Secretariat for Migration, *ibidem*.

⁸² Federal Department of Justice and Police (FDJP), nt. (11), 6-7.

asset, which leads to various practical issues and could force them to sell the cars,⁸³ thus making their professional integration more difficult.

Currently, most Ukrainians in Switzerland do not have a sufficient knowledge of at least one Swiss national language and cannot be hired in sectors where there is a great need for labour, such as catering, health and social services. The authorities understand the importance of offering them language courses (see point 4 above). The employers' associations also call for a more active role of the Regional Employment Centers in supporting people with protection status S.

Among the Ukrainians hosted, there are nearly 5.000 young people between the ages of 15 and 20 who could join the workforce.⁸⁴ The recent decision of the Federal Government to allow them in any case to complete their apprenticeship in Switzerland encourages both the young to complete their education and the employers to hire them (see point 3 above).

According to the first report of the Status S Evaluation Group,⁸⁵ emergency planning should be used in case of activation of the protection status S, the length of stay in the FACs should be extended to give the Cantons - and Communes - more time to organize themselves, and the legal bases for protection status S and temporary admission should be harmonized.⁸⁶

The protection status S granted to Ukrainians, which was initially intended to be temporary, will most probably last in view of the evolution of the war in Ukraine, so that linking protection status S to the existing instrument of temporary admission in Swiss asylum law still makes sense and could contribute to help Ukrainians to build their future. Accelerated integration of Ukrainian war migrants could also help to prevent the risks of humanitarian fatigue that are bound to increase with the indefinite extension of the conflict.

⁸³ SKOS CSIAS COSAS, nt. (46).

⁸⁴ *Secrétariat d'Etat aux migrations*, nt. (57).

⁸⁵ Group of eight *State Councilors* and the former and current *State Secretaries for Migration* which has been set up by the *Federal Councilor* in charge of the Department of Justice and Police to evaluate the S-status and to make recommendations.

⁸⁶ Federal Department of Justice and Police (FDJP), nt. (11), 17-18.

Mass influx of people from Ukraine: social entitlements and access to the labour market: Turkey.

Gaye Burcu Yildiz* - Mehtap Akgüç**

1. Preliminary remarks. 2. General legal framework. 3. Personal scope of applicable support measures. 4. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education. 5. Social policy measures for Ukrainians: supporting professional activity. 6. Final considerations. 7. Appendix.

1. Preliminary remarks.

The war in Ukraine, which started in February 2022, has forced an enormous number of people – mainly women, children and the elderly – to flee their homes as war migrants to seek safety and protection elsewhere. According to the United Nations High Commissioner for Refugees (UNHCR), one year after the start of the war, more than 8 million war migrants from Ukraine had moved to various countries in Europe, while more than 5 million individuals were estimated to be internally displaced within Ukrainian borders.¹ While the main destinations of Ukrainians during this time have been the neighbouring countries, including Poland, Romania, Hungary, Slovakia and Moldova, Turkey – which is also the country that hosts the highest number of refugees (3.7 million) in the world² overall – has been another important destination for Ukrainians fleeing the invasion. In fact, almost 100 000 Ukrainians have arrived in Turkey since the start of the war in early 2022. This is significant because it is higher than the number of Ukrainians in many individual EU countries (such as Belgium, Portugal, Denmark or the Netherlands).

According to a 2022 World Doctors situation report on the rapid needs assessment of Ukrainian war migrants,³ most of them arrived in Turkey via the land border and mainly by

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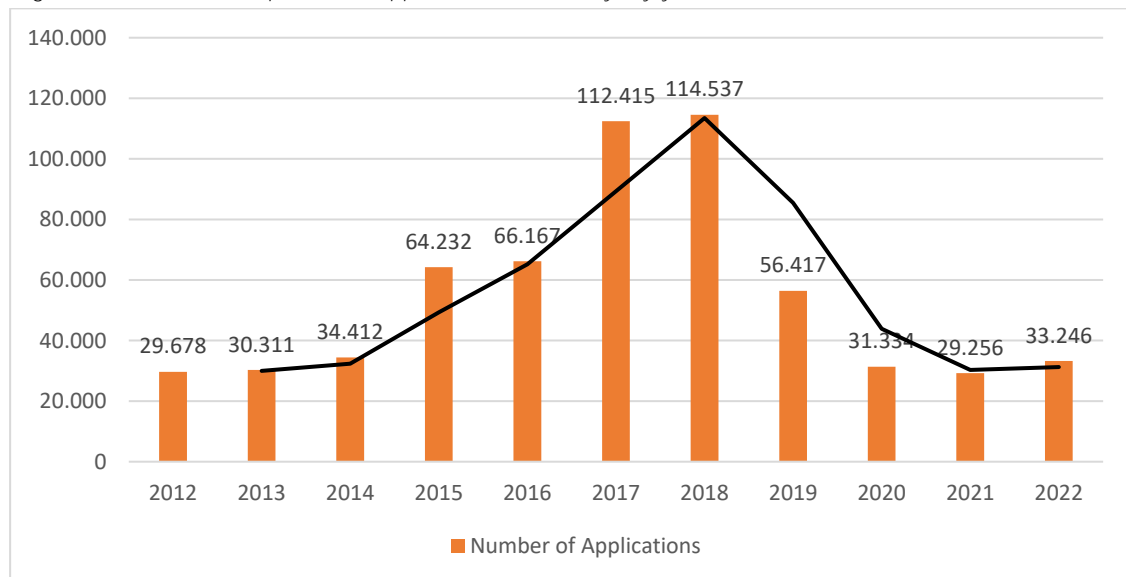
¹ UNHCR, *Ukraine emergency*, <https://www.unhcr.org/ukraine-emergency.html> (last accessed 13 April 2023).

² UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/> (last accessed 13 April 2023).

³ Medecins du Monde Turkey (Dunya Doktorlari Dernegi), *Ukrainian refugees in Turkey: a brief look at the humanitarian needs and responses* 12 April 2022, <https://reliefweb.int/report/turkey/ukrainian-refugees-turkey-brief-look-humanitarian-needs-and-responses> (last accessed 12 April 2023).

bus from other neighbouring countries, such as Bulgaria. Accordingly, most of the Ukrainians arriving in Turkey originated from Odesa and Kharkiv, but cities such as Kyiv and Dnipro are also among the main places of origin.

Figure 1. *International protection applications to Turkey, by year.*



Source: *Authors' elaboration based on data obtained from official statistics on migration.*⁴ The solid line indicates the moving annual average, reflecting the constantly evolving level of applications.

According to UNCHR, officially there were 95 874 Ukrainians in Turkey by 26 January 2023.⁵ The number of Ukrainians who had applied for international protection is reported as 7 131 out of a total of 33 246 applications (corresponding to the last column of Figure 1) by the end of 2022. In other words, at least one in every five international protection applications by foreigners in Turkey was made by a Ukrainian national in 2022.⁶

Because Turkey has received a significant number of Ukrainians since the start of the war and given the long-standing historical and strong bilateral relations between the two countries, it is important to take stock of the situation of Ukrainian people in Turkey. The objective of the current chapter is to describe the existing legal and social policy mechanisms that apply to internationally displaced Ukrainians residing in Turkey— or to foreign-born individuals in general – in order to obtain a better understanding of the experience of these displaced people.

⁴ Presidency of Migration Management, *International Protection*, <https://en.goc.gov.tr/international-protection17> (last accessed 7 March 2023).

⁵ UNHCR, *Ukraine Refugee Situation*, <https://data.unhcr.org/en/situations/ukraine> (last accessed 7 March 2023).

⁶ See Presidency of Migration Management, nt. (4).

2. General legal framework.

There are two main laws that affect migrants in Turkey. The first is the Law on Foreigners and International Protection (*Yabancılar ve Uluslararası Koruma Kanunu*, No. 6458),⁷ which regulates the principles and procedures governing **foreigners' entry into, stay in and exit** from Turkey, as well as the protection provided for foreigners who seek protection. This Law stipulates the general principles, scope and types of protection for various groups of people who are seeking protection.

The second legal instrument concerning foreigners is the Law on International Labour Force (*Uluslararası Gücü Kanunu*, No. 6735). This Law is the main item of legislation governing foreigners' **work permits**. We shall look at these two laws in some detail.

The Law on Foreigners and International Protection (No. 6458) defines migration as follows: 'regular migration whereby foreigners legally enter into, stay in or exit from Turkey, as well as irregular migration whereby foreigners enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit; as well as international protection' (3/1). The Law provides international protection for three sub-groups of foreigners, covering the status granted to (i) refugees,⁸ (ii) conditional refugees⁹ and (iii) subsidiary protection.¹⁰

Besides these categories, the Law on Foreigners and International Protection regulates another status in terms of temporary protection. This is defined as follows: 'temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection'.¹¹ This kind of international protection is currently being provided for Syrian migrants by Turkey.

⁷ Law no. 6458 of 4 April 2013, on foreigners and international protection, in OJ 28615 of 11 April 2013, unofficial translation available at <https://en.goc.gov.tr/kurumlar/en.goc/Ingilizce-kanun/Law-on-Foreigners-and-International-Protection.pdf> (last accessed 12 May 2023).

⁸ Persons who, as a result of events occurring in a European country and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their citizenship and unable or, owing to such fears, unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former residence as a result of such events, are unable or, owing to such fears, unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process (Law no. 6458, nt. (7), art. 61).

⁹ Persons who, as a result of events occurring outside European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, are unable or, owing to such fears, unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country (Law no. 6458, nt. (7), art. 62).

¹⁰ A foreigner or a stateless person, who can be qualified neither as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon determination of their status because if returned to their country of origin or country of [former] habitual residence they would: a) be sentenced to death or face the death penalty; b) face torture or inhuman or degrading treatment or punishment; c) face serious threat by reason of indiscriminate violence in situations of international or nationwide armed conflict; and therefore are unable or because of such a threat unwilling, to avail themselves of the protection of their country of origin or country of [former] habitual residence (Law no. 6458, nt. (7), art. 63).

¹¹ For more information about temporary protection, see UNHCR, *Temporary protection in Türkiye*.

Ukrainian migrants are not granted temporary protection by Turkey; most Ukrainians are residing in the country with a residence permit. The following figures give a comparative picture of the number of Ukrainians in Turkey with various residence permits, relative to foreigners of other origins residing in Turkey as of 6 April 2023. According to the official statistics regarding the numbers and nationalities of foreigners in Turkey with a permanent residence permit, Russians are first in line with 154 297 people. Ukrainians, with 46 458 people, are in ninth position (the upper left panel of Figure 2).¹² As regards short-term residence permits, Ukrainians rank eighth, with 33 963, following Iraq, Turkmenistan, Syria, Iran, Azerbaijan, Uzbekistan and Afghanistan (upper right panel of Figure 2). Regarding family reunification, another important legal migration channel, Ukrainians rank fifth in terms of residence permits, with 6 370, following Azerbaijan, Uzbekistan, Russia and Morocco. Last but not least, the official statistics also report the number of foreign students residing in Turkey for the top ten sending countries. However, there is no specific figure on the number of Ukrainian students living in Turkey as their number is relatively small.

Figures 2-4. Resident permits by type and country of origin.



Source: Authors' elaboration based on data retrieved from the official migration administration statistics.¹³

The Law on International Labour Force (No. 6735) is the other main piece of legislation concerning work permits. We shall address it below (Section 5).

3. Personal scope of applicable support measures.

<https://help.unhcr.org/turkey/information-for-syrians/temporary-protection-in-turkey/> (last accessed 7 May 2023).

¹² Presidency of Migration Management, *Residence Permits*, <https://en.goc.gov.tr/residence-permits>. The statistics are dated 19 January 2023 (last accessed 7 March 2023).

¹³ *Ibidem*.

As already mentioned, temporary protection status is given only to Syrian migrants in Turkey. In this context, people who fled to Turkey from the war in Ukraine cannot be granted temporary protection. However, they can apply for international protection on condition they meet the criteria laid down in Law No. 6458. According to statistics from the Presidency of Migration Management, 7 131 Ukrainians had asked for international protection by the end of 2022, which ranks Ukrainians second, following Afghans (19 400 applications) seeking international protection in Turkey.¹⁴

These groups are permitted to remain in Turkey if they are granted a residence permit. Residence permits are obligatory for foreigners who want to stay in Turkey beyond the expiry of their visa (normally 90 days). There is a visa exemption of 90 days during which it is possible to apply for the type of residence permit for which they believe that they meet the requirements through the e-residence system. This document is granted only by the competent authorities, and it gives foreigners the right to reside in a specified location in Turkey for a given period of time.¹⁵

4. Social policy measures for Ukrainians: financial support for housing, access to healthcare and education.

Individuals seeking international protection – that is, asylum seekers or refugees – might be eligible for a variety of forms of social and financial assistance from government institutions or other organisations. Ukrainians opting to stay in Turkey through the international protection channel could benefit from these support mechanisms, described briefly in the next paragraph.

These support measures for individuals with international protection in Turkey range from provision of food and household goods to cash assistance.¹⁶ One of these social support instruments is the Social Assistance and Solidarity Foundations (SASF), coordinated by provincial administrations. It includes one-off cash assistance, as well as provision of non-food items, coal aid or assistance for accommodation or education. Applicants for such assistance must submit an application to the local provincial governorship, which will then decide based on a needs assessment. This may sometimes involve a home visit. Other support mechanisms include Social Service Centres, operating under the Provincial Directorates of Family and Social Policies, which deliver support to the most vulnerable refugees and asylum-seekers. The services provided include psycho-social support, training and counselling. Local municipalities are also able provide assistance (such as coal, food packages, clothing) to refugees and asylum-seekers, but the type of assistance package and

¹⁴ Presidency of Migration Management, nt. (4).

¹⁵ Presidency of Migration Management, *General information*, <https://en.goc.gov.tr/general-information41> (last accessed 07 March 2023).

¹⁶ The information in the following paragraph describing social support measures for asylum-seekers and refugees in Turkey is taken mainly from the UNHCR Turkey webpage: *see* UNHCR, *Social and financial assistance*, <https://help.unhcr.org/turkiye/social-economic-and-civil-matters/social-and-financial-assistance/> (last accessed 14 April 2023).

the eligibility criteria depend on the municipality and the resources allocated for such support. Last but not least, financial assistance may be available for primary and secondary education for refugees (and their relatives). This national social assistance programme is coordinated and implemented jointly by the Ministry of Family and Social Policies, the Ministry of National Education, the Turkish Red Crescent and the **United Nations Children's Fund (UNICEF)**. Under this scheme, also known as the Conditional Cash Transfer for Education (CCTE), eligible refugee families receive cash transfers conditional on regular school attendance by their children, starting from pre-school until the end of high school.¹⁷

As regards access to health services in Turkey, the visa waiver programme for foreigners does not grant free access, which means that Ukrainians opting to stay in Turkey as a foreigner during the visa-free period or afterwards with a regular residence permit are responsible for their own health costs. Although special permissions have been made, particularly in the initial months following the outbreak of war for newly arriving Ukrainians, offering relatively fast access to health services for basic screening and primary health services, Ukrainians are not reimbursed for these expenses.¹⁸ Nevertheless, Law on Social Insurance and General Health Insurance (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, No. 5510) includes possible access for foreigners to health-care services in Turkey after one year's residence in the country.

As already mentioned, most Ukrainians in Turkey are there under the visa waiver scheme, instead of the international protection channel. Subsequently, they may request a residence permit, depending on their circumstances and eligibility. The possibility of staying on in Turkey with a resident permit and the possible long-term prospect of ongoing war in Ukraine, make returning home difficult. This appears to have induced Ukrainians to invest in property in Turkey. While owning a house in Turkey offers longer term accommodation for Ukrainians, there is a growing sentiment among locals that it might have generated an upward trend in house prices.¹⁹ Rising prices appear to have affected particularly the rental market, as property owners ask for even higher rents, above the already high inflation rate in Turkey. Such higher rents can still be afforded by Ukrainians (as well as Russians for that matter), among whom housing demand is still rising, while renting offers a 'wait-and-see' option, while the war is still ongoing.

Against this background, Figure 3 shows the latest trends in house purchases by Ukrainians in Turkey. The graph starts from about a year earlier than the start of the war in Ukraine in February 2022 in order to capture the house purchasing behaviour of Ukrainians prior to the war. The figure suggests that there has indeed been a sharp increase (actually more than double) in the number of houses purchased by Ukrainians in Turkey since the

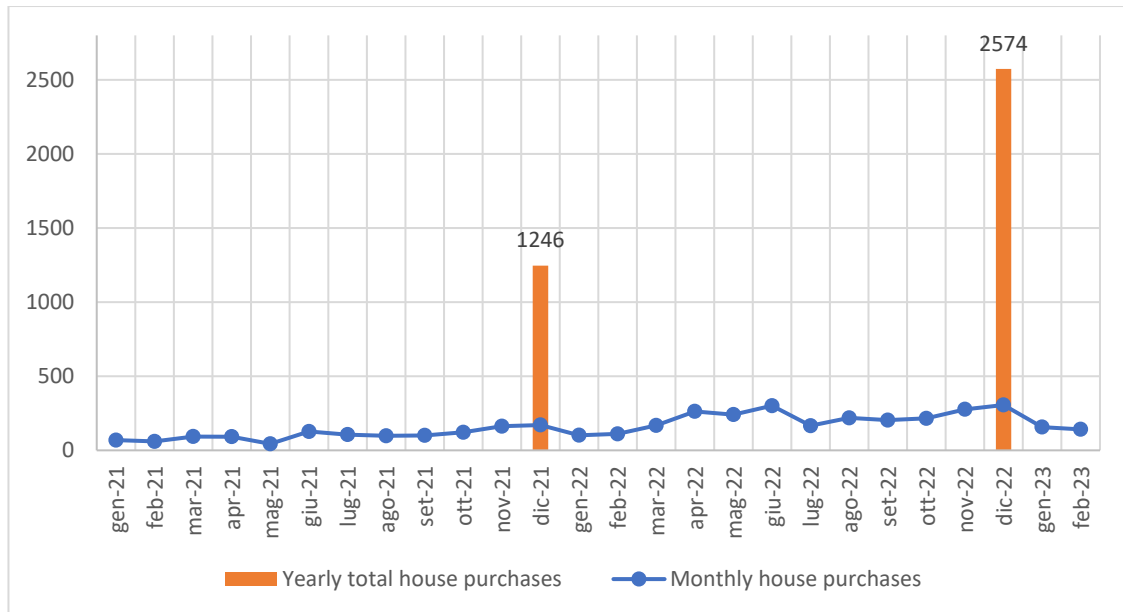
¹⁷ For more information, see UNICEF, *The "Conditional Cash Transfer for Education" (CCTE) Programme for Syrians and Other Refugee Children Launches into its second phase in Türkiye*, 24 September 2018, <https://www.unicef.org/turkiye/en/press-releases/conditional-cash-transfer-education-ccte-programme-syrians-and-other-refugee> (last accessed on 14 April 2023).

¹⁸ Medecins du Monde Turkey (Dunya Doktorlari Dernegi), nt. (3).

¹⁹ Çinar M., *A Antalya'da emlak sektörüne Rus ve Ukraynalı etkisi (Russian and Ukrainian influence on the real estate sector in Antalya)*, in *DHA*, 22 January 2023, <https://www.dha.com.tr/foto-galeri/antalyada-emlak-sektorune-rus-ve-ukraynali-etkisi-2194258> (last accessed on 14 April 2023); Tavsan S., Kidera M., *Turkey becomes magnet for Russians and Ukrainians alike*, in *Nikkei Asia*, 8 June 2022, <https://asia.nikkei.com/Politics/Ukraine-war/Turkey-becomes-magnet-for-Russians-and-Ukrainians-alike> (last accessed on 14 April 2023).

outbreak of war. Whereas in 2021 Ukrainian citizens bought 1 246 houses in Turkey, the figure was 2 574 in 2022, a 107% increase in net house sales to Ukrainians over a year. This sharp increase in house purchases is indicative of the permanent residence intentions of a significant number of Ukrainians, particularly following the war. Recent figures from Turkish Statistics, as well as anecdotal evidence from local sources suggest that house purchases by Ukrainians are concentrated in big cities, including Istanbul, Izmir and Antalya.

Figure 1. House purchases by Ukrainians in Turkey.



Source: Authors' elaboration based on recent statistics from the Turkish Institute of Statistics (TUIK).²⁰

Regarding education, there have also been several developments, with the introduction of targeted and formal, as well as ad hoc support measures for Ukrainians in Turkey. As regards formal interventions, one month after the start of the war in Ukraine, the Turkish Council of Higher Education announced a support programme for university students in Ukraine (both of Turkish and Ukrainian origins) to be transferred to Turkish universities to continue their education.²¹ Another targeted education support measure is the training and counselling jointly organised by the Ministry of Family and Social Policies and UNICEF and provided to staff recruited as part of the intervention programme to support children arriving from Ukraine to Turkey.²² The training covered topics such as child protection, awareness-raising among Ukrainian families, as well as psychosocial support services for children separated

²⁰ Turkish Statistical Institute, <https://data.tuik.gov.tr/Kategori/GetKategori?p=insaat-ve-konut-116&dil=1> (last accessed 13 April 2023).

²¹ The official announcement and the list of eligibility conditions for students in Ukraine to be transferred to universities in Turkey are provided here (in Turkish): Council of Higher Education, <https://www.yok.gov.tr/Sayfalar/Ogrenci/ukraynada-egitim-goren-TC-vatandasi-ogrencilerin-yatay-gecis-ve-ozel-ogrencilik-islemleri.aspx> (last accessed 14 April 2023).

²² T.C. Family and Social Ministry of Services, Department of Education and Publication, *Intervention Program Orientation Training for Children Coming to Turkey from Ukraine Started*, 4 October 2022, available at <https://www.aile.gov.tr/eydb/haberler/ukrayna-dan-turkiye-ye-gelen-cocuklara-yonelik-mudahale-programi-oryantasyon-egitimi-basladi/> (last accessed 14 April 2023).

from their parents (particularly from their fathers, as Ukraine declared martial law, prohibiting men aged between 18 and 60 from leaving the country) as a result of war.

Lastly, there are a number of ad hoc education support measures targeting Ukrainians in Turkey. One is the ‘Saturday Schools’ scheme run by the association Ukraine Families for children from Ukraine.²³ These schools provide lessons in Ukrainian, as well as drawing, sports and musical activities to children aged between 5 and 12, in at least two groups in Istanbul and Antalya. These are among the cities hosting the majority of Ukrainians in Turkey. Another example is the Turkish lessons provided by associations and volunteers to Ukrainian children in Turkey to help them continue their education in Turkey, as well as to improve their social integration.²⁴

5. Social policy measures for Ukrainians: supporting professional activity.

There are significant differences concerning the right to work depending on whether someone is resident in Turkey under international protection or because they have a residence permit.

According to the Law on Foreigners and International Protection, a refugee or a subsidiary protection beneficiary, upon being granted that status, may work independently or be employed, without prejudice to the provisions stipulated in other legislation excluding foreigners from certain jobs and professions.²⁵ The identity document issued to refugees or subsidiary protection beneficiaries shall also substitute for a work permit and this information shall be written on the document (Art. 89/4, b). On the other hand, an applicant or a conditional refugee may apply for a work permit after six months following the submission of an international protection claim. Thus, if a foreigner is granted refugee or subsidiary protection status, without any further conditions, they are thereby entitled to work.

The scope and rules of the right to work for people with temporary protection status are not regulated in detail by the Law on Foreigners and International Protection. Article 91/2 of the Law states that a bylaw will be issued to regulate the admission of foreigners into Turkey; their stay, rights and obligations in the country; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; and the duties and mandate of the central and provincial institutions and organisations. A Bylaw on Temporary Protection (*Geçici Koruma Yönetmeliği*) came into force on 22 October 2014. According to Article 29 of the bylaw, any person given a temporary protection identity card is entitled to apply to the Ministry of Labour and Social Security for a work permit.

²³ *Türkiye’deki Ukraynalı çocuklar için Cumartesi Okulları açıldı* (Saturday Schools opened for Ukrainian children in Turkey), in *Oha*, 27 September 2022, <https://www.qha.com.tr/haber-arsivi/turkiye-deki-ukraynali-cocuklar-icin-cumartesi-okullari-acildi-444030> (last accessed 14 April 2023).

²⁴ Ekizler T., *Ukraynalı çocuklara İzmir’de Türkçe eğitimi veriliyor* (Ukrainian children are given Turkish education in Izmir), in *AA*, 23 August 2022, <https://www.aa.com.tr/tr/rusya-ukrayna-savasi/ukraynali-cocuklara-izmirde-turkce-egitimi-veriliyor/2667335#> (last accessed 14 April 2023).

²⁵ To give a few examples, judges, prosecutors, lawyers, army officers and police officers.

Briefly, under the abovementioned legal provisions of the Law on Foreigners and International Protection and the Directive on Temporary Protection, the citizens of non-European countries cannot be granted refugee status in Turkey. Unless a foreigner is granted refugee status or subsidiary protection, they must apply for a work permit to work legally in Turkey. The types of work permits and the application process will be examined below.

The Law on International Labour Force is the main piece of legislation concerning work permits. Four types of work permit are regulated in the Law. For example, some work permits are issued for a definite period, some are indefinite and there is also a work permit that allows a foreigner to perform an economic activity on a self-employed basis. We shall turn to the fourth type of work permit shortly.

A common characteristic of the first three kinds of work permit is that the Ministry has discretion in granting them. The Ministry is not bound to grant a permit, even when an applicant has met all the requirements. This discretion enables the Ministry to examine the current state of the employment system when a foreigner applies for a work permit. The Ministry may decide to accept or reject an application on the basis of the current employment outlook.²⁶

The four types of work permit are as follows:

- a. Work permit for a definite period of time (Art. 10/1–2). This work permit can be issued only for work at a certain workplace or enterprise, whether in the public or private sector, in a certain position. The validity of the work permit should not exceed one year from the date of issuance. At the end of that period, the work permit may be extended up to two years on the first occasion, and for another three years subsequently, as long as the foreigner continues to work in the same workplace or enterprise and in the same job. If the foreigner wants to work for another employer, they have to make a new application, starting once again at one year's validity.²⁷
- b. Work permit for an indefinite period of time (Art. 10/3–4). This type of work permit may be issued to foreigners with a long-term residence permit or who have already been working on the basis of a work permit for eight years. This type of work permit enables a foreigner to work without restriction in a certain enterprise and/or profession. Long-term residence permits are regulated in Article 42 Law No. 6458. An important restriction on long-term residence permits is that refugees, conditional refugees and subsidiary protection beneficiaries, as well as people under temporary protection or humanitarian residence permit holders are not entitled to apply for them. Indefinite work permits grant foreigners much more freedom as regards employment. But there are restrictions on the types of occupation that non-nationals can take up. For example, foreigners cannot work as lawyers, notaries public, judges, prosecutors, military personnel or civil servants, even if they have a work permit for an indefinite period. These professions may be performed exclusively by Turkish citizens. Article 10/4 Law on International Labour Force specifies that the jobs and professions to which foreigners are denied access are covered by provisions in other laws.²⁸

²⁶ Yildiz G.B., *Foreign Workers in Turkey, Their Rights and Obligations Regulated in Turkish Labour Law*, in *European Journal of Migration and Law*, 9, 2007, 214.

²⁷ *Ibidem*, 215.

²⁸ For more detailed information, *ibidem*, 216.

- c. Permit for working independently (Art. 10/7–8). Any foreigner who intends to work as a self-employed person in Turkey needs to obtain this kind of work permit. Applications will be assessed by considering the applicant’s educational status and occupational experience. The applicant’s investments or economic activity, and any contribution to science and technology, or to national development and employment will also be considered.
- d. Turquoise card (Art 11). This is an exceptional type of work permit. First of all, the main purpose of this type of work permit is to procure foreign skilled labour. A Turquoise card will be granted, in line with international labour policy, to foreigners whose applications are in accordance with the principles and procedures set forth by the Ministry of Labour and Social Security. Applicants’ educational background and professional experience, as well as any possible contribution to science and technology, or the benefit of their activities or investments in Turkey to the national economy and employment are other criteria taken into account when evaluating applications. A Turquoise card is issued initially for a three-year trial period. During this period the Ministry of Labour will monitor the (temporary) Turquoise card holder, requesting information and documents related to their activities from them or their employer. After this initial three-year period, a permanent Turquoise card may be issued, upon application. Foreigners under temporary protection may not apply for a Turquoise card.

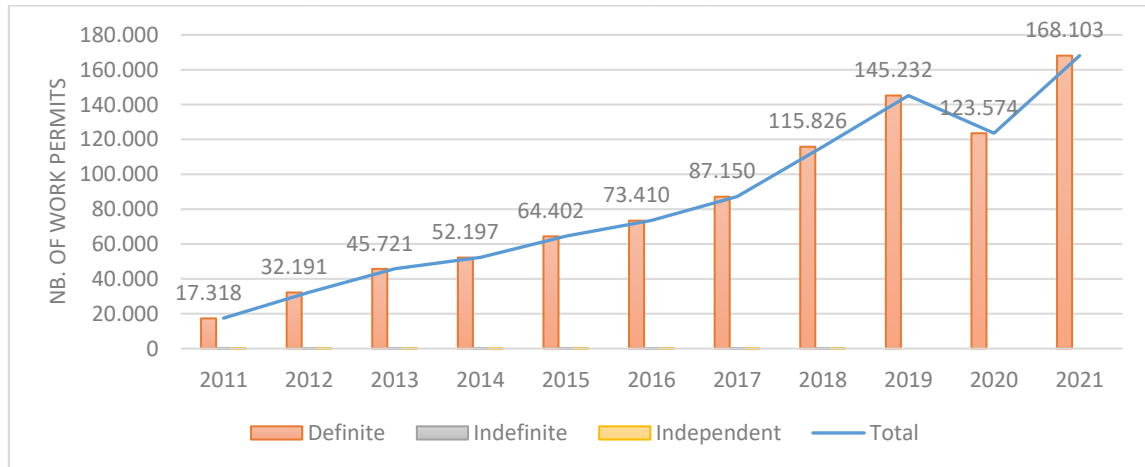
Figure 4 presents the evolution of the number of work permits granted to foreigners in Turkey by type of work permit (covering the first three types described above).²⁹ The figure suggests a growing number of work permits issued – apart from a fall during the first year of the Covid-19 pandemic – over the past decade. According to Ministry of Labour and Social Security statistics, 4 564 people from Ukraine were granted fixed-term work permits in 2021,³⁰ up from 2 271 in 2020.³¹ Among these 4 564 work permits, 74% were issued to Ukrainian women. Statistics on work permits for 2022 by country of origin and gender will come out towards the end of 2023.

²⁹ We do not possess information either on the overall number of Turquoise card holders or on the number of Ukrainians with a Turquoise card.

³⁰ T.C. Study and Ministry of Social Security, *Work permits of foreigners*, 2021, available at <https://www.csgeb.gov.tr/media/90062/yabanciizin2021.pdf> (last accessed 17 April 2023).

³¹ T.C. Study and Ministry of Social Security, *Work permits of foreigners*, 2020, available at <https://www.csgeb.gov.tr/media/87487/yabanciizin2020.pdf> (last accessed 17 April 2023).

Figure 2. Number of work permits issued to foreigners by type of permission and year, Turkey.



Source: Authors' elaboration based on work permit data retrieved from.³² The columns corresponding to indefinite and independent categories are not visible as the figures are dwarfed by the majority category of fixed-term work permits. The raw data underlying the figure are provided in the appendix, where the actual numbers from each category can be inspected in detail.

As already mentioned, if a foreigner is granted refugee or subsidiary refugee status they may work self-employed or for an employer, in accordance with the provisions in other legislation excluding foreigners from certain jobs and professions. The identity document issued to refugees or subsidiary protection beneficiaries shall also substitute for a work permit and this information shall be written into the document.

Article 17 Law on International Labour Force regulates the work permits of foreigners who are under international protection. According to the Article, any foreigner who has applied for international protection and whose application has not been finally settled may apply for a work permit after six months. The same applies to conditional refugees.

6. Final considerations.

The war in Ukraine that started in February 2022 has caused the displacement of millions of people, both internally and internationally. The majority of Ukrainians have fled to neighbouring countries, such as Poland, Romania, Hungary and Slovakia, but many have moved on to other European countries. A significant number have sought refuge in Turkey, totalling almost 100 000 people. Against the background of the strong historical and bilateral links between Ukraine and Turkey, this chapter provides a brief analysis of the situation of Ukrainians in Turkey. It starts with a brief description of the general legal framework governing the situation of persons seeking international protection in Turkey. It then describes the case of Ukrainians who are eligible for a visa waiver programme enabling them

³² T.C. Study and Ministry of Social Security, *Work permits Statistics*, available at: <https://www.csgeb.gov.tr/istatistikler/calisma-hayati-istatistikleri/resmi-istatistik-programi/yabancilarin-calisma-izinleri/> (last accessed 12 April 2023).

to remain in Turkey for a limited number of days. The chapter also presents the evolution of the number of Ukrainians in Turkey, with the latest available data.

In other sections, information on the relevant legal provisions, as well as formal and institutionalised support mechanisms for Ukrainians in Turkey are described. The formal social support measures have been complemented with ad hoc mechanisms targeting Ukrainians specifically. In the last section the legal provisions on occupational activities for foreigners in Turkey are detailed and it was explained that Ukrainians are also covered by these regulations.

All in all, given that the majority of Ukrainians in Turkey reside neither as refugees nor under temporary protection, but rather as foreign citizens with short- or long-term residence permits, our assessment of the situation is that their experience in Turkey has been rather positive, and this also applies to locals. This is confirmed by the rising number of civil society organisations supporting Ukrainians since the early stages of the war, as well as the civil society associations set up by Ukrainians living in Turkey. These developments could indicate that the social integration of Ukrainians in Turkey is improving.

From a comparative perspective, it could also be said that, compared with other large populations of migrants (such as Syrians and Afghans) in Turkey, Ukrainians are better off, in particular financially. The overall positive experience comes as no surprise, as Turkey was already a top destination (mainly for tourism, but not only that) for Ukrainians for many years prior to the war. Finally, the increasing number of house purchases by Ukrainians also points to their intention to remain in Turkey for the long term.

7. Appendix

Raw data on work permits underlying Figure 4:

Year	Type of permission			Total
	Definite	Indefinite	Independent (self-employed)	
2011	17 318	132	16	17 466
2012	32 191	79	9	32 279
2013	45 721	93	9	45 823
2014	52 197	95	3	52 295
2015	64 402	115	4	64 521
2016	73 410	115	24	73 549
2017	87 150	19	13	87 182
2018	115 826	4	7	115 837
2019	145 232	0	0	145 232
2020	123 574	0	0	123 574
2021	168 103	0	0	168 103

Mass influx of people from Ukraine: social entitlements and access to the labour market: United Kingdom.

Natalie Sedacca*

1. Preliminary remarks and general framework. 2. Personal scope of applicable support measures. 3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education. 4. Social policy measures for Ukrainians: supporting professional activity. 5. Final considerations.

1. Preliminary remarks and general framework.

The Council Implementing Decision of 4 March 2022¹ applied temporary protection measures arising from Directive 2001/55/EC to Member States of the European Union.² The United Kingdom has been a non-EU member states since 31 January 2020, and although certain aspects of EU refugee law have been retained,³ the Decision 2022/382 does not apply to the UK. The treatment of war migrants⁴ from Ukraine is fundamentally different from the approach taken in the EU, since it requires a visa to be held before travelling to the UK for any purpose,⁵ and is regulated by the Home Office's Immigration Rules. Two new categories of visa were created to provide protection for a three-year period to those with a family member in the UK ("Ukraine Family Scheme") or an offer of sponsorship ("Ukraine

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¹ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (later on as: Decision 2022/382), Articles 2-3.

² 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.

³ Yeo C., *The Impact of Brexit on UK Asylum Law: Part One*, in *Free Movement*, 27 December 2017, <https://freemovement.org.uk/impact-brexit-uk-asylum-law-part-one/> (last accessed 12 January 2023).

⁴ The term "war migrants" has been explained earlier in the book in Chapter 1 - Introduction. It is used in this collection to denote the fact that these are individuals fleeing a situation of war who have not received refugee status. Its use is not intended to suggest they lack a valid claim to refugee status.

⁵ Gower M., *Ukraine: UK Immigration Concessions*, Briefing Paper 9473, House of Commons Library, 11 March 2022, 4.

Sponsorship Scheme”). By 12 September 2023, the total number of arrivals of Ukraine Scheme visa holders was 240,000⁶ - a relatively low number in the context of the mass displacement caused by Russia’s war,⁷ which had seen over 8 million war migrants recorded by May 2023.⁸ In addition, the government provided for certain concessions and extension opportunities for Ukrainians already in the UK, including the “Ukraine Extension Scheme”. This chapter will address the scope and limitations of these schemes in more depth, before analysing the outcome of social policy measures for Ukrainians.

2. Personal scope of applicable support measures.

The three schemes comprise two new types of visa and a new route to extensions that give Ukrainian nationals and particular family members the right to stay in the UK for a period of three years and to work, study and claim benefits.⁹ Applicants through these schemes are classified as separate from asylum seekers and refugees, receiving a distinct temporary protection status.¹⁰ The relevant conditions, which vary between the schemes, are contained in the Immigration Rules Appendix for the Ukraine Scheme,¹¹ hereafter “UKR”, and other Home Office policy documents.

First, the Ukraine Family Scheme applies to applicants who are Ukrainian nationals or part of a family group that includes an immediate family member of a UK-based sponsor who is a Ukrainian national (UKR 7.1). To qualify, the individual must be a family member of a British citizen or of a person settled with permission in the UK, for example as a refugee or under the EU settlement scheme, who acts as the sponsor (UKR 6.1). “Family member” is defined in UKR 6.2 to include a pre-defined set of relationships, grouped into categories of “immediate family member” such as partner, child, or parent of a child under 18, “extended family member” such as parent of an adult, grandparent, sibling, aunt, uncle, cousin, nephew or niece, and “immediate family member of an extended family member.” The scheme was initially narrower, only applying to those with immediate family members in the UK,¹² with eligibility and duration of leave to remain widened somewhat after criticism

⁶ Home Office and UK Visas and Immigration, *Transparency data. Ukraine Family Scheme, Ukraine Sponsorship Scheme (Homes for Ukraine) and Ukraine Extension Scheme visa data*, last updated 14 September 2023, available at <https://www.gov.uk/government/publications/ukraine-family-scheme-application-data/ukraine-family-scheme-and-ukraine-sponsorship-scheme-homes-for-ukraine-visa-data--2> (last accessed 19 September 2023).

⁷ “War” here refers to the situation since the full-scale Russian invasion of February 2022, recognising that there had previously been an occupation of Crimea.

⁸ Walsh P.W., Sumption M., *Ukrainian Migration to the UK*, in *The Migration Observatory at the University of Oxford*, 8 August 2023, <https://migrationobservatory.ox.ac.uk/resources/briefings/ukrainian-migration-to-the-uk/> (last accessed 20 September 2023).

⁹ Nicol D-O., Sehic A., *Six months on. The UK’s response to the humanitarian crisis in Ukraine, and how the government can better protect refugees*, Work Rights Centre, 27 September 2022, 3.

¹⁰ Walsh P.W., Sumption M., *O&A: The UK and the Ukraine refugee situation*, in *The Migration Observatory at the University of Oxford*, 24 August 2022.

¹¹ Home Office, *Immigration Rules Appendix Ukraine Scheme*, last updated 30 January 2023, <https://www.gov.uk/guidance/immigration-rules/updates> (last accessed 16 February 2023).

¹² Gower M., nt. (5), 9.

from refugee advocacy groups and cross-party politicians.¹³ By 12 September 2023, the total number of visas issued under the Family Scheme was 70,200, while 12,000 applications had been withdrawn, the Home Office had refused 20,200 and 500 were awaiting conclusion, of a total of 102,900 applications.¹⁴ This indicates a success rate of 68% (where success rate means the percentage granted to date out of the total applications).

Secondly, another option for those without family links in the UK is the Ukraine Sponsorship Scheme (“Homes for Ukraine”), which has been the most popular scheme.¹⁵ Again, this is limited to Ukrainian nationals or immediate family members (UKR 17.1 and 18.1). It requires the applicant to have an Approved Sponsor (UKR 15.1), who can provide accommodation for at least six months and pass checks regarding their background and the suitability of the accommodation.¹⁶ Previously, the Scottish and Welsh governments could also act as sponsors, but these schemes are paused at the time of writing.¹⁷ Under the Homes for Ukraine scheme, of 208,800 applications the Home Office granted 168,800 visas, with 24,800 withdrawn, 7,500 refused, and 6,700 awaiting a conclusion¹⁸ - a success rate of 81%.

Thirdly, the government has widened the routes to extend visas for Ukrainians who were already in the UK. Previously, some categories of visa holder including those on a “Skilled Worker” visa – reserved for certain higher paying and / or formally qualified roles – already had options to apply for extensions.¹⁹ However, there was no such opportunity for those in the UK under the Seasonal Worker Visa (SWV) for agricultural work. The SWV, which is valid for a period of no more than six months in any 12-month period and cannot be extended, had been granted to 6,105 Ukrainians in 2022, 19,894 in 2021 and 6,297 in 2020.²⁰ Without concessions, the many thousands of Ukrainians on this scheme thus faced the stark prospect of return.

The Home Office made an initial set of concessions to the Immigration rules on 25 February 2022, providing for flexibility in the type of documentation needed for a visa application and / or for switching routes without leaving the country as would normally be required, for Ukrainian nationals or their dependent partners or children on certain visa

¹³ Refugee Council, *Government announcement re support for Ukrainian refugees – Refugee Council response*, 27 February 2022, <https://www.refugeecouncil.org.uk/latest/news/government-announcement-re-support-for-ukrainian-refugees-refugee-council-response/> (last accessed 12 January 2023); Tolhurst A., *Senior Tory Says UK’s Ukrainian Refugee Policy “Doesn’t Cut It” As Crisis Escalates*, in *Politics Home*, 3 March 2022, <https://www.politicshome.com/news/article/damian-green-ukraine-refugee-policy-russia-crisis-home-office-visa-waiver> (last accessed 23 February 2023); Da Lomba S., *Refugees from Ukraine: towards more humane asylum policies in the EU and the UK?*, University of Strathclyde, Glasgow, 8 March 2022, <https://www.strath.ac.uk/humanities/lawschool/blog/refugeesfromukrainetowardsmorehumaneasylumpoliciesintheeuandtheuk/> (last accessed 12 January 2023).

¹⁴ Home Office and UK Visas and Immigration, nt. (6).

¹⁵ Vicol D-O., Sehic A., nt. (9), 10.

¹⁶ *Ibidem*, 9. Home Office and UK Visas and Immigration, *Guidance - Apply for a visa under the Ukraine Sponsorship Scheme (Homes for Ukraine)*, 18 March 2022, <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme> (last accessed 19 September 2023).

¹⁷ Home Office and UK Visas and Immigration, *ibidem*.

¹⁸ Home Office and UK Visas and Immigration, nt. (6).

¹⁹ Gower M., nt. (5), 21.

²⁰ McKinney C.J., Coe S., Stewart I., *Seasonal Worker visas and UK Agriculture*, Briefing Paper CBP-9665, House of Commons Library, 26 June 2023, 27; Home Office, nt. (11).

routes.²¹ The list of eligible routes included many work and study visas, but excluded agricultural workers on a SWV.²² This latter group were subjected to a separate and more restrictive concession, which allowed an extension until 31 December 2022 provided they continued working in a job permitted by the scheme and for the same “scheme operator” that was originally responsible for recruiting and sponsoring them.²³

The Ukraine Extension Scheme was subsequently introduced on 3 May 2022²⁴ and applies to Ukrainians and specified family members who had permission to be in the UK between some of the period from 18 March 2022 and 16 May 2023, who previously held permission that expired on or after 1 January 2022, or to children of those with such permission (UKR 21.4 and 23.1). Where granted, it allows the individual to stay in the UK for up to three years. It represents a positive step for protecting Ukrainians who are in the country as agricultural workers as well as those in higher earning roles since, unlike the earlier concessions, it includes those on the SWV visa.²⁵ However, concerns remain about the lack of an extension route for those that had lost their permission to remain in the UK before 1 January 2022.²⁶

The schemes are more generous than the harsh regimes imposed on most asylum seekers in the UK,²⁷ and have provided protection to more people in less than six months than under the general asylum and refugee resettlement routes between 2016 and 2021.²⁸ Yet they also have crucial limitations, including the need to apply for a visa in order to obtain protection as a displaced person, which contrasts sharply with the EU’s visa-free entry system.²⁹ The visa requirement appears to increase the risk of exploitation among those fleeing, as long waiting times and confusion push some Ukrainians into more dangerous situations and routes.³⁰ While the Home Office has taken certain measures to accelerate processing of applications,³¹ the schemes continue to be beset by delays. In a reported example, a woman and two children that had been sheltering in a basement while waiting nearly eight months for a visa had their application declined when the British host died suddenly.³² Furthermore, there is no general route to seek protection in the UK for someone outside the UK that does

²¹ Home Office, *Ukrainian Nationals on Work and Study Routes: Concessions to the Immigration Rules - Version 1.0*, 25 February 2022, 6-9.

²² *Ibidem*, 4-5.

²³ *Ibidem*, 10-11.

²⁴ Home Office, *Guidance - Ukraine Extension Scheme: caseworker guidance (accessible)*, updated 15 September 2022, <https://www.gov.uk/government/publications/ukraine-extension-scheme-caseworker-guidance/ukraine-extension-scheme-caseworker-guidance-accessible> (last accessed 23 February 2023).

²⁵ Roberts K., *Filling the gaps: preventing increased risks of exploitation for Ukrainian workers on the Seasonal Worker Visa*, in *Focus on Labour Exploitation*, 8 April 2022, <https://labourexploitation.org/news/filling-the-gaps-preventing-increased-risks-of-exploitation-for-ukrainian-workers-on-the-seasonal-worker-visa/> (last accessed 3 January 2023).

²⁶ Cockbain E., Sidebottom A., *The war in Ukraine and associated risks of human trafficking and exploitation. Insights from an evidence-gathering roundtable*, Office of the Independent Anti-Slavery Commissioner, London, 29 April 2022, 32.

²⁷ Da Lomba S., nt. (13).

²⁸ Walsh P.W., Sumption M., nt. (8).

²⁹ *Ibidem*.

³⁰ Cockbain E., Sidebottom A., nt. (26).

³¹ HC Deb 8 March 2022 Vol 710 Col 197.

³² Dugan E., *‘It’s too cruel’: family stuck in Ukraine after UK host dies suddenly*, in *The Guardian*, 12 February 2023, <https://www.theguardian.com/uk-news/2023/feb/12/family-stuck-in-ukraine-after-uk-host-dies-suddenly> (last accessed 13 February 2023).

not have a relevant family relationship with a UK resident or successfully “match” with a willing host.

Finally, the schemes exclude third country nationals (TCNs) that had been living in Ukraine but do not have either Ukrainian citizenship or a relevant family relationship.³³ In 2020, around 300,000 TCNs with permanent residence status lived in Ukraine, plus a further 150,000 with temporary residence, many of whom were foreign students from countries including India, Morocco, Turkmenistan, Azerbaijan and Nigeria.³⁴ Those excluded from visa schemes by nationality or by lacking the requisite family relationship or sponsorship are highly unlikely to be able to claim asylum, since this is only possible from within the UK.³⁵ Travelling to the UK irregularly to claim asylum is physically dangerous and would also lead to any asylum claim being deemed inadmissible under the Illegal Migration Act 2023 once in force.³⁶ On balance, therefore, the schemes are *ad hoc* and fail to provide comprehensive routes of protection for persons in Ukraine affected by Russia’s war.

3. Social policy measures for Ukrainians: financial support, housing, access to healthcare and education.

Those on the Ukraine Family Scheme, Homes for Ukraine, and Ukraine Extension Scheme are all entitled to claim mainstream welfare benefits, which contrasts favourably with the situation for asylum seekers and most migrants in the UK.³⁷ However, criticisms have been raised about inconsistency in government support between the schemes. Under “Homes for Ukraine,” the host has the option of receiving a £350 per month payment for up to 12 months, and £500 per month for another year after that.³⁸ There is no increase in this figure if hosting more than one person, while the amounts paid have not kept up with soaring inflation, and late payments have been reported.³⁹ However, under the Family and Extension Schemes, no equivalent payments are made to households, nor is additional local authority funding allocated.⁴⁰ The disparity is problematic because individuals on the Ukraine Family Scheme may have greater needs, especially where family members have only sponsored them but are not hosting.⁴¹ A group of parliamentarians highlighted these matters and their consequences in a letter to the Housing and Homelessness Minister, which called

³³ Vicol D-O., Sehic A., nt. (9), 7.

³⁴ Bathke B., *IOM takes stance against discrimination of non-Ukrainian refugees*, in *InfoMigrants*, 12 April 2022, <https://www.infomigrants.net/en/post/39741/iom-takes-stance-against-discrimination-of-nonukrainian-refugees> (last accessed 19 January 2023).

³⁵ Walsh P.W., Sumption M., nt. (8).

³⁶ See Refugee Council, *What is the Illegal Migration Act?*, available at <https://www.refugeecouncil.org.uk/information/what-is-the-illegal-migration-bill/> (last accessed 19 September 2023).

³⁷ Woolley A., *Access Denied: The cost of the ‘no recourse to public funds’ policy*, The Unity Project, June 2019. Most migrants are subjected to the “No recourse to Public Fund” policy.

³⁸ Vicol D-O., Sehic A., nt. (9), 10; Department for Levelling Up, Housing and Communities, *Guidance - Becoming a sponsor: Homes for Ukraine*, 16 January 2023 (last accessed 16 February 2023).

³⁹ Vicol D-O., Sehic A., nt. (9), 12.

⁴⁰ *Ibidem*, 7; Cockbain E., Sidebottom A., nt. (26), 28.

⁴¹ Cockbain E., Sidebottom A., nt. (26), 28-29.

for financial support to become more flexible in order to cover Ukrainians on the Family Scheme and under lodging arrangements no longer covered by Homes for Ukraine.⁴²

Relatedly, broader concerns exist about the schemes' limitations as regards the housing situation of Ukrainians. "Homes for Ukraine" requires the host to commit for a six-month period, which is significantly less than the three years the scheme runs for, leading to a risk of homelessness.⁴³ Even before the expiry of the six month period, and as early as April 2022, some Ukrainian families were seeking homelessness support following relationship breakdown with hosts.⁴⁴ It is extremely difficult to find rented housing on the private sector, with barriers including high rents and upfront deposits, the need for an employment history or a guarantor in the UK, lack of savings, difficulty finding suitable work, particularly for single mothers with childcare commitments, and prejudice against benefit claimants.⁴⁵ A survey of visa holders on the Ukraine humanitarian schemes in autumn 2022 found only 17% were renting from a private landlord, with around 45% reporting barriers to doing so, most commonly a lack of guarantor or references, or inability to afford the rent, deposit or other upfront payments.⁴⁶ Another study found similar difficulties in securing guarantors and paying deposits after leaving "Homes for Ukraine" sponsors, leaving a total of 4,630 Ukrainian war migrants households classified as homeless.⁴⁷

With a severe lack of social housing available, many local authorities have placed Ukrainian war migrants in temporary housing – with figures from early 2023 showing at least 668 households or 1,618 people placed into hotels in England since March 2022, and a further 406 households in other temporary accommodation.⁴⁸ In Wales and Scotland, at least another 4,107 people are being placed in hotels and spending many months there, often while waiting to be matched with a host family.⁴⁹ This is a deeply unsatisfactory housing situation that can leave individuals without cooking facilities or proper privacy as well as being costly.⁵⁰ In other examples, families have been placed in large houses shared with other households.⁵¹ Furthermore, the ordinary rules for checking suitability of private accommodation have been relaxed in respect of those arriving in the UK in the last two years.⁵² While intended to open

⁴² The letter is available at https://www.crisis.org.uk/media/248993/appgeh-letter-to-minister-buchan.pdf?fbclid=IwAR3QeQrt6uRespnF8oqGOth5AVDhHT2IzZ0IkhN0LRW8yMR_d-zUT7g6Lc (last accessed 2 March 2023).

⁴³ *Briefing - Ukrainian refugees struggling to find accommodation after leaving UK sponsors*, Focus on Labour Exploitation, London, November 2022, 10.

⁴⁴ Cockbain E., Sidebottom A., nt. (26), 28.

⁴⁵ Vicol D-O., Sehic A., nt. (9), 14-15 and 24-26.

⁴⁶ Office for National Statistics, *Visa holders entering the UK under the Ukraine Humanitarian Schemes – Follow-up survey: 17 October to 7 November 2022*, 22 November 2022, 8-9.

⁴⁷ Gentleman A., *Ukrainian refugees struggling to find accommodation after leaving UK sponsors*, in *The Guardian*, 17 March 2023, available at <https://www.theguardian.com/world/2023/mar/17/ukrainian-refugees-struggling-to-find-accommodation-after-leaving-uk-sponsors> (last accessed 3 April 2023).

⁴⁸ Bancroft H., *Thousands of Ukrainian refugees living in hotels as councils struggle to deal with rising homelessness*, in *The Independent*, 7 January 2023, <https://www.independent.co.uk/news/uk/home-news/ukraine-refugees-visa-home-office-hotels-b2256853.html> (last accessed 12 January 2023).

⁴⁹ *Ibidem*.

⁵⁰ *Ibidem*.

⁵¹ Gentleman A., nt. (47).

⁵² Homelessness (Suitability of Accommodation) (Amendment) (England) Order 2022/521.

up a greater supply,⁵³ it also consigns war migrants, including children, to a lower standard of accommodation than other people.⁵⁴ The overall housing situation for Ukrainians is preferable to that of asylum seekers from other countries, who are often held indefinitely in de facto detention at hotel-type accommodation where their freedom of movement and basic liberties are restricted.⁵⁵ Nonetheless, there are areas of significant concern particularly for those Ukrainians left homeless and provided with unsuitable accommodation.

Turning to healthcare access, changes introduced on 17 March 2022 have meant that Ukrainians fleeing the war are given free access to the National Health Service (NHS), including at hospitals and General Practitioners, covering treatment that began on or after 24 February.⁵⁶ This is preferable to the “Immigration Health Surcharge” of £675 per year⁵⁷ payable as part of the visa application for most individuals on visas staying in the UK for six months,⁵⁸ including those resettled under the Hong Kong British National Overseas visa.⁵⁹ Nonetheless, there may be practical barriers to healthcare access. Other Central and Eastern Europeans migrating to the UK have sometimes delayed registering with or presenting to health services, with clinical approaches such as short and / or phone-based consultations and the broader issue of long waiting times for specialist appointments causing difficulties.⁶⁰ One response is to ensure expectations are managed carefully,⁶¹ but the situation also arguably demonstrates how the over-stretched NHS lacks resources to address all healthcare needs properly.⁶² While materials exist to help medical professionals in primary care identify and respond to the needs of those arriving from Ukraine, including advice on culture, religion, and mental health issues,⁶³ this does not directly address issues such as long waiting lists. Indeed, there have been reports of some Ukrainian war migrants travelling home rather than awaiting NHS treatment.⁶⁴

⁵³ *Temporary easement of suitability obligations on England's local authorities to open up greater supply of temporary accommodation for people fleeing Ukraine and Afghanistan humanitarian crises*, in RightsNet, 11 May 2022, <https://www.rightsnet.org.uk/housing/news/item/temporary-easement-of-suitability-obligations-on-englands-local-authorities> (last accessed 2 March 2023).

⁵⁴ Vicol D-O., Sehic A., nt. (9), 19.

⁵⁵ Refugee Action, *Hostile accommodation - How the Asylum Housing System is Cruel by Design*, March 2023.

⁵⁶ Department of Health and Social Care, Home Office, The Rt Hon Sajid Javid MP, and The Rt Hon Priti Patel MP, *Ukrainians fleeing war granted free access to NHS healthcare*, 17 March 2022, <https://www.gov.uk/government/news/ukrainians-fleeing-war-granted-free-access-to-nhs-healthcare> (last accessed 2 March 2023).

⁵⁷ Or £470 for those on student or Youth Mobility Scheme visas, or who are under 18 at the time of applying. See UK Government, *Pay for UK healthcare as part of your immigration application*, <https://www.gov.uk/healthcare-immigration-application/how-much-pay> (last accessed 2 March 2023).

⁵⁸ Waite L., *Asylum Seekers and the Labour Market: Spaces of Discomfort and Hostility*, in *Social Policy & Society*, 16, 4, 2017, 669 and 675.

⁵⁹ Walsh P.W., Sumption M., nt. (8).

⁶⁰ Poppleton A., Ougrin D., Maksymets Y., *Providing responsive primary care for Ukrainian refugees*, in *British Journal of General Practice*, 72, 719, 2022, 274.

⁶¹ *Ibidem*.

⁶² British Medical Association, *An NHS under pressure*, <https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/an-nhs-under-pressure> (last accessed 3 April 2023).

⁶³ UK Health Security Agency, *Guidance - Arrivals from Ukraine: advice for primary care*, 12 December 2022, <https://www.gov.uk/government/publications/arrivals-from-ukraine-advice-for-primary-care/arrivals-from-ukraine-advice-for-primary-care> (last accessed 2 March 2023).

⁶⁴ Parsley D., *Ukrainian Refugees Give up on Crisis-Hit NHS and Travel Home to War Zone for Medical Treatment*, in *inews.co.uk*, 13 January 2023, <https://inews.co.uk/news/ukrainian-refugees-nhs-crisis-travel-home-war-zone-treatment-2083233> (last accessed 2 March 2023).

On education, the Department for Education (DfE) has told local authorities to work with Ukrainian families to facilitate children attending schools as soon as possible.⁶⁵ Ideally this should be offered in the local area, failing which local authorities can use an “in-year-fair-access” procedure allowing schools to accept vulnerable children even where they are full. It has provided explanatory materials on the education system in Ukrainian and English, alongside English language resources.⁶⁶ By June 2022, 11,400 pupils from Ukraine had applied for school places and 9,900 had been offered a place.⁶⁷ By February 2023 the DfE stated that local authorities were “continuing work with families to make sure every Ukrainian child gets a suitable school place offer as soon as possible.”⁶⁸ However, the shortfall is challenging, with significant numbers of children not yet given a school place. Surveyed in October to November 2022, respondents cited a number of difficulties including arriving mid-school year, and not knowing if their children were allowed to go to school in the UK or how to register them.⁶⁹ The Homes for Ukraine education and childcare grant can allocate funds under s14 Education Act 2002 for local authorities in England to spend on providing services for children aged 2 – 18 who entered via Homes for Ukraine – to include travel, specialist services, free school meals and uniforms as well as school places.⁷⁰ While an important means of support, similar provision is not made for those on the Family Scheme.

As to university students, those given leave under Ukraine schemes are entitled to “home fee status” (i.e. not to pay the more expensive fees usually charged to international students) where their course and higher education provider are approved.⁷¹ Depending on their circumstances and which nation of the UK they are in, they may be eligible for other support such as loans, grants and bursaries, although with certain exceptions full-time students cannot claim welfare benefits.⁷² The Office for Students have distributed more than £4 million to universities for the benefit of Ukrainian students facing financial hardship, with many higher education providers having set up scholarships for this group, and some existing scholarships for asylum-seeking or refugee students being available to Ukrainians.⁷³

⁶⁵ Department for Education, *The Education Hub - One year on from Russia invading Ukraine: school places*, 23 February 2023, <https://educationhub.blog.gov.uk/2023/02/23/one-year-russia-invading-ukraine-school-places/> (last accessed 2 March 2023).

⁶⁶ Department for Education, *Guidance - Resources to help support children and young people arriving from Ukraine*, 28 September 2022, available at <https://www.gov.uk/government/publications/helping-ukrainian-students-in-schools/resources-to-help-support-children-and-young-people-arriving-from-ukraine> (last accessed 2 March 2023).

⁶⁷ Department for Education, *The Education Hub - How Many Pupils from Ukraine Have Been given School Places in England?*, 9 June 2022, <https://educationhub.blog.gov.uk/2022/06/09/how-many-pupils-from-ukraine-have-been-given-school-places-in-england/> (last accessed 23 March 2023).

⁶⁸ Department for Education, nt. (65).

⁶⁹ Office for National Statistics, nt. (46), 15.

⁷⁰ Department for Levelling Up, Housing & Communities, *Education & Skills Funding Agency, Guidance - Homes for Ukraine education and childcare grant conditions of funding*, 24 February 2023, available at <https://www.gov.uk/government/publications/homes-for-ukraine-education-and-childcare-funding/homes-for-ukraine-education-and-childcare-grant-conditions-of-funding> (last accessed 2 March 2023).

⁷¹ Lewis J., Wilson S., *Constituency casework - Support for students from Ukraine in UK higher education*, House of Commons Library, <https://commonslibrary.parliament.uk/support-for-students-from-ukraine-in-uk-higher-education/> (last accessed 2 March 2023).

⁷² *Ibidem*.

⁷³ *Ibidem*. Office for Students, *Information for providers on the crisis in Ukraine*, 28 April 2022, <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/information-for-providers-on-the-crisis-in-ukraine/funding-to-support-ukrainian-students/> (last accessed 2 March 2023).

However, financial support is not available for those who continue to study their courses in Ukraine remotely, leaving them without a source of finance; attempts by the charity Child Poverty Action Group to resolve this gap have not been successful.⁷⁴

4. Social policy measures for Ukrainians: supporting professional activity.

As noted above, persons arriving under the Ukraine schemes are entitled to work, but the question of access to employment also encompasses broader areas like integration and support for professional activity. A survey of visa holders under the Ukraine Humanitarian Schemes in autumn 2022 found that 56% were working in the UK, a substantial increase from 19% in June.⁷⁵ Less encouragingly, however, 65% were not working in the same sector as they had done in Ukraine, for reasons including lacking the requisite level of English (50%), taking any job available (43%) and qualifications not being recognised or valid (23%).⁷⁶ A much higher number were working in hospitality, food production, agriculture and farming than had done so in Ukraine, while the number working in financial services, teaching and education, and healthcare was significantly reduced.⁷⁷ The reduction in those working in education and healthcare is particularly significant given the high level of vacancies in the NHS and schools, suggesting vital qualifications and experience are not being fully utilised. For those who had not found work, reasons mirrored those for working in a different sector (lack of English language and non-recognition of qualifications), as well as not finding a suitable job or one that uses their skills, and not being able to find childcare – particularly important as around 45% of adults live with at least one dependent child with whom they travelled from Ukraine.⁷⁸

Childcare costs in the UK have risen by nearly 6% with the annual cost of a full-time nursery place for a child under two averaging £14,836 (around €16,751),⁷⁹ compared with a median income of £33,280 for those in full-time work.⁸⁰ Free childcare provision of 30 hours per week exists only for children aged three to four years; while measures announced in the March 2023 budget are designed to extend the same provision to children aged nine months to three years, they will not fully come into force until September 2025,⁸¹ and may anyway

⁷⁴ *Ukrainian Student Refused UC*, in *RightsNet*, 28 June 2022, available at: <https://www.rightsnet.org.uk/forums/viewthread/18405/#87290> (last accessed 23 March 2023).

⁷⁵ Office for National Statistics, nt. (46), 11.

⁷⁶ *Ibidem*, 11-13.

⁷⁷ *Ibidem*, 13.

⁷⁸ *Ibidem*, 14-15.

⁷⁹ Morris S., *What Does Childcare Cost in the UK Compared to Other Countries?*, in *The Standard*, 9 March 2023, <https://www.standard.co.uk/news/uk/childcare-costs-uk-countries-parents-children-london-b1061671.html> (last accessed 23 March 2023).

⁸⁰ Office for National Statistics, *Employee earnings in the UK: 2022*, 26 October 2022, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2022> (last accessed 3 April 2023).

⁸¹ HM Treasury, *Policy paper. Spring Budget 2023 factsheet – Labour Market Measures*, 15 March 2023, <https://www.gov.uk/government/publications/spring-budget-2023-labour-market-factsheet/spring-budget-2023-factsheet-labour-market-measures> (last accessed 23 March 2023).

be unworkable without additional funding.⁸² The situation causes pronounced problems for those on lower incomes and for single parents. As a result, many Ukrainians have struggled to take up full-time employment.⁸³

To assist with access to the labour market, the government has provided some guidance to businesses offering work to those coming from Ukraine, including a system for notifying vacancies that are open to Ukrainians as well as reference to other materials on war migrants employment,⁸⁴ and a scheme for employers wishing to offer work.⁸⁵ However, it does not appear to be providing new centrally funded language courses, referring instead to the work provided by local authorities and charities, which vary by location.⁸⁶ It is unclear how viable it will be for Ukrainians to access the kind of advanced level language skills required for employability in professional roles, except where they can fund this privately. While the above statistics relate to the two humanitarian schemes for new entries, there is less information on the outcomes for those that have utilised the extension scheme. For example, **in principle Ukrainians can now carry out agricultural work without an employer's sponsorship**, but there is little information on how frequently this is happening.⁸⁷

Alongside language skills and childcare, the transferability of qualifications is another potential barrier, which varies between fields. In teaching, those already qualified in Ukraine do not need to retrain, but require teaching skills and experience, criminal and professional safeguarding checks, and a high standard of written and spoken English.⁸⁸ The position is more complex for doctors, who will need to obtain an IELTS (language qualification), pass a test on applying knowledge to patient care, and complete a clinical attachment, after which they can apply to join the General Medical Council (GMC) Register.⁸⁹ Some support is available through the **British Medical Association (BMA)'s Refugee Doctor Initiative** and charities associated with the BMA, while a "Building Bridges" programme to support health professionals has also been set up by the NHS and Refugee Council.⁹⁰ For dentists, there is no separate exam but the IELTS is also required, following which it can take several months

⁸² Savage M., "This Will Be the End of Nurseries": Preschools in England Warn of Closures amid Free Childcare Expansion Plan, in *The Guardian*, 19 March 2023, <https://www.theguardian.com/education/2023/mar/19/this-will-be-the-end-of-nurseries-preschools-in-england-warn-of-closures-amid-free-childcare-expansion-plan> (last accessed 23 March 2023).

⁸³ Vicol D.-O., Sehic A., nt. (9), 17.

⁸⁴ Department for Levelling Up, Housing and Communities, Department for Business and Trade, Home Office, Department for Work and Pensions, and Department for Business, Energy & Industrial Strategy, *Guidance - Guidance for businesses offering work to people coming from Ukraine*, 6 May 2022, available at <https://www.gov.uk/guidance/guidance-for-businesses-offering-work-to-people-coming-from-ukraine> (last accessed 2 February 2023).

⁸⁵ UK Government, *Offer work to people who have come to the UK from Ukraine*, <https://www.gov.uk/offer-work-ukraine> (last accessed 2 March 2023).

⁸⁶ Department for Levelling Up, Housing and Communities, *Learn to Speak, Read and Write English: Homes for Ukraine*, 16 January 2023, <https://www.gov.uk/guidance/learn-to-speak-read-and-write-english-homes-for-ukraine> (last accessed 23 March 2023).

⁸⁷ Walsh P.W., Sumption M., nt. (8).

⁸⁸ Department of Education – Teaching: every lesson shapes a life, *Ukrainian teachers and trainees coming to the UK*, <https://getintoteaching.education.gov.uk/non-uk-teachers/ukraine> (last accessed 2 February 2023).

⁸⁹ Ukrainian Refugee Help, *Qualified Professionals from Ukraine*, 4 October 2022, available at <https://ukrainianrefugeehelp.co.uk/qualified-professionals/> (last accessed 2 February 2023).

⁹⁰ *Ibidem*.

to process an application.⁹¹ Engineers generally face no restrictions on practising in the UK, except in a set of areas that are mainly safety related.⁹²

For lawyers, there are separate systems within the UK's four nations. Ukrainian lawyers relocating to England and Wales can practice under their existing professional title without any separate examination or qualification process, providing services in Ukrainian law, international law, and certain areas of English law including drafting contracts.⁹³ However, this excludes “reserved areas” such as appearing before a court, conducting litigation, land registration, probate, notarial, financial and immigration law.⁹⁴ To be able to gain the title of “solicitor” and practice in reserved areas, it would be necessary to complete the Solicitors Qualification Examination, although the Law Society will consider exemptions from parts based on qualifications and / or work.⁹⁵ The rules for Scotland are similar,⁹⁶ while the Law Society of Northern Ireland page does not contain specific information, suggesting a need to follow its rules on overseas lawyers.⁹⁷

Apart from recognition of qualifications, there is also the question of practical support for finding work. In the legal profession, this has included a Law Society networking event for Ukrainian lawyers, a webinar for Ukrainian lawyers settled in the UK,⁹⁸ and a Ukrainian lawyers matching scheme provided by the Inner Temple (one of the barristers' Inns of Court).⁹⁹ For academics, support is available via the Council for At-Risk Academics, including through the British Academy-led “Researchers at Risk” Programme.¹⁰⁰ In retail, several supermarkets have introduced schemes to assist Ukrainians into jobs, including guaranteed interviews and fast-tracking of applications – although such measures may not be lawful if they are seen to disadvantage groups from other nationalities without adequate justification.¹⁰¹

⁹¹ *Ibidem*.

⁹² *Mobility and Recognition: Engineers from Ukraine*, in *Engineering Council*, <https://www.engc.org.uk/refugees> (last accessed 2 February 2023).

⁹³ *Support for Ukrainian lawyers and firms in England and Wales*, in *The Law Society*, 5 September 2023, <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/tools/support-for-ukrainian-lawyers-and-firms-in-england-and-wales> (last accessed 2 February 2023).

⁹⁴ *Doing Legal Business in England and Wales*, in *The Law Society*, available at <https://www.lawsociety.org.uk/topics/international/doing-legal-business-in-england-and-wales> (last accessed 2 February 2023).

⁹⁵ *Support for Ukrainian lawyers and firms in England and Wales*, in *The Law Society*, available at <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/tools/support-for-ukrainian-lawyers-and-firms-in-england-and-wales> (last accessed 2 February 2023).

⁹⁶ *Standing in Solidarity with Ukraine*, in *The Law Society of Scotland*, 6 April 2022, available at <https://www.lawscot.org.uk/news-and-events/law-society-news/standing-in-solidarity-with-ukraine/> (last accessed 23 March 2023).

⁹⁷ *Overseas Lawyers*, in *The Law Society of Northern Ireland*, available at <https://www.lawsoc-ni.org/solicitor-admitted-overseas> (last accessed 23 March 2023).

⁹⁸ *Support for Ukrainian lawyers and firms in England and Wales*, in *The Law Society*, <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/tools/support-for-ukrainian-lawyers-and-firms-in-england-and-wales> (last accessed 2 February 2023).

⁹⁹ *Ukrainian Lawyers Matching Scheme*, in *The Inner Temple*, available at <https://www.innertemple.org.uk/your-professional-community/international/ukrainian-lawyers-matching-scheme/> (last accessed 23 March 2023).

¹⁰⁰ *Ukraine Crisis*, in *CARA (Council of At-Risk Academics)*, available at <https://www.cara.ngo/what-we-do/ukraine-crisis> (last accessed 23 March 2023).

¹⁰¹ Farrell S., *Are moves to 'fast-track' Ukrainians into supermarket jobs legal?*, in *The Grocer*, 1 April 2022.

Overall, the picture on supporting professional activity is mixed. Having over half of visa holders working within around six months could be seen as impressive, compared with 40% currently employed or self-employed in a study of countries neighbouring Ukraine and other European host countries.¹⁰² However, this must be set against the relatively high educational level of Ukrainians that arrive in the UK as compared to other countries: a June 2022 survey of recent arrivals found that 81% had a tertiary degree.¹⁰³ This makes it more difficult to justify ongoing issues accessing the labour market either at all or in relevant fields.

5. Final considerations.

The overall measures for Ukrainians are at once more favourable than the harsh treatment of other asylum-seeking populations in the UK, and inadequate compared with both the measures needed and the EU's more generous approach. Rather than allowing visa-free entry for all fleeing Ukraine, the UK has designed a set of *ad hoc* visa and extension schemes that leave some applicants waiting for long periods, often while remaining in a precarious situation in Ukraine or neighbouring countries. These measures bypass the ordinary asylum system and entrench the idea that refugee protection in the UK should be strictly confined to those the government has pre-approved for travel. There are specific and heightened issues for particular populations, including third country nationals fleeing Ukraine who are not eligible for protection, and Ukrainian nationals that were previously working under the Seasonal Worker Visa for agriculture and whose visa expired more than a couple of months before the invasion began.

For those Ukrainians and family members who are able to enter and / or stay in the country under the schemes, the picture is mixed. They are entitled to work, study, and claim benefits, and exempted from the Immigration Health Surcharge, which is advantageous. However, the general financial support provided is not evenly extended across visa types, with those on the Family Scheme lacking targeted government financial support. A shortfall in accommodation provision has seen a surge in Ukrainian war migrants classified as homeless, with many placed into unsuitable locations such as hotels. In accessing services like the NHS and education, to which they are entitled, some Ukrainians face practical difficulties including a lack of capacity and difficulty finding school places part way through the year.

Labour market integration for Ukrainians has been reasonably successful, with over half of visa holders under the two bespoke visa schemes by autumn 2022. However, many are not working in the same occupation as they had done in Ukraine, while a significant minority are left without work at all. Obstacles to working at all, or in the same field, include extremely high childcare costs, a lack of advanced English language skills or provision to improve, and difficulties in the recognition of some qualifications.

¹⁰² UNHCR, *Lives on hold: intentions and perspectives of refugees and idps from Ukraine*, Regional Bureau for Europe, Regional Intentions Report, 4, July 2023, 5.

¹⁰³ OECD, *What we know about the skills and early labour market outcomes of refugees from Ukraine*, 6 January 2023, <https://www.oecd.org/ukraine-hub/policy-responses/what-we-know-about-the-skills-and-early-labour-market-outcomes-of-refugees-from-ukraine-c7e694aa/> (last accessed 26 January 2023).

Overall, the situation in the UK indicates an uneasy compromise between an overall climate of hostility to migration and reluctance to expend public resources on one hand, and a will to appear generous to the plight of Ukrainians on the other. Much of this generosity has come from individuals who were already resident in the UK prior to the war, whether fellow Ukrainians who sponsored their family members or other individuals who chose to host and matched with those needing to flee. While the Ukraine schemes and support represent a positive exception to the government's hostility towards other asylum-seeking populations, it remains too limited and narrow to fully meet the substantial needs of those fleeing the war.

Mass influx of people from Ukraine: social entitlements and access to the labour market: United States of America.

Alan Hyde*

1. Preliminary remarks. 2. Refugees in the US labour market in historical perspective. 3. The normal US refugee and humanitarian parole process before 2017. 4. The crippling of normal refugee admissions 2017-present. 5. The Uniting for Ukraine (U4U) program: support for social services; authorization for employment. 6. Future developments.

1. Preliminary remarks.

The United States continues to be the preferred destination for the world's migrants and refugees.¹ However, in recent years it is barely in the top twenty in number of refugees actually received.² While the US has a long tradition of incorporating migrants, it was a latecomer to the global refugee system and had already developed many distinct practices. Two are of particular importance in understanding the process of accepting migrants from Ukraine following the Russian war from February 24, 2022. First, the US has long relied on private nongovernmental organisations for the work of settling refugees. Indeed, it has been said that the US outsources to families the entire process of integrating migrants of all kinds.³ Second, the US labour market is exceptionally lightly-regulated, by international standards. For example, there is no such thing as a “work permit” anywhere in the US for US citizens or lawful permanent residents. Only certain migrants require employment authorisation before taking jobs, and, as we shall see, Ukrainians admitted on humanitarian grounds receive such employment authorisation automatically.

This combination of private sponsorship and immediate work authorisation lies behind a unique and successful program, Uniting for Ukraine (U4U), that has permitted the admission,

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¹ Migration Policy Institute, *Top 25 Destinations of International Migrants*, available at: <https://www.migrationpolicy.org/programs/data-hub/charts/top-25-destinations-international-migrants> (accessed 6 March 2023).

² Statista, *Ranking of the largest refugee-hosting countries as of 2023*, available at: <https://www.statista.com/statistics/263423/major-refugee-hosting-countries-worldwide/> (accessed 6 March 2023).

³ Cohen E., *What Immigration Restrictionists Can't Foresee*, in *The Atlantic*, April 2019.

under private sponsorship, of over 100,000 Ukrainians as of February 2023, with an additional forty thousand approved for travel. U4U is entirely separate from the normal process of refugee admissions, which is heavily backlogged and not functional as of 2023.⁴ Ukrainians admitted through U4U are not “refugees” in US law. They are authorized to begin work immediately. The success of U4U has led to pilot adaptations of its model of private sponsorship for migrants from Afghanistan, Venezuela, and other countries. The chief limit of U4U is that it contains no path to permanent residency. This is thought to require Congressional action that faces severe obstacles. Because the resettlement of Ukrainians in the US is occurring under private sponsorship, there is no data available on their actual experience in the labour market, or other economic data. Consequently, this chapter will depart somewhat from the suggested format.

2. Refugees in the US labour market in historical perspective.

In most countries that receive refugees, their employment rates on arrival are considerably lower than other legal migrants. In countries other than the US, UK, or Canada, employment rates of refugees two years after arrival are below 20 percent. The United States is the only country in which the employment rates for refugees are barely distinguishable from other migrants; any slight differences disappear after two years. In fact, employment rates for refugees are comparable to native-born Americans of similar age and education. Refugees lag other migrants in earnings, but again the gap is much smaller than in other receiving countries and closes over time.⁵ US refugees’ contributions in taxes outweigh their costs in public benefits. Or so the US Department of Health and Human Services found in an inconvenient 2017 study that the Trump Administration, which had expected the opposite

⁴ US law and practice employs a considerably narrower definition of “refugee” than the rest of the world. When this chapter uses the term “refugee” in international comparison, it employs the definition of the United Nations High Commissioner for Refugees: “individuals who are outside their country of origin and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.”

<https://emergency.unhcr.org/entry/55772/refugee-definition> (accessed 6 March 2023). US law reserves the term “refugee” for those meeting the narrower definition of the 1951 protocol: “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”, 8 USC §1101(a)(42)(A). That is, someone fleeing a civil war is not a refugee under US law unless they can show individuated persecution, *INS v. Elias-Zacarias*, 502 US 478 (1992). A long list of other humanitarian admissions supplements this narrow definition, including the U4U program discussed here; other humanitarian parole; Temporary Protected Status, Special Immigrant Juvenile, victims of torture or trafficking, etc. It is likely that some migrants admitted under U4U might also qualify for refugee status or for admission under another legal provision, but so far such applications have not generally been made since the U4U program is efficient and the alternatives are not.

⁵ Brell C., Dustmann C., Preston E., *The Labor Market Integration of Refugee Migrants in High-Income Countries*, in *Journal of Economic Perspectives*, 34, 1, 2020, 94, 103 (reviewing literature). The pioneering study for the US is Cortes K., *Are Refugees Different from Economic Immigrants? Some Empirical Evidence on the Heterogeneity of Immigrant Groups in the United States*, in *The Review of Economics and Statistics*, 86, 2, 2004, 465.

finding, attempted to suppress.⁶ Refugees have the highest rate of business formation of any group admitted to the US.⁷

The reasons for this happy US outcome are very far from clear. Undoubtedly part of the picture however are the important roles of nongovernmental refugee resettlement organisations and the relatively unregulated US labour market, discussed in this chapter.

3. The normal US refugee and humanitarian parole process before 2017.

The US did not participate in the world refugee system until 1980, by which time it had developed many unique practices. The US never signed the 1951 refugee agreement, and while it did sign the 1967 Protocol, implementing legislation was not enacted until 1980. US immigration law before 1965 had no specific provision for admission of refugees. It did authorize discretionary temporary “parole” to enter the US for emergency reasons or the public interest.⁸ Parole by statute is temporary and does not count as formal admission to the US. Immigration officials developed the practice of permitting some migrants, who might have been classed as refugees in other countries, to parole into the US. Such parole was normally for migrants from communist countries, beginning with Hungarians in 1956 and later including migrants from Cuba and Indochina, and otherwise used to reward friends and punish enemies during the Cold War.⁹ This is the device that has been revived for Ukrainians, nearly all of whom are admitted under “parole.” The Refugee Act of 1980, which first created formal refugee admissions, expressed a preference that parole be used only in individual cases, not for entire populations, but immigration officials continue to use parole because of its flexibility, for example for minors from Central America.¹⁰

There were no governmental programs or funding to integrate refugees (or what the rest of the world would call refugees) in the years before 1980, when the category was added to US immigration law. Instead, social workers from American charities helped refugees find housing, employment, or location in the US. The formal Refugee Admissions Process created in 1980 continued this practice. The US Department of State contracts annually with nine

⁶ U.S. Department of Health and Human Services, *The Fiscal Costs of the U.S. Refugee Admissions Program at the Federal, State, and Local Levels, from 2005-2014*, 29 July 2017, available at

<https://www.nytimes.com/interactive/2017/09/19/us/politics/document-Refugee-Report.html> (accessed 6 March 2023). To the same effect is Evans W., Fitzgerald D., *The Economic and Social Outcomes of Refugees in the United States: Evidence from the ACS*, in *National Bureau of Economic Research Working Paper*, 23498, June 2017.

⁷ Gelatt J., *Do Employer-Sponsored Immigrants Fare Better in Labor Markets Than Family-Sponsored Immigrants?*, in *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 6, 3, 2020, 70-93, 82 (Fig. 4)(New Immigrant Survey).

⁸ The current statute is 8 USC §1182 (d)(5). The original 1952 statute is in Congressional Research Service, *Immigration Parole* 20, 15 October 2020, available at <https://crsreports.congress.gov/product/pdf/R/R46570>.

⁹ Kramer P., *The Geopolitics of Mobility: Immigration Policy and American Global Power in the Long Twentieth Century*, in *The American Historical Review*, 123, 2, 2018, 393-438. Before 1980, some 690 thousand Cuban nationals and 360 thousand Indochinese were paroled into the US. Chishti M., Bolter J., *Welcoming Afghans and Ukrainians to the US: A Case in Similarities and Contrasts*, July 13 2020, available at <https://reliefweb.int/report/united-states-america/welcoming-afghans-and-ukrainians-united-states-case-similarities-and-contrasts> (accessed 6 March 2023).

¹⁰ The immigration agencies stopped releasing annual reports on immigration parole after 2003, but at that time there were around 300,000 such paroles annually, for a wide variety of purposes. Congressional Research Service, nt. (8), 5.

private resettlement agencies, paying each \$2275 per refugee. Additional funding is provided by the Department of Health and Human Services. The resettlement agencies then assist refugees in location, job placement, school enrollment, public benefits, and similar social services.¹¹

4. The crippling of normal refugee admissions, 2017-present.

The Trump administration that took office in 2017 set out to reduce drastically the admission of all kinds of migrants, including refugees. The statute did not change, and the administration made no serious attempt to get Congress to change the statute. However, its administration of the statute seriously crippled refugee admissions.

The 1980 Act authorizes the President to set the number of refugees to be admitted annually. This figure had popped up and down between 140 thousand and 26 thousand, with no particular logic. The Trump administration dropped the number to 13 thousand. It made similar restrictions in another humanitarian admission program, Temporary Protected Status. A federal judicial decision, enjoining those restrictions, contains an illuminating account of a process completely dominated by politics without any regard either for relevant law or what is good for the US.¹² Personnel in the immigration agencies were transferred from issuing visas to enforcement, such as reviewing old files for possible grounds for revocation of visas or citizenship. Applications for asylum piled up. Contracts with refugee settlement agencies were not renewed. Personal and institutional expertise was lost.

By December 2022, the number of applications for asylum awaiting hearing had reached almost 1.6 million.¹³ Thousands of Afghani had pending applications for normal humanitarian parole. It was not possible for existing agencies to act speedily on the needs of individuals fleeing Ukraine after the Russian invasion. A new program had to be created.

5. The Uniting for Ukraine (U4U) program: support for social services; authorization for employment.

U4U, a special humanitarian parole program for Ukrainians, was announced on April 25, 2022. It is administered by the Department of Homeland Security, which includes most immigration service and enforcement, and not by the Department of State, which administers refugee admission.

In the preceding two months, some 34 thousand Ukrainians traveled to the US on valid existing visas, such as tourist. Another 20 thousand or so, who lacked valid US visas, made

¹¹ National Immigration Forum, *Explainer: Private Sponsorship Programs for Refugees*, 2022, available at <https://immigrationforum.org/article/a-guide-to-private-sponsorship-for-refugees/> (accessed 6 March 2023). See generally Prantl J., *Community Sponsorship for Refugees and Other Forced Migrants: Learning from Outside and Inside the United States*, *Georgetown Immigration Law Journal*, forthcoming, available on SSRN.

¹² *Ramos v Nielsen*, 336 FSupp3d 1075 (ND Cal 2018)(enjoining Trump restrictions), appeal voluntarily dismissed, 2023 Westlaw 4363667, 2023 US App LEXIS 16518 (9th Cir., June 29, 2023).

¹³ TRAC Immigration, *A Sober Assessment of the Growing US Asylum Backlog*, 2022: <https://trac.syr.edu/reports/705/> (accessed 6 March 2023).

their way to Mexico and applied for asylum at the border. The Border Patrol normally permitted them entrance as humanitarian parolees, facing criticism that Ukrainians were receiving preferential treatment over migrants from the rest of the world. U4U was partly designed to discourage appearance at the border. Around four hundred Ukrainian nationals entered the US through the formal refugee program, although it is likely that most or all of these had applied long before the Russian invasion.¹⁴

The U4U program permits private US sponsors to apply for humanitarian parole for the specific Ukrainian nationals mentioned in their application. It is not a program for which Ukrainians may apply. However, a matching tool, welcome connect, developed by Goldman Sachs, ServiceNow, and Infosys, permits Ukrainians to log on and find a sponsor, which so far has been adequate to meet the need.¹⁵ Sponsors must demonstrate their ability to support the parolee financially, and commit to ensuring that beneficiaries have housing and healthcare, though beneficiaries will receive some of the normal benefits received by refugees.¹⁶ They also must assist the newcomers in applications for employment authorization and in enrolling children in school. Beneficiaries must have resided in Ukraine through February 11, 2022, and pass security vetting. They are granted humanitarian parole for two years. They pay no fees. Unlike refugee admission, they need not demonstrate persecution or hardship.

The program has been enormously successful. As of February 2023, over 200 thousand US individuals and organizations had applied to be sponsors. Over 144 thousand Ukrainians have been approved for travel to the US, and close to 110 thousand have arrived. Since the goal for normal refugee admissions this year is around 125 thousand (which won't be reached), U4U is already as significant as refugee admissions.¹⁷ Obviously these numbers are well below the number of Ukrainians in Germany, Poland, and some other European hosts.

Who are these sponsors? The Niskanen Foundation obtained data for the first five months of the program. Sponsors live in urban and suburban areas with higher than usual concentration of residents with Ukrainian ancestry.¹⁸ Sponsors must be based in the US but need not be citizens: asylees, refugees, beneficiaries of deferred action, and humanitarian

¹⁴ Chishti M., Bolter J., nt. (9).

¹⁵ Interview by the Author with Denise Bell, representing welcome.us, on February 14, 2023. Welcome.us is the organization created to administer U4U and other migration through private sponsorship.

¹⁶ A Congressional appropriation of May 2022 extended benefits to Ukrainian migrants but did not address their long-term immigration status. Ukrainians who have been or will be paroled into the U.S. between February 24, 2022, and September 30, 2023 will now have access to cash assistance through the Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI); health insurance through Medicaid; and food assistance through the Supplemental Nutrition Assistance Program (SNAP). The bill also provides access to certain Office of Refugee Resettlement (ORR) benefits, including cash assistance, medical assistance, employment preparation, job placement, and English-language training. They will not, however, have access to services through the Department of State's Reception and Placement Program. *National Immigration Forum, Summary: Immigration and Refugee Assistance in the Ukraine Funding Bill*, 23 June 2022, available at <https://immigrationforum.org/article/summary-immigration-and-refugee-assistance-in-the-ukraine-funding-bill/> (accessed 6 March 2023).

¹⁷ Interview, Denise Bell, nt. (15).

¹⁸ LaCorte M., Esterline C., *10 takeaways from new data on who signed up to sponsor displaced Ukrainians*, 6 October 2022, available at <https://www.niskanencenter.org/10-takeaways-from-new-data-who-signed-up-to-sponsor-displaced-ukrainians/> (accessed 6 March 2023).

parolees may all serve as sponsors. Ukrainians receiving humanitarian parole may in turn sponsor others.

Beneficiaries, on entry into the US, automatically receive authorization to work for 90 days, simply by being in the U4U program. Since November 2022, they may start working without waiting for any additional employment authorization, although they still must apply to be protected after 90 days of work.¹⁹

There are no sources collecting data on the actual labour market experience of U4U beneficiaries.²⁰ There do not appear to be any published surveys of beneficiaries, sponsors, or employers on their experience under U4U. The US government never collects such data for any migrant group. Scholars who research these topics, such as the sources cited *supra* nn 5-7, normally work with Census data, so we are years away from any comprehensive picture of how well Ukrainian migrants are doing in the US labour market.

6. Future developments.

US immigration officials and advocates consider U4U to be a big success, and are already adapting it for other migrants. The Department of State, which has power to admit “refugees” on a permanent basis, launched in January 2023 Welcome Corps, patterned on U4U, as a way of encouraging private sponsorship of refugees.²¹ The largest group of refugees expected to be admitted through Welcome Corps is expected to be from sub-Saharan Africa.²² Programs like U4U have also been created to encourage private sponsorship of migrants from Afghanistan and Venezuela, who are not necessarily refugees in US parlance, but who will be eligible for humanitarian parole on the model of U4U.

While the legal status of refugee (in US law) puts the holder on the path to legal permanent residency, this is not true of the humanitarian parole status currently granted under U4U and the emerging programs for Afghanistan and Venezuela. Currently such parole is being awarded for two years. There is no legal reason that this period cannot be extended. In fact, it is inconceivable that the US would start deporting beneficiaries of the program.

The US maintains other streams of humanitarian migration that do not lead to legal permanence but in practice have been extended without limit. Temporary Protected Status (TPS), mentioned in n.12 *supra*, is granted by proclamation to nationals of countries where there is ongoing armed conflict, earthquake, flood, or similar environmental disaster.²³

¹⁹ U.S. Citizenship and Immigration Services, Uniting for Ukraine, available at <https://www.uscis.gov/ukraine> (accessed 6 March 2023).

²⁰ An interview with representatives of a single church sponsoring one Ukrainian family in the early days of U4U is Prantl J., *op. cit.*, 71-76.

²¹ US Department of State, *Fact Sheet—Launch of Welcome Corps—Private Sponsorship of Refugees*, Office of the Spokesperson, 19 January 2023, available at <https://www.state.gov/launch-of-the-welcome-corps-private-sponsorship-of-refugees-2/> (accessed 6 March 2023).

The web site is <https://welcomecorps.org/>.

²² Yang M., *US State Department announces new refugee program titled Welcome Corps*, in *The Guardian*, 20 January 2023, available at <https://www.theguardian.com/us-news/2023/jan/20/us-state-department-new-refugee-program-welcome-corps> (accessed 6 March 2023).

²³ INA §244, 8 USCA §1254a (added 1990). Most of these individuals in TPS status would be refugees in international parlance but not under US law.

Individuals holding only TPS status currently have no legal way of adjusting to lawful permanent residence.²⁴ Nevertheless, the median TPS holder has lived in the US for fourteen years.²⁵ TPS holders from El Salvador and Honduras have lived in the US for a median of 27 years.²⁶ It is thus possible that current humanitarian parole might be similarly extended.

Far preferable, of course, would be Congressional legislation regularizing the status of holders of humanitarian parole (and Temporary Protected Status and similar programs). Past mass extensions of humanitarian parole, such as earlier programs for Cubans and Indochinese, were followed by legislation.²⁷ However, Congress has failed to reach agreement on legislative solutions for current migrants from Ukraine, Afghanistan, Venezuela, or anywhere else, and prospects for such legislation are not bright.

²⁴ *Sanchez v Mayorkas*, 141 S.Ct. 1809 (2021).

²⁵ Fwd.us, *Temporary Protected Status protects families while also boosting the US economy*, 16 February 2023, available at <https://www.fwd.us/news/temporary-protected-status-report/> (accessed 6 March 2023).

²⁶ Fwd.us, *Temporary Protected Status: 5 things to know*, 16 February 2023, available at: <https://www.fwd.us/news/temporary-protected-status-tps-5-things-to-know/> (accessed 6 March 2023).

²⁷ Congressional Research Service, nt. (8).

The book is dedicated to describing the effects of the massive influx of people from Ukraine, which started from February 2022 due to the ongoing war in Ukraine. The material presented ranges from general issues related to the regulation of the mass influx to studies on national mechanisms supporting displaced persons in terms of social entitlements and access to the labour market.

Italian Labour Law e-Studies is an editorial collection related to the Italian Labour Law e-Journal.

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