

Policy Brief

Ukraine's refugee plight

A paradigm shift for the EU's asylum policy?

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This Policy Brief maps the EU's immediate response to the arrival of more than three million Ukrainian refugees. While the decision to grant them immediate access to protection by activating the Temporary Protection Directive has raised the question whether current events will lead to a paradigm shift in EU asylum and migration policy, the EU's greater test is what member states and the Commission will do next. The Policy Brief discusses why a mechanism for the fair sharing of responsibility is urgently needed and outlines what such a scheme could look. It closes by arguing that the current welcoming of Ukrainian refugees is less a paradigm shift in EU asylum and migration policy than an example of an increased politicisation of access to protection.

One month after Russia's invasion of Ukraine, 3.5 million [refugees](#) have fled the country. Another 6.5 million Ukrainians have been internally displaced. Initial estimates from the UNHCR projected four million refugees fleeing Ukraine. Other [estimates](#) from the European Commission expect the arrival of up to seven million Ukrainian refugees in the weeks ahead.

So far, the EU's response to people fleeing Ukraine has been unusually univocal and welcoming. On March 4, EU ministers agreed to activate the Temporary Protection Directive (TPD) for the first time since its adoption in 2001, thereby granting Ukrainian refugees an immediate protection status. However, as the number of persons fleeing the war in Ukraine continues to increase by the day, EU member states cannot rest easy on their immediate achievements. Reception capacities in countries like Poland, where more than two million Ukrainians have already arrived, will soon be overwhelmed. Similar pressures are faced by Romania and Hungary, which have received 543,000 and 317,000 refugees respectively. Given their restrictive asylum policies, countries like Poland or Hungary have neither the capacity nor the experience to provide sufficient accommodation in the short-term and offer longer-term integration for such large numbers of refugees. Hence,

the greater test for the EU's asylum and migration policy is what member states and the Commission will do next.

The EU's most urgent challenge will be the organisation of a fair sharing of responsibility for the reception and integration of Ukrainian refugees. Member states were quick to offer financial and logistical solidarity. Yet, they have thus far avoided addressing the more controversial issue of relocation, even though it is also part of the solidarity mechanism outlined in the Temporary Protection Directive. This Policy Brief maps the EU's immediate response to the arrival of more than three million refugees from Ukraine. It then discusses why a mechanism for the fair sharing of responsibility is urgently needed and outlines what such a scheme could look like. The Brief closes by arguing that the current welcoming of Ukrainian refugees is less a paradigm shift in EU asylum and migration policy than an example of an increased politicisation of access to protection.

1. Short-term: How has the EU responded?

As part of Ukraine's Association Agreement with the EU, Ukrainian nationals are allowed to enter and travel within the EU for 90 days without having to apply for a visa. While this has facilitated their flight, the movement of Ukrainian refugees follows a common pattern by which most people first flee to neighbouring countries. There, existing social and family networks can provide reception and offer housing. Being home to a sizable diaspora of Ukrainian nationals, Poland has been the major destination for people fleeing the war in Ukraine. So far, an estimated [2.1 million](#) refugees have sought protection there. Other neighbouring countries, like Hungary, Slovakia, Romania and Moldova are similarly affected. Germany, which also hosts a considerable Ukrainian diaspora, has seen more than [220,000](#) refugees arrive since February 24.

The immediate response from countries neighbouring Ukraine has been predominantly welcoming. In particular, the willingness of Poland and Hungary to receive Ukrainian refugees stands in stark contrast to the restrictive asylum policies that both states have pursued over recent years. Yet, the geographic proximity of the war, close cultural links and ethnic ties help explain the different treatment of refugees. This commitment to welcome Ukrainian refugees – not least from civil society – has set the tone for the wider EU response. Three strands characterise the EU's immediate reaction to the humanitarian fallout of the war: issuing temporary protection; facilitating border management; and providing humanitarian funding to Ukraine and affected member states.

1.1. Temporary protection in the EU

On March 4, EU interior ministers agreed to activate the [Temporary Protection Directive](#) following a proposal from the Commission, thereby granting persons fleeing the war in Ukraine immediate access to protection in the EU. The Directive had already been adopted in 2001 in the wake of the war in Yugoslavia but had never been applied in practice since then. Its activation is historic not only because of the 21 years that the file remained dormant; it also marked a rare moment of consensus in the Council, which unanimously voted in favour of the Directive.

The TPD offers [many advantages](#) to both national administrations and its beneficiaries. The Directive grants immediate protection for one year until March 4, 2023 (see table 1). Should the reason for displacement persist, the temporary protection status is automatically extended up to two times for a period of six months each. After March 4, 2024, the Council can extend the temporary protection by another year. The status also grants beneficiaries the right to work and to housing, as well as to education for minors. Family reunification is

possible for spouses, minor children and close relatives who have lived together as part of the family unit.

Table 1: Temporary Protection Directive

Temporary Protection Directive	
Protection	Until March 4, 2023; renewable twice for six months and then until March 4, 2025 for up to three years in total.
Beneficiaries	Ukrainian citizens; stateless persons and others with protection status in Ukraine; students and third-country nationals with permanent residence who are unable to return to their country of origin.
Procedure	Registration with national authorities; no asylum procedure necessary. Asylum can be claimed at any time during stay.
Family reunification	Possible for spouses, minor unmarried children, close relatives living together in the family unit.
Relocation	Voluntary pledges by EU member states; beneficiaries must consent to relocation.

The Directive does not just apply to Ukrainian citizens fleeing their country. Its scope also includes people who benefited from international protection in Ukraine, as well as third-country nationals who had been residing in Ukraine as permanent residents and who are unable to safely return to their country of origin. People falling under the scope of the Directive are spared from having to undergo the asylum procedure. Instead, they merely have to register with the relevant national authorities before being granted temporary protection. This relatively unbureaucratic process is one of the main features distinguishing the TPD from other pathways to protection. For one, it allows its beneficiaries to avoid the uncertainty and limited access to rights that come with a regular asylum procedure. But more importantly, one of the Directive's main objectives is to ease the pressure on national asylum systems in light of the expected number of refugees who have yet to arrive in EU member states.

The preamble to the [original text](#) of the Temporary Protection Directive further includes “a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States” concerning financial compensation and “the actual reception of persons”. To that end, EU countries are expected to make voluntary pledges to receive beneficiaries of temporary protection – who would, however, have to consent to their transfer to another member state. Yet, in the [implementing decision](#), member states merely referred to Ukrainian nationals’ right to visa-free travel, which allows them to choose their preferred destination country. This, as the Council hoped, would “in practice facilitate a balance of efforts between Member States”. In order to arrive at a consensus on the activation of the TPD in the Council, member states thus postponed the thorny issue of relocation for the time being.

1.2. Border Management

In line with the derogations possible under the Schengen Borders Code, the Commission further released a set of [operational guidelines](#) in order to facilitate member states' efforts to manage the arrival of persons fleeing Ukraine. Due to Ukraine's Association Agreement with the EU, Ukrainian nationals do not register as irregular arrivals, but can enter EU member states legally without the need for a visa. The EU's usual approach to dealing with the arrival of protection-seekers through registration and containment at or near the border is hence not applicable to the current situation. In light of the political willingness to receive Ukrainian refugees and the different legal context, the Commission's guidelines therefore aim at reducing obstacles for arrival by proposing the following measures:

- “Simplification of border controls for certain categories of persons, including vulnerable persons, such as children, and other categories, such as transport workers that find themselves in Ukraine while carrying out their services;
- The possibility to organise border controls outside of border crossing points;
- Special arrangements for crossing the borders by rescue services, police, fire brigades and border guards, seafarers regardless of their nationality;
- The establishment of emergency support lanes, in order to ensure access and return of organisations providing humanitarian aid to people in the Ukrainian territory;
- Outside the scope of the Schengen rules, the waiving of customs duties and measures to facilitate the entry of pet animals travelling with their owners from Ukraine.”

While the guidelines are not mandatory, they are largely in line with prior measures taken at the national level. The guidelines further recommend that member states take advantage of the support offered by EU agencies, such as Frontex or the EU Asylum Agency (EUAA). So far, 49 Frontex officers have been [deployed](#) to the external borders with Ukraine, while another 162 staff have been deployed to Romania's border with Moldova. The Commission also announced that a total of 2,600 Frontex staff are on stand-by and has proposed a [status agreement](#) which would allow for the deployment of Frontex officers to Moldova.

1.3. Humanitarian funding

The EU mobilised roughly €1 billion in emergency assistance to deal with the humanitarian fallout in Ukraine and neighbouring countries affected by the refugees' plight (see table 2). On February 28, the Commission [greenlighted](#) €90 million for humanitarian assistance, of which €85 million was allocated to Ukraine and €5 million to Moldova. The money is used to supply basic needs such as food, water, medicine, tents and healthcare. Another €3 million was allocated to Moldova on March 10 to support the reception of Ukrainian refugees in the country. These immediate measures are part of a €550 million package to be mobilised under the EU budget, which includes a further €120 million in direct budget support to Ukraine, as well as €15 million to support border management in Moldova. The emergency assistance package also prescribes €330 million to be made available as part of the Neighbourhood, Development and International Cooperation Instrument (NDICI), which can provide emergency assistance either directly to Ukraine or to countries affected by the arrival of Ukrainian refugees. In addition to short-term humanitarian funding, the EU further supports Ukraine through emergency [macro-financial assistance](#) loans worth €1.2 billion while the European Investment Bank announced an immediate repurposing of loans in the amount of €668 million as liquidity support to Ukraine.

Table 2: Overview of EU humanitarian funding

Volume		Measure	Beneficiary
550 million	85 million	Humanitarian aid	Ukraine
	120 million	Budget support	Ukraine
	15 million	Border management	Moldova
	8 million	Humanitarian aid	Moldova
	330 million	NDICI emergency assistance	Ukraine; Moldova; possibly other third countries
420 million		AMIF & ISF funding for reception capacity	EU member states

Source: European Commission

Additional funding is also made available for EU member states in order to support the reception of Ukrainian refugees. The Commission proposed prolonging the implementation period of the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) to provide extra flexibility and free up €420 million in resources. On March 8, the Commission [further adopted a proposal](#) for the Cohesion's Action for Refugees in Europe (CARE) programme, thereby adjusting cohesion policy rules to assist member states in accommodating Ukrainian refugees. This includes the possibility to extend 100% EU co-financing to 2021-2022, as well as the option for member states and regions to draw on the European Fund for Regional Development (ERDF) and the European Social Fund (ESF) in their effort to support Ukrainian refugees. While these measures are primarily concerned with covering the immediate needs of member states to provide shelter and reception, longer-term funding for the integration of refugees into national labour markets will be just as necessary. Such funding will be essential to implement the comprehensive [set of measures](#) aimed at facilitating access to education, health care and employment for beneficiaries of temporary protection which the Commission announced on March 23.

2. Medium-term: The need for responsibility-sharing

The arrival of more than three million displaced persons has left member states like Poland, Hungary, Slovakia or Romania disproportionately affected. Discussions on responsibility-sharing have already begun. Greece, Italy and Luxembourg called for a sustainable reception of Ukrainian refugees at a [meeting of delegates](#) from the member states, the Commission and the EU Parliament. Similarly, France and Germany demanded better coordination. Germany's interior minister, Nancy Faeser, even declared a quota for relocating refugees to be her objective, while the country's foreign minister, Annalena Baerbock, called for an [airlift](#) to relocate refugees from countries of first arrival to other member states.

Yet, member states bordering Ukraine – Poland, Hungary and Slovakia – continue to insist that no EU-coordinated relocation assistance is necessary. Instead, Hungary [referred](#) to discussions about possible relocation as “counterproductive”. In 2015, the country similarly refused to benefit from the emergency scheme to relocate Syrian refugees. Since then, Hungary and Poland have remained staunch opponents of any responsibility-sharing that includes the transfer of refugees. Despite the unprecedented number of refugees currently arriving at their border, it seems as though the two member states fear that consenting to a relocation initiative now could open the door for a more permanent mechanism to follow in the future.

Although the opposition of Poland, Hungary and the other Visegrad countries is rooted in the experience of 2015, the situation is different today. Given the scarcity of legal pathways to protection, previous refugee movements towards the EU have predominantly been characterised by irregular arrivals. In such situations, the Dublin Regulation requires that asylum seekers must lodge their claim in the country of first arrival, which then (in the majority of cases) remains responsible for processing a person's protection claim. However, Ukrainian nationals have the right to legally enter the EU and move between member states. Activating the Temporary Protection Directive further allows them to lodge their protection claim in any EU country. While the "secondary movement" of protection-seekers has been a major concern for many member states in the past, the free onward movement of Ukrainian refugees is now perceived as an ideal solution to maintain a balance of responsibility among EU countries. In that vein, Poland and Hungary insist that people fleeing the war in Ukraine will disperse themselves across other member states, thus deeming a formal relocation scheme unnecessary.

However, it remains unclear whether visa-free travel for Ukrainians will in fact result in a "balance of efforts between Member States" as the Council hoped for in its implementing decision. It is true that Ukrainians who have found only immediate shelter after leaving their country are likely to make use of the right to register their protection status in another member state. Others may similarly wish to join family members in different EU countries. But on the one hand, such onward movements do currently not occur on a scale necessary to offset the number of new arrivals and to reach a fair level of responsibility-sharing among member states. And on the other hand, differing levels of social benefits between member states might lead to a situation in which some EU states are still more affected than others by such a "free choice" relocation system. Activating the TPD, as well as the support from civil society, have prevented national asylum systems from collapsing thus far. Yet, the pressure on reception capacities in countries of first arrival will increase drastically as more people arrive who have no existing social or family networks. Moreover, Ukrainians who have benefited from civil society support in the first days after their arrival might soon wish to register with national authorities to claim the rights associated with temporary protection status.

While the Commission and the member states delivered on the financial and practical solidarity foreseen in the Temporary Protection Directive, EU countries less affected by the arrival of Ukrainian refugees have so far shied away from solidarity in "the actual reception of persons". Yet, the EU urgently needs to move from relying on immediate support to drafting a sustainable plan for a shared effort to register, accommodate and integrate those fleeing the war in Ukraine. This is not only necessary to prevent a further overburdening in countries of first arrival – it is also essential to ensure that refugees can fully claim the rights granted to them under the Temporary Protection Directive.

2.1. Complementing free movement with a voluntary relocation scheme

Two things should happen at the EU level to implement the Temporary Protection Directive's solidarity mechanism in full effect. First, the Commission must make sure that member states evenly implement the right of Ukrainian refugees to move freely across EU territory. The objective here should be to avoid a situation in which additional entry requirements disincentivise Ukrainians from joining their social networks in other member states. For example, Sweden's government has already [declared](#) its intent to introduce pre-entry identity checks, which would effectively deter undocumented persons from entering. Facilitating smooth onward movement is, however, essential for the envisioned "self-relocation" to work in practice and to result in some degree of responsibility-sharing. This also includes ensuring the possibility for beneficiaries of temporary protection to travel between EU countries after having registered with local authorities in a member state. This as was agreed upon by member states in the implementing decision of the TPD. The Commission's [announcement](#) to ask member states to issue short visas for Ukrainians arriving without a biometric passport and its request to waive carrier liability for airlines is a positive step in that direction.

Second, EU member states should complement the free movement of Ukrainians with a voluntary relocation scheme. The legal basis for such a relocation mechanism is already in place in the Temporary Protection Directive. It provides member states with the necessary legal certainty that has often been missing in past discussions concerning the transfer of asylum seekers. Under the Temporary Protection Directive, relocation remains entirely voluntary. Based on the concept of "[double volunteerism](#)", EU countries will have to make voluntary pledges as to how many refugees they are willing to relocate, and Ukrainians would then have to consent to their transfer before being relocated to another member state.

For this to work in practice, member states and the Commission need to set up the organisational infrastructure to coordinate the transfer of those willing to move to another EU country while organising adequate financial compensation for member states disproportionately affected. In the [communication](#) accompanying the proposal to activate the TPD, the Commission suggested to coordinate member state activities via a "solidarity platform". Such a platform could indeed be used to organise the practical implementation of a relocation scheme in close cooperation with national asylum authorities. To that end, national administrations should set up [streamlined procedures](#) for the registration of Ukrainian refugees, including an identity and security check. To ensure that adequate staffing and sufficient resources are available, member states could register their need for support from Frontex and the EU Asylum Agency (EUAA) with the solidarity platform. When registering with local authorities, beneficiaries of temporary protection would ideally be given the option to indicate whether they wish to remain in their current member state, or whether they would be willing to move to another EU country.

Based on this information, member states could then register those willing to be relocated with the solidarity platform where they are matched with the reception capacities offered by other member states. Such reception capacities could also include offers from private sponsors who would have to register with the competent national authority and provide accommodation, as well as integration support. Such sponsorship models could be designed in line with existing schemes, such as the Global Refugee Sponsorship Initiative (GRSI). Yet, private sponsorship should not compromise the rights and entitlement to integration support that come with a temporary protection status. Beneficiaries of temporary protection would then receive a relocation offer, which they would have to agree to before being transferred to the receiving member state. Such transfers could either take place via

[plane](#), or via train – as was the case in Germany, where Ukrainian nationals can travel freely with the *Deutsche Bahn* on their transit from Poland.

The solidarity platform should also be used for coordinating the financial compensation of member states' efforts to receive and integrate Ukrainian refugees. So far, funding made available under the AMIF and ISF is primarily targeted to support the immediate reception of protection-seekers (see table 2). Yet, member states will also be confronted with substantial costs for the longer-term accommodation of refugees and their integration into the labour market. The OECD [estimates](#) that costs for processing and accommodating protection seekers amount to €10,000 per application in the first year. At current arrival figures, this could mean member states face a collective financial burden of €35 billion. While the exact costs for longer-term integration are still to be determined, they will likely vary between member states depending on the extent to which beneficiaries of temporary protection are allocated among EU countries. It is therefore essential that sufficient funding be made available through respective EU funds so that member states can guarantee that beneficiaries of temporary protection are effectively integrated and can make use of the full rights given to them under the TPD.

3. Long-term: Beware of “geopoliticising” protection

Using the current momentum to turn the achievements of the EU's immediate crisis response into a sustainable strategy for the reception, relocation and integration of Ukrainian refugees will be essential. After the arrival of more than one million Syrian refugees in 2015, there was a similar attitude towards welcoming new arrivals in many EU countries. Yet, a disillusioned public and the refusal by some member states to participate in collective burden-sharing soon turned the tide. Now, it will be crucial to convince precisely these countries (Poland, Hungary, Slovakia) to consent to a solidarity scheme that would relocate refugees from their territories. Ironically, winning their support for a short-term scheme to transfer Ukrainian refugees might very well come at the expense of a longer-term relocation mechanism. Given their current opposition, it is unlikely that Poland, Hungary or the other Visegrad countries will change their position on a permanent solidarity mechanism. A breakthrough in the negotiations over the Commission's proposal for a Migration Pact should therefore not be expected anytime soon.

However, the current willingness across Europe to welcome refugees fleeing Ukraine is less an exception to the EU's previous treatment of asylum-seekers than one might expect. Rather, it illustrates a growing politicisation of protection. In recent years, the EU's common asylum and migration policy was held together by the objective to deter arrivals, culminating in the systemic use of pushbacks at the external border. The violent prevention of entry has not halted with the arrival of Ukrainian refugees, however. In Poland, Ukrainian refugees are welcomed while asylum-seekers attempting to enter the country from Belarus continue to be denied access to protection. Given the threat of a war at their own borders and close cultural ties, it is understandable that Ukrainian refugees are welcomed in neighbouring member states. But Poland's [two distinct border policies](#) also exemplify how the EU treats asylum-seekers differently based on the political context in which they arrive.

During the Cold War era, Western countries welcomed refugees fleeing regimes of the Eastern bloc as a symbol for the attractiveness of liberal democracy. A similar [ideological thinking](#) increasingly shapes access to protection in the EU today. In the summer of 2021, EU member states evacuated Afghans who worked as local staff after Kabul fell to the Taliban. Yet only a few days before, EU interior ministers tried to [increase the number of returns](#) of Afghans who had their protection claims dismissed. Now, the *prima facie* recognition of Ukrainian refugees, i.e. their recognition without the necessity of a prior asylum procedure,

was certainly a useful and appropriate measure. But deciding on asylum claims without previous assessment can also be politicised to work in reverse, as was the case in October 2021. Then, asylum-seekers trying to enter the EU via Belarus were refused entry based on the argument that they had merely been instrumentalised to assert pressure on the EU.

Among the lessons to be learned from the EU's immediate response to the displacement of more than three million Ukrainian refugees should therefore be that a Common European Asylum System (CEAS) must not be built around the differentiation between wanted refugees and unwanted "migrants". Granting international protection should be based on the individual claim of an asylum-seeker, not on political reasoning. Any potential paradigm change to the EU's future treatment of protection-seekers should rest on this assumption.

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