

# PEACE & SECURITY

## PAIX ET SÉCURITÉ INTERNATIONALES

11

2023



EUROMEDITERRANEAN JOURNAL OF INTERNATIONAL LAW  
AND INTERNATIONAL RELATIONS



ISSN 2341-0868

DOI: [http://dx.doi.org/10.25267/Paix\\_secur\\_int.2023.111](http://dx.doi.org/10.25267/Paix_secur_int.2023.111)

**Citation:** ABRISKETA, J., “The Activation of the Temporary Protection Directive 2001/55/EC for Ukrainian Refugees: A Demonstration of its Uniqueness”, *Peace & Security – Paix et Sécurité Internationales*, No 11, 2023.

**Received:** 30 January 2023.

**Accepted:** 17 July 2023.

## THE ACTIVATION OF THE TEMPORARY PROTECTION DIRECTIVE 2001/55/EC FOR UKRAINIAN REFUGEES: A DEMONSTRATION OF ITS UNIQUENESS

Joana ABRISKETA URIARTE<sup>1</sup>

I. INTRODUCTION. II. THE TEMPORARY PROTECTION DIRECTIVE AND THE WEAKNESS OF THE TERM “MASS INFLUX”. III. THE REASONS FOR THE “NON-ACTIVATION” OF THE TEMPORARY PROTECTION DIRECTIVE DURING THE 2015 “REFUGEE CRISIS”. IV. THE REASONS FOR THE “ACTIVATION” OF THE TEMPORARY PROTECTION DIRECTIVE IN THE CASE OF THE UKRAINIAN REFUGEES OF 2022. V. THE EU COUNCIL IMPLEMENTING DECISION: THE PERSONAL SCOPE OF APPLICATION VIS-À-VIS THE PRINCIPLE OF NON-DISCRIMINATION. VI. ASYLUM SHOPPING *VERSUS* QUOTA DISTRIBUTION. VII. CONCLUSIONS: THE “HIC ET NUNC” COUNCIL IMPLEMENTING DECISION.

**ABSTRACT:** The response to the arrival of the Ukrainian population as a consequence of the Russian invasion breaks with the “deterrence paradigm” that has guided the EU’s asylum policies since the end of the Cold War. The flight from Ukraine of 650 000 displaced persons in a period of two weeks—from 24 February to 3 March 2022—led the Council of the EU to recognize “the existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict”<sup>2</sup>. The Council’s unanimous finding of the existence of a “mass influx” situation

<sup>1</sup> Associate Professor of Public International Law, University of Deusto. This article is part of the project “The European Pact on Migration and Asylum and the Mediterranean States in the post-covid context” (EURASYLUM II), financed by the Ministry of Economy and Competitiveness and the European Regional Development Fund (DER 113999RB-100), of which the author is the main researcher. A previous version of this article is published in “La activación de la Directiva de Protección Temporal 2001/55/CE para los refugiados ucranianos: un hecho aislado en el sistema de asilo de la UE”, in MARTÍN Y PÉREZ DE NANCLARES, J., and GONZÁLEZ HERRERA, D. (cords.), *Desafíos jurídicos en la gestión internacional y europea de los flujos migratorios*, Tirant lo Blanch, pp. 187-216.

<sup>2</sup> 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, OJ L71/1, of 4 March 2022, Art. 1.

had never been made before. This article seeks to examine the unprecedented response of the EU through the analysis of the Council Implementing Decision (EU) 2022/382 of 4 March 2022. It concludes that although this is a significant response, it has not succeeded in altering in a general way the approach to the asylum system –far from the principle of solidarity– of the Member States.

**KEYWORDS:** Temporary Protection Directive 2001/55/CE, Council implementing Decision (EU) 2022/382 of 4 March 2022, Ukrainian refugees, quota system.

## **LA ACTIVACIÓN DE LA DIRECTIVA DE PROTECCIÓN TEMPORAL 2001/55/CE PARA LOS REFUGIADOS UCRANIANOS: UNA DEMOSTRACIÓN DE SU SINGULARIDAD**

**RESUMEN:** La respuesta a la llegada de la población ucraniana como consecuencia de la invasión rusa rompe con el «paradigma de la disuasión» que ha guiado las políticas de asilo de la UE desde el final de la Guerra Fría. La huida de Ucrania de 650.000 desplazados en un periodo de dos semanas –del 24 de febrero al 3 de marzo de 2022– llevó al Consejo de la UE a reconocer «la existencia de una afluencia masiva a la Unión de personas desplazadas que han tenido que abandonar Ucrania como consecuencia de un conflicto armado». La constatación unánime por parte del Consejo de la existencia de una situación de «afluencia masiva» no se había producido nunca. Este artículo trata de examinar la respuesta sin precedentes de la UE a través del análisis de la Decisión de Ejecución (UE) 2022/382 del Consejo, de 4 de marzo de 2022. Concluye que, aunque se trata de una respuesta significativa, no ha logrado alterar de manera general el enfoque del sistema de asilo –alejado del principio de solidaridad– de los Estados miembros.

**PALABRAS CLAVE:** Directiva de Protección Temporal 2001/55/CE, Decisión de Implementación del Consejo (UE) 2022/382, de 4 de marzo de 2022, Refugiados ucranianos, sistema de cuotas.

## **L'ACTIVATION DE LA DIRECTIVE 2001/55/CE SUR LA PROTECTION TEMPORAIRE POUR LES RÉFUGIÉS UKRAINIENS: UNE DÉMONSTRATION DE SA SINGULARITÉ**

**RESUMÉ:** La réponse à l'arrivée de la population ukrainienne suite à l'invasion russe rompt avec le «paradigme de dissuasion» qui a guidé les politiques d'asile de l'UE depuis la fin de la guerre froide. La fuite de l'Ukraine de 650 000 personnes déplacées en l'espace de deux semaines –du 24 février au 3 mars 2022– a conduit le Conseil de l'UE à reconnaître «l'existence d'un afflux massif dans l'Union de personnes déplacées qui ont dû quitter l'Ukraine à la suite d'un conflit armé». La reconnaissance unanime par le Conseil de l'existence d'une situation d'afflux massif n'avait jamais été observée auparavant. Cet article vise à examiner la réponse sans précédent de l'UE à travers une analyse de la décision d'exécution (UE) 2022/382 du Conseil du 4 mars 2022. Il conclut que, bien qu'il s'agisse d'une réponse significative, elle n'a pas réussi à modifier fondamentalement l'approche des États membres à l'égard du système d'asile –en s'éloignant du principe de solidarité.

**MOTS CLÉ:** Directive 2001/55/CE sur l'octroi d'une Protection Temporaire, Réfugiés ukrainiens, système de quotas.

## **I. INTRODUCTION**

The invasion of Ukraine launched by Russia on 24 February 2022 and the flight from Ukraine of 650 000 displaced persons in a period of two weeks –from 24 February to 3 March 2022– led the Council of the EU to recognize “the existence of a mass influx into the Union of displaced persons

who have had to leave Ukraine as a consequence of an armed conflict”<sup>3</sup>. The Council’s unanimous finding of the existence of a “mass influx” situation had never been made before. Neither in 2011 following the Arab Spring, nor in 2015 during the Syrian refugee crisis, nor in 2021 during the arrival of the Afghan population following the Taliban takeover of power, had the Council recognized in such conclusive terms that there was a situation of a “mass influx” of people into European territory. It is therefore a response that is unprecedented in the Union.

The unexpected reaction of the EU and its Member States raises the question of whether the war in Ukraine could represent a paradigm shift in the way they will now address issues related to forced migration and international protection, or whether this is an isolated event that responds to the particular characteristics of displacement caused by Russian aggression, and does not apply to other types of situations involving mass arrivals.

In general terms, the novelty lies in the fact that the European Commission proposed the activation, for the first time since its entry into force, of the 2001 Temporary Protection Directive (hereafter used interchangeably as “TPD” or its full name)<sup>4</sup>. Having received the Commission’s proposal<sup>5</sup>, and following the procedure laid down in the Directive, the Council agreed to adopt the Implementing Decision (EU) 2022/382 on 4 March 2022 (hereinafter “Council Decision” or “Council Implementing Decision”) which activated after 21 years the application of Directive 2001/55/EC of 20 July 2001<sup>6</sup>. Thus, in terms of European Union law, both the TPD and the Implementing Decision, renewed

---

<sup>3</sup> 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, OJ L71/1, of 4 March 2022, Art. 1.

<sup>4</sup> 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, OJ L 212/12, of 7 August 2001.

<sup>5</sup> 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 Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection, COM(2022) 91 final, of 2 March 2022.

<sup>6</sup> Council Implementing Decision (EU) 2022/382... *cit.*

until March 2024<sup>7</sup>, constitute the two main legal instruments governing the reception of the population forced to flee Ukraine following the Russian invasion that began in February 2022<sup>8</sup>.

The consequences of the implementation of the Council Decision are not minor for the Member States. Eleven months after its activation – as of 24 January 2022 – according to UNHCR data, there were 4,952,938 refugees from Ukraine registered for Temporary Protection Directive or similar protection schemes residing in EU Member States<sup>9</sup>.

Nor are the effects that this response has on the European Pact on Migration and Asylum presented by the European Commission on 20 September 2020, which is being negotiated within the EU Parliament and the Council during the 2020–2024 legislature, any less significant. As the reform of the TPD is currently under discussion, which is embodied in the Pact –particularly, in the proposal for a Regulation on crisis situations and force majeure<sup>10</sup>–, it is worth reflecting on the general outline of this amendment, and whether it will go ahead in light of what happened in 2022.

Moreover, the activation of the TPD calls into question the allegations of the material inability of Member States to receive the refugees who in

---

<sup>7</sup> The second paragraph of Art. 4 of the TPD provides that if the reasons for temporary protection persist, the Council, acting by qualified majority on a proposal from the Commission, which shall itself examine any request from a Member State which submits a proposal to the Council, may decide to extend such temporary protection for a maximum of one year. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the Report on Migration and Asylum, COM(2022) 740 final, 6 October 2022, p. 2.

<sup>8</sup> As regards to soft law, the European Commission added the documents: Commission Communication, Proving operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders, OJ C 104 I/1, 4 March 2022 and 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, OJ C 126I/1, of 21 March 2022.

<sup>9</sup> UNHCR, Operational Data Portal, Ukraine Refugee Situation, <https://data.unhcr.org/en/situations/ukraine>. According to this Data Portal, the number of refugees from Ukraine recorded in Europe was of 5,967,100 (as updated 4 July 2023).

<sup>10</sup> 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, of 23 September 2020.

2015 arrived on EU territory mainly from Syria, but also from Afghanistan, Nigeria, Pakistan, Iraq, Yemen and Eritrea (1,300,000 according to Eurostat data<sup>11</sup>). Since the activation of the TPD, the causes based on the “collapse” of EU Member States’ reception systems can be contested. So are the semantic debates on what constitutes a “mass influx”<sup>12</sup>.

To this must be added criticism based on the disparity in the EU’s response to similar situations. The opening of borders to the Ukrainian population, in contrast to other groups from the Middle East and North Africa, has even led to the Council Decision being described as discriminatory and racist<sup>13</sup>. The temptation to interpret the 2022 response as granting preferential and favorable treatment to refugees from Ukraine is unavoidable. This criticism deserves a specific study in the context of Discrimination Law, which is only touched upon in this analysis.

All in all, the response to the arrival of the Ukrainian population breaks with the “deterrence paradigm” that has guided the EU’s asylum policies since the end of the Cold War<sup>14</sup>. This extraordinary response harks back to the

---

<sup>11</sup> BATHA, E., “FACTBOX—How Big is Europe’s Refugee and Migrant Crisis?”, *Thomson Reuters Foundation News*, 30 November 2016, <https://www.reuters.com/article/us-women-conference-refugee-crisis-factb-idUKKBN13P22P>, accessed 12 July 2023.

<sup>12</sup> UNHCR data indicate that by 5 March 2022, the majority of displaced persons had fled to four Member States that paradoxically were the most reluctant to share quotas in 2015: Poland (756 000), Hungary (157 000), Slovakia (101 000) and Romania (63 000).

<sup>13</sup> Defending the Decision and stating that it is not a case of discrimination: SKORDAS, A., “Temporary Protection and European Racism”, *Global Asylum Governance and the European Union’s Role*, 3 June 2022. Supporting the argument that the Decision is not discriminatory: COSTELLO, K., and FOSTER, M., “(Some) Refugees Welcome: When is Differentiating Between Refugees Unlawful Discrimination?”, *International Journal of Discrimination and the Law*, vol. 22, n. 3, 2022, pp. 244-280; CRESCENZI, A., “La crisi ucraina e l’attivazione della Direttiva 55/2001 sulla protezione temporanea: trattamenti preferenziali e doppi standard”, *Ordine internazionale e diritti umani*, n. 5, 2022, pp. 1160-1176; JACKSON, M., “Ukrainian Refugees, Race, and International Law’s Choice Between Order and Justice”, *American Journal of International Law*, vol. 116, n° 4, 2022, pp. 698-709; and KIENAST, J., FEITH TAN, N., and VEDSTED-HANSEN, J., “Preferential, Differential or Discriminatory? EU Protection Arrangements for Persons Displaced from Ukraine”, *ASILE*, 27 April 2022, <https://www.asileproject.eu/preferential-differential-or-discriminatory-eu-protection-arrangements-for-persons-displaced-from-ukraine/>, accessed 12 July 2023.

<sup>14</sup> GAMMELTOFT-HANSEN, Th. and TAN, N.F., “The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy”, *Journal on Migration and Human Security*, vol. 5, n.1, 2017,

pre–Cold War era, when overt reception and resettlement policies responded to the era of détente in which states aligned with each other according to their geopolitical and ideological agendas<sup>15</sup>.

This article seeks to analyse the nature of some of the challenges posed by the unusual application of the Temporary Protection Directive within the Common European Asylum System (CEAS). The paper is divided into seven sections. Following this introduction, the second section provides an overview of the general framework of the TPD and the weakness of the term “mass influx” contained in the Directive (II). Then, it offers an analysis of the reasons why the TPD was not activated during the 2015 crisis (III). This is followed by the reasons that led to its activation through Council Decision 2022/382 of 4 March 2022 in the Ukrainian case (IV). The fifth section analyses the nuances of the EU Council Implementing Decision’s personal scope of application vis-à-vis the principle of non-discrimination (V). The sixth section highlights that the Decision supplants the system of quotas distributed among Member States with a response based on the “free choice” of the displaced person, a concept that emerges in this specific case, and which deviates from what is proposed in the European Pact on Migration and Asylum (VI). Finally, a series of final conclusions are presented (VII).

## **II. THE TEMPORARY PROTECTION DIRECTIVE AND THE WEAKNESS OF THE TERM “MASS INFLUX”**

The TPD was adopted in 2001 in response to the scale of the exodus caused by the conflicts in the former Yugoslavia during the 1990s<sup>16</sup>. Following the entry into force of the Amsterdam Treaty in 1999, it was the first instrument on international protection to be adopted within the Union. As Di Filippo and Acosta explain, Directive 2001/55/EC provides for a system of “minimum standards” for the granting of temporary protection in the event of a mass

pp. 26-56.

<sup>15</sup> CHIMNI, B.S., “The Geopolitics of Refugee Studies: A View from the South”, *Journal of Refugee Studies*, vol. 11, n. 4, 1998, pp. 350-374 and STÜNZI, R., “Back in the USSR: the Policy Response to the Ukrainian Refugee Crisis”, *National Centre of Competence in Research On the Move Blog*, 7 April 2022, <https://nccr-onthemove.ch/blog/back-in-the-ussr-the-policy-response-to-the-ukrainian-refugee-crisis/>, accessed 12 July 2023.

<sup>16</sup> VAN SELM–THORBURN, J., *Refugee Protection in Europe. Lessons of the Yugoslav Crisis*, Martinus Nijhoff, The Hague, 1998, p. 278.

influx of displaced persons<sup>17</sup>. The minimum standards were in line with the provisions of the then Art. 63(2)(a) and (b) of the Treaty establishing the European Community on which it was based. However, following the entry into force of the Lisbon Treaty, in order to achieve greater integration in this area, Art. 78(1) and (2)(c) and (g) TFEU refer to a “common policy” as well as to a “common system” of temporary protection in the event of a mass influx –without referring to the adoption of “minimum standards”.

Moreover, Art. 80 TFEU places the principle of solidarity and the fair sharing of responsibilities between Member States at the heart of EU asylum, border and immigration policy. Thus, the legal basis that served for the adoption of the TPD is no longer in force today. The “evolved” dimension of for temporary protection according to the TFEU goes beyond what was agreed in 1999 –and subsequently in the 2001 Directive. The TPD has not been changed to accommodate to the TFEU.

The TPD establishes a rapid response mechanism to alleviate the pressure on national asylum systems. It provides a fast-track procedure, while ensuring human rights standards for displaced persons through simplified systems. It institutes a practical mechanism to temporarily protect groups of persons seeking international protection and circumvents the requirement for individual status determination. A proposal made by the Commission must then be adopted by a qualified majority within the Council<sup>18</sup>. It thus provides a general framework for the deployment of possible temporary protection, which is not established automatically, since it requires the Council, acting by qualified majority, and on the basis of a Commission proposal, to agree that a situation of mass influx exists.

Indeed, the factual situation that allows the Directive to be activated is the existence of a situation of mass influx of persons. For the purposes of applying the Directive, “mass influx” is defined in Article 2 (d) as follows:

the arrival in the Community of a large number of displaced persons from a given country or geographical area, whether their arrival in the Community occurred spontaneously or with the help of, for example, an evacuation programme.

<sup>17</sup> DI FILIPPO, M., and ACOSTA, M.A., “La protezione temporanea, da oggetto misterioso a realtà operative: aspetti positivi, criticità, prospettive”, *Ordine Internazionale e Diritti Umani*, n. 4, 2022, pp. 926-956.

<sup>18</sup> Art. 5 of the Temporary Protection Directive.



As ARENAS points out, “large-scale displacement becomes the essence of the concept”<sup>19</sup>. The specific trigger of activation of the TPD –which is mass influx– distinguishes and separates it from other protection mechanisms within the European asylum system. It is instituted as a specific instrument to legally address the problem of large-scale exiles, and at the same time, is an integral part of the set of Directives and Regulations that make up the CEAS<sup>20</sup>.

However, neither art. 2 of the TPD nor any other provision of the TPD gives any further indication of what constitutes a situation of mass influx. The term can be understood as referring to a large number of persons arriving on the territory of the Union, for a short period of time, and coming from a given country or geographical area. According to the UNHCR, “mass influx” cannot not be understood in absolute terms, but in terms of the resources of the receiving state<sup>21</sup>. The increase in the absolute number of arrivals over a certain period of time, the number of Member States affected by the arrivals, as well as the ratio between the number of arrivals, the population and the resources of the Member States concerned could be indicators of the existence of a mass influx situation<sup>22</sup>.

It has to be noted that the absence of unanimity on the characterization of “mass influx” of the precedent crisis did not avoid the qualified majority in the Council regarding the adoption of the 2015 Decisions for relocation that applied to Italy and Greece. In fact, the first article of Decision (EU) 2015/1601 of the Council, of 22 September 2015, referred in vague terms to “the situation regarding massive inflows of third country nationals into

---

<sup>19</sup> ARENAS HIDALGO, N., *El sistema de protección temporal de desplazados en la Europa comunitaria*, University of Huelva, 2005, p. 99-102.

<sup>20</sup> Idem.

<sup>21</sup> UNHCR, *Annotated Comments on Council Directive 2001/55/EC of 20 July 2001, on minimum standards for giving 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*, Geneva, 19 May 2003.

<sup>22</sup> SKORDAS, A., “Temporary Protection Directive 2001/55/EC”, in Thym, D., and Hailbronner, K., (eds.), *EU Immigration and Asylum Law. Article-by-Article Commentary*, Nomos, 3<sup>a</sup> ed., 2022, pp. 1177-1227.

Member States<sup>23</sup>. Equally, the European Court of Justice had already characterized the situation as a “massive inflow of third country nationals”<sup>24</sup>.

In any case, it is up to the Commission to make “an estimation of the scale of movements of displaced persons”<sup>25</sup>. In this regard, the Report on the TPD requested by the Commission points out, among its weaknesses, that the absence of indicators and a clear definition of what constitutes a “mass influx” has one consequence: the application of high thresholds and restrictive interpretations. This is what has led to the non-activation of the TPD until the Ukrainian case. The report also opens the debate on whether absolute or relative numbers could be considered, on the sudden growth of arrivals compared to other periods, or on occupancy figures in Member States’ reception centers<sup>26</sup>. We will come back to this point later. It is only to be noted for the moment that the proposal for a Regulation on crisis situations and force majeure of 2022, presented under the European Pact on Migration and Asylum, which is intended to replace the TPD, does not provide an answer to these questions<sup>27</sup>.

As is well known, although the doctrine assessed the approval of the TPD in positive terms, in practice it was never implemented during the first two decades of its validity. Its lack of implementation is precisely what has contributed to accentuating its weaknesses. Unlike the rest of the instruments of the CEAS, which were reformed in 2011 to adapt to new requirements, the TPD was not reformed in 2011 because it had never been adopted, and was thus disregarded when the rest of the CEAS was reformed.

As regards to the applicable measures, the TPD only prescribes minimum standards, which means that the responses of the Member States may differ, both when it is transposed and when it is implemented. This is reflected by

---

<sup>23</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248/80, 24 September 2015.

<sup>24</sup> European Court of Justice, [Grand Chamber], *Slovak Republic and Hungary v. Council of the European Union*, 6 September 2017, ECLI:EU:C:2017:631, paras. 115 and 117.

<sup>25</sup> Art. 5 (2) (c) of the Temporary Protection Directive.

<sup>26</sup> BEIRENS, H., MAAS, S., PETRONELLA, S., VELDEN, M., *Study on the Temporary Protection Directive. Final Report*, Report prepared for the European Commission, 2016, pp. 16 y 99.

<sup>27</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure... cit.*

the fact that it does not lay down any procedural rules, nor does it contain any provisions on the eligibility or exclusion criteria for granting temporary protection status, or even on the way in which persons granted temporary protection must register. Nor are there any rules on the sharing of data between Member States or on the role of agencies in this context. All of these weak points have been highlighted in relation to the Ukrainian population protected by the Directive.

### **III. THE REASONS FOR THE “NON-ACTIVATION” OF THE TEMPORARY PROTECTION DIRECTIVE DURING THE 2015 “REFUGEE CRISIS”**

In 2011, the fall of Tunisia’s former President Zine el-Abidine Ben Ali led thousands of Tunisians to flee the country. Similarly, the end of the Gaddafi era in Libya and the military intervention in the country led to an increase in the number of asylum seekers arriving at European borders. Alarmed by the escalation of arrivals from North Africa, the Italian government –with the support of Malta– drew the attention of the Commission to propose the activation of the Temporary Protection Directive in 2011<sup>28</sup>. However, the EU Council rejected the Italian government’s call on the grounds that the conditions for its activation were not met.

Nor was it implemented in 2015 when approximately 1,300,000 applicants for international protection, mainly Syrians, arrived on Greek shores, fleeing armed conflict<sup>29</sup>. States closed internal borders, tightened migration controls, and introduced national measures that called into question common EU

---

<sup>28</sup> NASCIBENE, B., DI PASCALE, A., “The ‘Arab Spring’ and the Extraordinary Influx of People who Arrived in Italy from North Africa”, *European Journal of Migration and Law*, n. 13 (4), 2011, pp. 341-360.

<sup>29</sup> 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?”, *European Journal of Migration and Law*, n. 18, 2016, pp. 1-33; GENÇ, H. and SIRIN, N., “Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union”, *International Journal of Political Science and Urban Studies*, 2019, vol. 7, n. 1, pp. 1-18 and DI FILIPPO, M., and ACOSTA, M.A., “La protezione temporanea, da oggetto misterioso a realtà operative: aspetti positivi, criticità, prospettive”... *cit.*, p. 933.

norms and human rights standards in the Schengen area<sup>30</sup>. Instead, the Council turned to relocation Decisions under a quota system mentioned above<sup>31</sup>.

In her book *Temporary Protection in Law and Practice*<sup>32</sup>, Ineli Ciger outlines the reasons why the TPD was not implemented during the first two decades of its existence. These are summarized as follows: a) the first reason for the non-implementation of the Directive is due to the vagueness of its terms, and the lack of objective indicators to determine the existence of such a mass influx; b) the second reason is due to the idea that the activation of the temporary protection mechanism requires complex procedures for which there was insufficient time to react; c) in line with the above, it is difficult to achieve a qualified majority in the Council in a situation of mass influx given that it affects a small number of Member States; d) in addition, some states argue that refugees from Syria were not seeking only “temporary” protection<sup>33</sup>; e) activation of the Directive would trigger a “pull effect” on other migrants who become incentivized to entering the EU; f) given that the Directive provides a set of rights for those who benefit from it, some states might be reluctant to accept its activation; and finally, g) Member States’ asylum systems could cope with the arrival of a significant number of refugees with the support of the European institutions without the need to activate the TPD<sup>34</sup>.

<sup>30</sup> GAMMELTOFT–HANSEN, Th. and HOFFMANN, F., “Mobility and Legal Infrastructure for Ukrainian Refugees”, *International Migration*, n. 60, 2022, pp. 213-216.

<sup>31</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239/146, 15 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248/80, 24 September 2015.

<sup>32</sup> INELI CIGER, M., *Temporary Protection in Law and Practice*, Brill, 2017. See also the reasons why the Directive was not triggered before in FILIPPO, M., and ACOSTA, M., “La protezione temporanea da oggetto misterioso a realtà operative: aspetti positivi, criticità, prospettive”... *cit.*, p. 936.

<sup>33</sup> SCHULTZ, J. et al., “Collective Protection as a Short-Term Solution: European Responses to the Protection Needs of Refugees from the War in Ukraine”, *EU Immigration and Asylum Law and Policy*, 8 March 2022, <https://eumigrationlawblog.eu/collective-protection-as-a-short-term-solution-european-responses-to-the-protection-needs-of-refugees-from-the-war-in-ukraine/>, accessed 12 July 2023.

<sup>34</sup> Contrasting these ideas in relation to Ukraine can be read in 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, <https://eumigrationlawblog>.

This set of reasons reiterated over time even led to the view that the TPD had become obsolete<sup>35</sup>. Not surprisingly, the European Pact on Migration and Asylum proposes the repeal of the TPD<sup>36</sup> and its replacement by the proposal for a Regulation on crisis situations and force majeure<sup>37</sup>. In the same vein, the proposal for a Regulation of the Parliament and of the Council on Asylum and Migration Management (RAMM), another of the instruments contained in the European Pact on Migration and Asylum, recommends the repeal of the Temporary Protection Directive:

Given that the proposal for a Regulation on crisis and force majeure in the area of migration and asylum also provides for specific rules for relocation and sponsorship of returns in order to address crisis situations in structural terms, the Commission intends to withdraw the proposal for a Regulation establishing a crisis relocation mechanism of September 2015 and repeal the Temporary Protection Directive<sup>38</sup>.

Thus, the non-activation of the Directive for twenty-one years had led to the announcement of its repeal through the European Pact. But unexpectedly it became a useful mechanism. Member States unanimously recognised that with more refugees arriving in Ukraine's neighboring countries – mainly

---

[eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/](#), accessed 12 July 2023.

<sup>35</sup> INELI CIGER, M., “Has the Temporary Protection Directive become Obsolete?”, in Bauloz, C., Ineli Ciger, M., Singer, S., and Stoyanova, V., (eds.), *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common European Asylum System*, Brill, 2015, pp. 225-247.

<sup>36</sup> “[...] Given the development of the concepts and rules of qualification for international protection and in view of the fact that the new legislation would lay down rules for granting immediate protection status in crisis situations, the Temporary Protection Directive would be repealed”, in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM(2020) 609 final, 23 September 2020, p. 11.

<sup>37</sup> 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... *cit.*

<sup>38</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM(2020) 610 final, 23.9.2020, p. 7.

Poland – in the first two weeks of the invasion than at the height of the crisis in 2015, activation of the TPD was the appropriate response.

#### **IV. THE REASONS FOR THE “ACTIVATION” OF THE TEMPORARY PROTECTION DIRECTIVE IN THE CASE OF THE UKRAINIAN REFUGEES OF 2022**

The reasons given to explain the non-activation of the TPD were not given in the case of the arrival of Ukrainians due to the occupation of their country by the Russian army. On the contrary, at the extraordinary Council of 27 February 2022, the Ministers of Justice and Home Affairs agreed on the establishment of a temporary protection mechanism for the reception of Ukrainian nationals<sup>39</sup>. On 2 March, the European Commission proposed the activation of the TPD mechanism<sup>40</sup>, together with a guide on its application at the external borders<sup>41</sup>. The Council, without delay, expressed its support for this proposal on 3 March, which it formally adopted unanimously on 4 March<sup>42</sup>.

The reasons leading to the activation of the TPD can be condensed into three main ideas: first, the strong condemnation of Russian military aggression against a country neighboring the EU; second, the short time span and the scale of the arrivals on European territory; and third, the fact that Ukrainians enjoyed visa-free access to and movement within the territory of the EU.

The focus of the activation of the Directive adopted by the Council is not only the verification of a situation of mass influx. Compared to other contexts of mass arrivals, the Ukrainian case highlights the reprobation of the facts that caused the forced displacement. The Commission “condemns in the strongest terms Russia’s unprovoked and unjustified military aggression against Ukraine” and stresses that “it is in serious violation of international

<sup>39</sup> Extraordinary Justice and Home Affairs Council, 27 February 2022, <https://www.consilium.europa.eu/es/meetings/jha/2022/02/27/>, accessed 12 July 2023.

<sup>40</sup> European Commission, Proposal for a Council implementing Decision..., COM(2022) 91 final... *cit.*

<sup>41</sup> European Commission, Commission Communication Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders... *cit.*

<sup>42</sup> Extraordinary Justice and Home Affairs Council, 27 February 2022... *cit.*

law and the principles of the United Nations Charter, with the intention of undermining European and global security and stability”<sup>43</sup>.

In the same vein, the strong terms of condemnation issued by the European Council take on a significant weight. The first five recitals of the Council’s Implementing Decision of 4 March 2022 condemn in the “strongest terms” the invasion, “which seeks to undermine European and global security and stability”<sup>44</sup>. At the same time, it underlines that the conflict “has implications for the Union, including the likelihood of severe migratory pressure on its eastern borders as the conflict develops”<sup>45</sup>. It follows from the Council Decision that to a large extent the activation of the Directive is, at least partly, a form of response to Russia’s military invasion, and thus to a “common enemy”. Some authors point out that if the aggressor had been another state it would be doubtful to conclude that the EU would have activated the Directive in the same terms<sup>46</sup>.

The second idea that gains momentum is related to the “short” time span in which arrivals from Ukraine take place. This is seen as another reason for activating the Directive. The Commission proposal notes the existence of a situation of a mass influx of displaced persons from Ukraine and proposes the activation of the Directive only ten days after the outbreak of the conflict in Ukraine. Indeed, a fundamental difference between the context of the 2015 refugee crisis and that of the war in Ukraine relates to the time frame in which the arrivals take place. The Council’s own Implementing Decision indicates that as of 1 March 2022 –only five days after the invasion– “more than 650 000 displaced persons had arrived in the Union from Ukraine through via Poland, Slovakia, Hungary and Romania”<sup>47</sup>.

Moreover, the Decision refers to the “implications [of the conflict] for the Union, including the likelihood of high migratory pressure on its Eastern borders as the conflict unfolds”<sup>48</sup>. The Decision seems to have forecasted a

<sup>43</sup> European Commission, Proposal for a Council implementing Decision..., COM(2022) 91 final... *cit.*, p. 1.

<sup>44</sup> Council Implementing Decision (EU) 2022/282... *cit.*, Third Recital.

<sup>45</sup> *Ibidem*, Fifth Recital.

<sup>46</sup> INELI CIGER, M., “5 Reasons Why: Understanding the Reasons Behind the Activation of Temporary Protection Directive in 2022”... *cit.*, p. 3.

<sup>47</sup> Council Implementing Decision (EU) 2022/282... *cit.*, Fifth Recital.

<sup>48</sup> *Idem*.

mass influx by predicting that the number of migrants arriving at European borders was expected to increase<sup>49</sup>. In contrast, during the refugee crisis of 2015 the institutions did not forecast and instead they focused back in time to the year 2011, when the outbreak of the Syrian conflict began. And while the arrivals of migrants in Europe from previous crises took four years, the Ukrainians began arriving in the EU within one month of the outbreak of the war. Thus, the Decision's prediction of mass influx and migratory pressure was affirmed.

Thirdly, Ukrainians enjoyed the possibility of entering and moving within the Schengen area without a visa<sup>50</sup>. They could reside in the EU for a maximum period of 90 days (short-term stays). In fact, both the Commission proposal and the Council Decision refer to the fact that Ukraine is a visa-free country for holders of Ukrainian biometric passports<sup>51</sup>. Accordingly, the Council Decision finds an easy way of implementation by the fact that before the 2022 invasion most Ukrainians had a biometric passport. There was no need to suspend the Dublin III Regulation or to provide for national derogations. To paraphrase Moya, “a nadie se le escapa que la exención de visado estaba prevista para hacer turismo o visitar familiares o conocidos, pero no para buscar asilo (o trabajo)”<sup>52</sup>. It is patently obvious that the visa exemption was envisaged for tourism purposes or to visit relatives but not to seek asylum or

<sup>49</sup> *Idem*.

<sup>50</sup> Council Decision of 13 May 2013 on the conclusion of the Agreement with Ukraine amending the Agreement with Ukraine on the facilitation of the issuance of visas, OJ L 168/10, 20 June 2013, and Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (Annex I to the Regulation) and those whose nationals are exempt from that requirement for stays no more than 90 days in any 180-day period (Annex II to the Regulation), (codification) OJ L 303/39, 28 November 2018.

<sup>51</sup> European Commission, Proposal of Implementing Decision... *cit.*, p. 1.

<sup>52</sup> MOYA, D., “La crisis humanitaria de Ucrania debe forzar avances inesperados en el sistema de asilo europeo”, *CIDOB Opini3n*, n. 713, 2022. On the other hand, those who are not exempt from the visa requirement, because they do not hold a biometric passport and do not hold a short-stay visa, a long-stay visa or a residence permit issued by a Member State, and are entitled to have access to temporary protection or adequate protection under national law, will be provided with every facility to obtain the necessary visas, with the length of the procedures being reduced as far as possible, given the emergency situation. Cf. Communication from the Commission on Operational guidelines... *cit.*, p. 8.



work. Nevertheless, this important nuance was not brought up in the Council's debates. And from a legislative point of view, the provisions on the scope of the visa remained unchanged.

As is well known, when a state is involved in an armed conflict, it is common practice for Member States to close their diplomatic representations. For nationals of countries involved in armed conflicts, obtaining a visa through embassies is virtually impossible. Neither EU law nor the ECHR obliges Member States to grant a visa to nationals of third countries fleeing conflict or violence<sup>53</sup>. On the other hand, in the present case, the possibility of seeking international protection at the external borders does not even arise since Ukraine shares its border with the European territory.

## **V. THE EU COUNCIL IMPLEMENTING DECISION: THE PERSONAL SCOPE OF APPLICATION VIS-À-VIS THE PRINCIPLE OF NON-DISCRIMINATION**

The personal scope of application of the TPD is limited to “displaced persons” as defined in Art. 2:

third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, *who may fall* within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights<sup>54</sup>.

In defining displaced persons, the Directive provides that they are those “who may fall within the scope of Article 1 of the Geneva Convention”. Consequently, the Directive refers to persons who have had to leave their country of origin in terms that go beyond the 1951 Geneva Convention. In fact, the Council Implementing Decision is addressed to those fleeing Ukraine on the grounds of an armed conflict, a profile that does not fit the strict

---

<sup>53</sup> Judgement of the European Court of Justice [Grand Chamber], *X and X v. Belgium*, ECLI: EU:C: 2017:173, 7 March 2017 and European Court of Human Rights [Grand Chamber], *M.N. and others v. Belgium*, n. 3599/18, 5 May 2020.

<sup>54</sup> Emphasis added.

definition of the 1951 Geneva Convention<sup>55</sup>. It can be argued in favour of this interpretation that the definition places a special burden on the fact that “safe and durable return is impossible”. What is relevant is the impossibility of a safe and durable return to Ukraine. This condition renders irrelevant the fact that the “country or region of origin” of the displaced person is Ukraine. We will come back to this, one of the most controversial points of the Decision, as it would accordingly apply in the same terms to Ukrainian and non-Ukrainian nationals.

In addition, the list of groups of persons covered by the Directive is not exhaustive as it prefaces the connector “in particular” before listing the groups of protected persons – “those who have fled areas of ongoing armed conflict or violence” and “those who have been or are at serious risk of being exposed to systematic or widespread violation of human rights”. Therefore, other groups of persons could also fall within the definition of displaced persons covered by the Directive<sup>56</sup>.

On this basis, the Implementing Decision addressing this situation of Ukrainian displaced persons contains only four articles, preceded by 27 recitals. The first article on the subject matter states very succinctly that “It is established that there is a massive influx into the Union of displaced persons who have been forced to leave Ukraine as a result of armed conflict”<sup>57</sup>. The second article then deals with the personal scope of application. The Implementing Decision covers three groups of persons who were forced to move as a result of the military invasion by the Russian armed forces as of 24 February 2022. The first group includes three categories of persons: Ukrainian nationals residing in Ukraine before 24 February 2022; stateless persons or nationals of third countries other than Ukraine enjoying international protection or equivalent national protection in Ukraine before 24 February 2022; and members of the families of such persons<sup>58</sup>. The inclusion of stateless people and those who

<sup>55</sup> MOYA, D., “La crisis humanitaria de Ucrania...”. *cit.*

<sup>56</sup> PEERS, S., “Temporary Protection in the EU? Q and A”, *EU Law Analysis*, 27 February 2022, <https://eulawanalysis.blogspot.com/2022/02/temporary-protection-for-ukrainians-in.html>, accessed 12 July.

<sup>57</sup> Art. 2 refers to the persons to whom the temporary protection applies; art. 3 refers to cooperation and the exchange of information among Member States; and art. 4 about the entry into force of the Decision.

<sup>58</sup> Art. 2 (1) of the Council Implementing Decision (EU) 2022/382... *cit.*

previously secured protection in Ukraine under the 1951 Refugee Convention or equivalent national protection is praiseworthy as it allows them freedom of movement and the choice to seek protection in EU Member States.

The second group of persons to whom temporary protection applies consists of “stateless persons and nationals of third countries other than Ukraine *who can prove* that they were legally resident 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 to their country or region of origin in a safe and durable manner”<sup>59</sup>. According to the Decision, this group is not treated in the same way as Ukrainian nationals since they are required to prove, first, that they were legally resident in Ukraine before 24 February, and second, that they cannot return to their country or region of origin in a safe and durable manner. Furthermore, in these cases, Member States can choose whether to apply the TPD or “adequate protection under national law”.

In addition, there is a third group of persons who could be protected by the Decision if Member States so decide. These are stateless persons and nationals of third countries other than Ukraine, “*who were residing legally in Ukraine* and who are unable to return in safe and durable conditions to their country or region of origin”<sup>60</sup>. Therefore, EU Member States are not required under the Implementing Decision to extend temporary protection to most stateless people who were living in Ukraine. If they had no proof of permanent residence or if Member States did not allow the triggering of the Implementing Decision for this third group, they may need to apply for asylum or another form of protection according to the laws of their host

---

<sup>59</sup> Art. 2 (2) of the Council Implementing Decision (EU) 2022/382 and its Statements 12 y 13 (emphasis added)... *cit.*

<sup>60</sup> *Ibidem*, Art. 2 (3). The Spanish government decided to extend the scope of application of temporary protection not only to persons of other nationalities or stateless persons who were legally residing in Ukraine before 24 February, but also to Ukrainian citizens residing in Spain. These are Ukrainian nationals who had arrived in Spain before the start of the conflict or were in an irregular situation here, including asylum seekers with negative decisions, who, as a result of the conflict, cannot return to the country. On the measures taken by Spain, see AZCÁRRAGA, C., “La ‘afluencia masiva de personas desplazadas’ desde Ucrania y su protección temporal en la Unión Europea y en España: la activación de la Directiva 2001/55/CE”, *Revista General de Derecho Europeo*, n. 57, 2022.

country. And, as explained by this could pose serious issues in terms of their access to rights and services and their ability to obtain protection<sup>61</sup>.

By including certain categories of persons on the basis of certain criteria, the Decision excludes other categories – *inclusio unius, exclusio alterius*. In particular, the criteria set out in the Decision exclude two types of groups: Ukrainians who were “not residing” in Ukraine before the invasion; and stateless persons and third-country nationals who, not enjoying international protection or equivalent, cannot prove that they were lawfully resident in Ukraine before the invasion. The latter could be protected if EU Member States, in accordance with their national law, decide to implement the Decision.

Even those fleeing Russia because they dissent from Putin’s regime and have a fear of persecution could be considered victims of the conflict (and are not protected by the Implementing Decision). Some States have even cut off legal means of entry under the pretext of sanctions against Russia: the Czech Republic and Lithuania have halted visa processing for Russian citizens<sup>62</sup>.

As a consequence, the Implementing Decision leaves a number of persons at the margins of the law – for whom there is no good reason why they should not be protected. It is a discriminatory decision insofar as the beneficiary of temporary protection must meet certain requirements that are not necessarily related to the armed conflict as such. In other words, the main purpose of the Decision is to grant temporary protection to those fleeing armed conflict, but it restricts its application to certain categories of displaced persons, not to “all persons” displaced by the conflict. Other groups of persons residing in Ukraine during the aggression are excluded from the Decision. For the regime to be non-discriminatory, it would have to produce the same result for everyone who is displaced “as a result of the military invasion by Russian armed forces”<sup>63</sup>.

As is well known, most national, regional and international human rights regimes include the principle of non-discrimination. This principle is even considered to constitute a norm of *jus cogens*. The principle of non-

<sup>61</sup> NASH, C., “Stateless People and Refugees Fleeing Ukraine”, *EU Law Analysis*, 20 March 2022, <https://eulawanalysis.blogspot.com/2022/03/>, accessed 12 July 2023.

<sup>62</sup> “Ireland Lifts Visa Requirements for Ukrainian Citizens”, *Schengenvisa News*, 1 March 2022, <https://www.schengenvisa.info.com/news/ireland-lifts-visa-requirements-for-ukrainian-citizens/>, accessed 12 July 2023.

<sup>63</sup> Art. 2 (1) of the Council implementing Decision (EU) 2022/382.

discrimination requires that persons in comparable or “substantially similar” situations be treated equally unless there are objective justifications for differential treatment. Such protection is enshrined in Art. 14 ECHR, Art. 21 CFREU, Art. 2 (2) of the Convention on All Forms of Racial Discrimination, Art. 3 of the Geneva Convention relating to the Status of Refugees, Art. 26 of the Covenant on Civil and Political Rights, and Art. 2 (2) of the Covenant on Economic, Social and Cultural Rights. These provisions contain a list of areas of protection that cannot be invoked to justify differential treatment.

Under Art. 14 ECHR, the discrimination test comprises two elements: whether there has been a difference in treatment between persons in like or similar situations; and whether such differential treatment is justified in order to achieve a legitimate aim in a manner that is reasonably proportionate to that aim<sup>64</sup>. At the same time, preferential treatment of groups of non-nationals is an accepted norm in the context of migration control—the rules on safe third countries are eloquent in this respect. However, while equal treatment of all non-nationals is not required according to EU Law, there is a limitation on the permissibility of such differential treatment that must be accommodated within Article 14 of the ECHR. The ECtHR has emphasized repeatedly that only “very weighty reasons” could justify such differential treatment<sup>65</sup>. As stated by Prantl and Kysel, “in the context of precipitous flight from the ongoing war of aggression, it seems impossible that States identify ‘very weighty reasons’ for making nationality-based distinctions in who can seek refuge outside Ukraine’s borders”<sup>66</sup>.

Not only nationality, but also race has been a ground for restricting entry of people seeking to cross Ukraine’s border. Indeed, during the first months after the invasion, African descent and racial and ethnic minorities claimed that they were being subjected to discriminatory treatment as they fled Ukraine. The UN Working Group of Experts of People of African Descent declared that several individual and media reports indicated regulation of Ukrainian trains,

---

<sup>64</sup> KIENAST, J., FEITH TAN, N., and VEDSTED-HANSEN, J., “Preferential, Differential or Discriminatory?...” *cit.*

<sup>65</sup> European Court of Human Rights, *Andrejeva v. Latvia*, 18 February 2009, no. 55707/00, p. 87.

<sup>66</sup> PRANTL, J. and KYSEL, I., “Generous, but Equal Treatment? Anti-Discrimination Duties of States Hosting Refugees Fleeing Ukraine”, *EJIL:Talk! Blog of the European Journal of International Law*, 2 March 2022, <https://www.ejiltalk.org/generous-but-equal-treatment-anti-discrimination-duties-of-states-hosting-refugees-fleeing-ukraine/>, accessed 12 July 2023.

buses, as well as borders themselves, to deny or delay freedom of movement to people of African descent until all white migrants and asylum seekers were accommodated. Ongoing measures to force people of African descent to the back of queues fleeing the armed conflict were also indicated<sup>67</sup>.

On another level, the Council Decision introducing temporary protection for Ukrainians confers preferential treatment in favour of Ukrainian citizens and their families over applicants for protection coming from other conflicts, such as Syria in 2015 and Afghanistan in 2021<sup>68</sup>.

Finally, when a person leaves his or her country of origin and/or habitual residence because he or she intends to apply for asylum, there is a period of time until he or she finally succeeds (or fails) in obtaining asylum status, in which the person is considered a migrant. This legal status is incomplete from the point of view of the law, in the sense that it requires the addition of the qualifier “regular” or “irregular” in order for the rules to be applied. Given the *prima facie* difficulties in proving refugee qualification, before that moment the person is considered an “irregular” migrant if he or she enters European territory in breach of the rules on entry and stay<sup>69</sup>. This being the case, if the TPD had not been activated, those who left Ukraine would have been considered both “applicants for international protection” – subject to the individualized process that this entails – and probably at the same time “irregular migrants”. The immediate protection granted by the Implementing Decision is what distinguishes Ukrainians from Syrians and Afghans, among others, who are seeking international protection in the EU.

<sup>67</sup> Office of the High Commissioner for Human Rights, *Ukraine: UN Experts Concerned by Reports of Domination Against People of African Descent at Border*, 3 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-experts-concerned-reports-discrimination-against-people-african>, accessed July 2023.

<sup>68</sup> The European Union Agency for Asylum estimates that after the Syrian population (117.000 petitions), the afghans were the ones who lodged the largest number of applications (102.000), *Latest Asylum Trends-Annual Overview 2021*, <https://euaa.europa.eu/latest-asylum-trends-annual-overview-2021#:~:text=The%20overall%20EU%2B%20recognition%20rate,first%20instance%20decisions%20were%20negative>, accessed 12 July 2023.

<sup>69</sup> DE LA ORDEN, G., *El derecho de asilo ante la criminalización de la migración irregular en las fronteras exteriores de la Unión Europea. España como caso de estudio*, University of Deusto, Bilbao, 2022.

## **VI. ASYLUM SHOPPING VERSUS QUOTA DISTRIBUTION**

The TPD was understood as an instrument proposing a measure of inter-state solidarity. It responded to the debates that had arisen between Member States during the 1990s. Germany and Austria had received the vast majority of refugees fleeing the wars in the former Yugoslavia, and as a result, unsuccessfully pushed for compulsory solidarity in the framework of the fledgling European asylum system<sup>70</sup>. Two decades later, Germany maintains this position, as it emphasized during its EU presidency in the second half of 2020, in relation to crisis situations and migratory pressures<sup>71</sup>.

With the arrival of 650 000 forcibly displaced persons from Ukraine in three weeks –mostly to Poland, Hungary, Slovakia and Romania– it was predictable that the debate would focus on the scope of the solidarity mechanism and that the Council would push for equitable efforts among member states to accommodate displaced persons<sup>72</sup>. However, the debate on solidarity–inspired quota sharing hardly took place. In practice, Member States gave up on the equitable effort set out in Recital 23 of the TPD and on the application of Art. 11 of the TPD, which implicitly assumes the establishment of a system of authorizations for Member States to receive applicants for temporary protection. In this sense, FILIPPO and ACOSTA remain that the TPD lays down a solidarity mechanism among Member States “which should be specified in the Decision on the activation of the temporary protection and the acts related to it”<sup>73</sup>.

The confrontation between Hungary, Poland and the Czech Republic in the Council during the 2015 crisis over their refusal to accept the quota system

<sup>70</sup> NOLL, G., “Sharing the Burden?”, in Noll, G., (ed.), *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, Brill, 2000, pp. 263-351.

<sup>71</sup> German Presidency, “Presidency progress report on key elements of a European Migration and Asylum policy and the way forward”, 2020, <https://www.eu2020.de/blob/2427378/79ff059a5f9cea1ed904aaf5cc15fa36/12-15-pm-viko-jha-fortschrittsbericht-en-data.pdf>, accessed 12 July 2023.

<sup>72</sup> In October 2022, according to available Member State data, Poland granted the highest number of temporary protection statuses in favour of the Ukrainian population (54,520), followed by Germany (37,595), Italy (8,620) and Bulgaria (7,250). EUROSTAT, *Ukrainians granted temporary protection in October*, 9 December 2022, <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221209-1>.

<sup>73</sup> FILIPPO, M., and ACOSTA, M., “La protezione temporánea...” *cit.*, p. 931.

was not present on this occasion either. So the Council Implementing Decision is silent on the distribution of displaced persons by quotas (although they are permitted under Article 25 of the TPD, and instead employs in practice a system of “free choice” in favour of beneficiaries of temporary protection. The free choice solution has the advantage of allowing beneficiaries to choose which country to go to, while sparing the state authorities from having to carry out complex relocation procedures<sup>74</sup>.

Thus, the surprise of the awakening of the “sleeping beauty”, as it has been called by some<sup>75</sup>, was not only due to the fact that it was activated, but also to its very content. Instead of articulating an equitable distribution between Member States, it provides for a system of choice of country of destination for displaced persons. The free choice approach is, in Peers’ words, a “Copernican turn” from the Dublin system’s approach to the allocation of responsibility for examining applications for international protection<sup>76</sup>.

The non-allocation of quotas to member states in principle simplifies the complex mechanism for the reception and relocation of refugees, and avoids the disputes over the allocation of quotas that opened so many wounds in the 2015 crisis. The Decision allows beneficiaries to choose the country in which to seek refuge and thus moves away from the Council Decisions adopted in 2015 in the context of that “refugee crisis” which called for mandatory relocation and a quota system<sup>77</sup>.

In fact, the solidarity clause of the TPD is hardly considered in the Council Decision, which refers to this principle expressly only twice in the Preamble and without giving it any specific meaning<sup>78</sup>. According to the TPD, Member

<sup>74</sup> Thym, D., “Temporary Protection for Ukrainians: the Unexpected Renaissance of ‘Free Choice’”, *EU Immigration and Asylum Law and Policy Blog*, 7 March 2022, <https://eumigrationlawblog.eu/temporary-protection-for-ukrainians-the-unexpected-renaissance-of-free-choice/>, accessed 14 July 2023.

<sup>75</sup> RASCHE, L., “Implementing Temporary Protection in the EU. From Crisis Response to Long-Term Strategy”, *Hertie School Jaques Delors Centre*, June 2022, [https://www.delorscentre.eu/en/detail/publication/temporary-protection#:~:text=When%20transitioning%20from%20crisis%20response%20to%20implementing%20temporary%20protection%2C%20the,see%202.1\)%20and%20require%20comprehensivem](https://www.delorscentre.eu/en/detail/publication/temporary-protection#:~:text=When%20transitioning%20from%20crisis%20response%20to%20implementing%20temporary%20protection%2C%20the,see%202.1)%20and%20require%20comprehensivem), accessed 14 July 2023.

<sup>76</sup> PEERS, S., “Temporary Protection in the EU?...” *cit.*, p. 7.

<sup>77</sup> See the references to 2015 Relocation Decisions in Note 31.

<sup>78</sup> Arts. 24 to 26 of the TPD. Specifically, the most striking section of the Directive is contained in Art. 25, whose first paragraph states that “The Member States shall receive persons who are



States “shall inform the Commission of their reception capacity”, and shall “receive persons eligible for temporary protection in a spirit of Community solidarity”<sup>79</sup>. It even foresees that Member States shall indicate reception possibilities in numerical or general terms. However, the Council Decision does not specify which countries will receive displaced persons, nor does it establish any quotas. Its articles refer only once to solidarity, which can be considered insufficient: “Member States should also contribute to a common understanding of the situation in the Union by sharing relevant information through the integrated policy response to crises”<sup>80</sup>.

Moreover, the Council Implementing Decision not only disregards the quota system but also ignores the proposal for a Regulation on crisis situations and force majeure contained in the 2020 European Pact on Migration and Asylum. This affirms that there is a need for “a well-managed migration system which, in times of crisis caused by a mass influx of persons into the territory of a Member State, prioritizes the principle of relocation as a default solidarity measure, in order to rapidly alleviate the pressure on that Member State”<sup>81</sup>.

It should be recalled here that the European Pact on Migration and Asylum presented by the European Commission on 20 September 2020 contains five legislative proposals. Among them, in the framework of this study, the proposal for a Regulation on crisis situations and force majeure stands out as it specifically addresses, through a separate instrument, crisis situations<sup>82</sup>. It constitutes an intensification of the solidarity mechanism contained in another legislative proposal, the so-called Proposal for a Regulation on asylum and

---

eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. [...]”. Equally noteworthy is Art. 5 (3), which provides that “The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive” [...]. See also in this respect, FILIPPO, M., and ACOSTA, M., “La protezione temporanea...” *cit.*, p. 931.

<sup>79</sup> See para. 20 and Art. 25 of the TPD.

<sup>80</sup> Art. 3 of the Council Implementing Decision... *cit.*

<sup>81</sup> 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, *op. cit.*, p. 12.

<sup>82</sup> *Idem.*

migration management<sup>83</sup>. The proposal for a Regulation on crisis situations and force majeure provides for a mandatory and immediate relocation scheme and short deadlines for such a mechanism to be deployed. Most notably, the proposal is presented as the instrument that will replace the existing 2001 Temporary Protection Directive.

In particular, in the framework of the European Pact on Migration and Asylum, the proposal for a Regulation on crisis situations contains a kind of compromise clause conferring powers on the Commission. It even refers the interpretation of the content of the provisions on crisis situations to the Commission. This is designed to centralise the system through the Commission. However, the Ukraine decision does not concentrate the supervisory function in favour of the Commission to any significant extent. It is diluted among the various actors mentioned in Art. 3 of the Council Implementing Decision: the Migration Crisis Preparedness and Management Network, the Member States, the European Border and Coast Guard Agency (Frontex), the European Union Agency for Asylum (EUAA) and the European Union Agency for Police Cooperation (Europol).

In addition, Ukraine is a country whose nationals, in general, do not require a visa to enter the EU<sup>84</sup>. On this basis, they enjoy the right to choose the Member State in which they wish to enjoy the rights associated with temporary protection. Against this background, given the events following Russia's annexation of the Autonomous Republic of Crimea and the city of Sevastopol, the European Commission, in its proposal for a Decision, estimated that half of the Ukrainians arriving in the Union would benefit from the visa waiver, join family members settled in the Union and seek

---

<sup>83</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] COM(2020) 610 final, 23 September 2020.

<sup>84</sup> The visa waiver applies to holders of biometric passports issued by Ukraine. Specifically, Ukrainians are exempt from the visa requirement for stays of less than 90 days for periods of 180 days as provided for in Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018, *op. cit.*, (Annex II).

employment. The other half, as envisaged by the Commission, would apply for international protection<sup>85</sup>.

Hence, Member States agreed on the freedom of choice related to temporary protection. In particular, the EU-Ukraine Visa Facilitation Agreement provides that “Citizens of Ukraine who are holders of valid biometric service passports may enter, leave and transit through the territories of the Member States without visas” (Art. 10 (2))<sup>86</sup>. However, the Preamble of the Council Implementing Decision neglects to mention the non-Ukrainians to whom the Decision applies. Nevertheless, the Commission proposed that all those without visas should also be allowed entry if this is done in accordance with Art. 6 (5) (c) of the Schengen Code which provides that “third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorized by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations [...]”<sup>87</sup>.

## **VII. CONCLUSIONS: THE “HIC ET NUNC” COUNCIL IMPLEMENTING DECISION**

The response of EU Member States to the arrival of Ukrainian refugees is particularly unique and striking when compared to the Syrian refugee crisis of 2015 and the arrival of Afghan refugees in 2021. It even compares to the 2021 crisis on the Belarusian–Russian border a few months before the Russian invasion. In March 2022, concerns about the collapse of EU Member States’ reception systems were met with different criteria than those used for the arrival of Syrians and Afghans in previous years. The different response

---

<sup>85</sup> European Commission, Proposal for a Council implementing Decision..., COM(2022) 19 final... *cit.*, p. 1.

<sup>86</sup> Council Decision of 13 May 2013 on the conclusion of the Agreement with Ukraine amending the Agreement with Ukraine on the facilitation of the issuance of visas... *cit.*

<sup>87</sup> Regulation (EU) 2016/399 of the European Parliament and the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) OJ L 77/1, of 23 March 2016. Specifically, the Commission envisages, with respect to non-Ukrainian third country nationals or stateless persons who are able to return to their country or region of origin in safe and durable conditions, that “should nonetheless be admitted into the Union on humanitarian grounds without requiring, in particular, possession of a valid visa or sufficient means of subsistence or valid travel document, to *ensure safe passage with a view to returning to their country or region of origin*” (Twelfth Recital, emphasis added).

reflects that the problem is not so much one of lack of resources –and the crisis that this provokes– in the face of sudden, large-scale refugee arrivals, but of building consensus around the timeliness of welcoming refugees arriving *en masse* and suddenly.

The landmark EU Council Decision is a significant step, not only because Member States agree to open their borders, but also because it departs from the approach of quota distribution between states. Instead of specifying how many refugees each country should receive, the Council Decision gives displaced persons the freedom to choose their destination within the territory of the Union. This is due to the fact that the Ukrainian population does not require a visa to enter the Union, and this visa freedom would not be consistent with imposing a specific destination for each refugee.

As to the question posed at the beginning of this study, i.e. whether the Council Decision may constitute a turning point in the current reform process of the CEAS, or whether it merely reflects an isolated and exceptional event, the answer is as follows. The activation of the TPD could contribute to spreading a standardized view of the Council's ability to react to emergency situations. The TPD has been a marginal instrument throughout its lifetime, both because of its non-activation and because it was conceived to play a very specific role in the asylum system. Its activation in March 2022 gives it a prominence it has never had before. However, it does not mean that the asylum system has entered a momentous turning point. Although it is thought-provoking, it does not crystallize the principle of solidarity.

This conclusion is evident at the level of the current negotiation of the European Pact on Migration and Asylum within the institutions, which does not move in the direction of solidarity, even though it has been shown to be possible. It can be said that the Council Decision adopted for the Ukrainian case displaces and disrupts the Proposal for a Regulation on crisis situations presented in 2020 in the framework of the European Pact on Migration and Asylum, one of the aims of which was to repeal the TPD. But beyond this, its impact on the European Pact is not obvious.

Finally, from the point of view of the principle of non-discrimination, it is worth noting the lack of correlation between the ultimate aim – temporary protection due to armed conflict – and the personal scope of the Decision,

which is inclined to offer such protection to certain groups of people, but not universally from the outset.

## **BIBLIOGRAPHICAL REFERENCES**

- ARENAS HIDALGO, N., “La primera activación de la Directiva 2001/55/CE. Entre los límites restrictivos de su ámbito de aplicación personal y las bondades de su modelo de solidaridad interestatal en la acogida de las personas desplazadas desde Ucrania”, *Revista Electrónica de Estudios Internacionales*, n. 44, 2022.
- ARENAS HIDALGO, N., *El sistema de protección temporal de desplazados en la Europa comunitaria*, University of Huelva, 2005.
- AZCÁRRAGA, C. , “La ‘afluencia masiva de personas desplazadas’ desde Ucrania y su protección temporal en la Unión Europea y en España: la activación de la Directiva 2001/55/CE”, *Revista General de Derecho Europeo*, n. 57, 2022, pp. 77-116.
- BATHA, E., “Factbox:–How Big is Europe’s Refugee and Migrant Crisis?”, *Thomson Reuters Foundation News*, 30 November 2016, <https://www.reuters.com/article/us-women-conference-refugee-crisis-factb-idUKKBN13P22P>, accessed 12 July 2023.
- BEIRENS, H., MAAS, S., PETRONELLA, S., VELDEN, M., *Study on the Temporary Protection Directive. Final Report*, Report prepared for the European Commission, Brussels, 2016.
- CHIMNI, B.S., “The Geopolitics of Refugee Studies: A View from the South”, *Journal of Refugee Studies*, vol. 11, n. 4, 1998, pp. 350-374.
- COSTELLO, K., and FOSTER, M., “(Some) Refugees Welcome: When is Differentiating Between Refugees Unlawful Discrimination?”, *International Journal of Discrimination and the Law*, vol. 22, n. 3, 2022, pp. 244-280.
- CRESCENZI, A., “La crisi ucraina e l’attivazione della Direttiva 55/2001 sulla protezione temporanea: trattamenti preferenziali e doppi standard”, *Ordine internazionale e diritti umani*, n. 5, 2022, pp. 1160-1176.
- DE LA ORDEN, G., *El derecho de asilo ante la criminalización de la migración irregular en las fronteras exteriores de la Unión Europea. España como caso de estudio*, University of Deusto, Bilbao, 2022.
- DI FILIPPO, M., and ACOSTA, M.A., “La protezione temporanea, da oggetto misterioso a realtà operative: aspetti positivi, criticità, prospettive”, *Ordine Internazionale e Diritti Umani*, n.4, 2022, pp. 926-956.

- GAMMELTOFT-HANSEN, Th. and TAN, N.F., “The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy”, *Journal on Migration and Human Security*, vol. 5, n. 1, 2017, pp. 26-56.
- GAMMELTOFT-HANSEN, Th. and HOFFMANN, F., “Mobility and Legal Infrastructure for Ukrainian Refugees”, *International Migration*, n. 60, 2022, pp. 213-216.
- GENÇ, H., and SIRIN, N., “Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union”, *International Journal of Political Science and Urban Studies*, 2019, vol. 7, n. 1, pp. 1-18.
- GORTÁZAR ROTAECHE, C., “Normas y mecanismos para asegurar la protección internacional en situaciones de afluencia masiva: reconocimiento prima facie y protección temporal”, in FERNÁNDEZ SÁNCHEZ, P. A., (ed.), *La revitalización de la protección de los refugiados*, University of Huelva, 2002, pp. 231-248.
- 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, <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/>, accessed 12 July 2023
- INELI CIGER, M., *Temporary Protection in Law and Practice*, Brill, 2017.
- 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?”, *European Journal of Migration and Law*, n. 18, 2016, pp. 1-33.
- INELI CIGER, M., “Has the Temporary Protection Directive become Obsolete?”, in BAULOZ, C., INELI CIGER, M., SINGER, S., and STOYANOVA, V., (eds.), *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common European Asylum System*, Brill, 2015, pp. 225-247.
- JACKSON, M., “Ukrainian Refugees, Race, and International Law’s Choice Between Order and Justice”, *American Journal of International Law*, vol. 116, n. 4, 2022, pp. 698-709.
- KIENAST, J., FEITH TAN, N., and VEDSTED-HANSEN, J., “Preferential, differential or discriminatory? EU protection arrangements for persons displaced from Ukraine”, *ASILE*, 27 April 2022, <https://www.asileproject.eu/preferential-differential-or-discriminatory-eu-protection-arrangements-for-persons-displaced-from-ukraine/>, accessed 14 July 2023.
- MOYA, D., “La crisis humanitaria de Ucrania debe forzar avances inesperados en el sistema de asilo europeo”, *CIDOB Opinión*, n. 713, 2022.

- NASCIMBENE, B., DI PASCALE, A., “The ‘Arab Spring’ and the Extraordinary Influx of People who Arrived in Italy from North Africa”, *European Journal of Migration and Law*, n. 13 (4), 2011, pp. 341-360.
- NASH, C., “Stateless People and Refugees Fleeing Ukraine”, *EU Law Analysis*, 20 March 2022, <https://eulawanalysis.blogspot.com/2022/03/>, accessed 12 July 2023.
- NOLL, G., “Sharing the Burden?”, in NOLL, G., (ed.), *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, Brill, 2000, pp. 263-351.
- PEERS, S., “Temporary Protection in the EU? Q and A”, *EU Law Analysis*, 27 February 2022, <https://eulawanalysis.blogspot.com/2022/02/temporary-protection-for-ukrainians-in.html>, accessed 12 July.
- PRANTL, J. and KYSEL, I., “Generous, but Equal Treatment? Anti-Discrimination Duties of States Hosting Refugees Fleeing Ukraine”, *EJIL:Talk! Blog of the European Journal of International Law*, 2 March 2022, <https://www.ejiltalk.org/generous-but-equal-treatment-anti-discrimination-duties-of-states-hosting-refugees-fleeing-ukraine/>, accessed 12 July 2023.
- RASCHE, L., “Implementing Temporary Protection in the EU. From Crisis Response to Long-Term Strategy”, *Hertie School Jaques Delors Centre*, June 2022, [https://www.delorscentre.eu/en/detail/publication/temporary-protection#:~:text=When%20transitioning%20from%20crisis%20response%20to%20implementing%20temporary%20protection%2C%20the,see%202.1\)%20and%20require%20comprehensivem](https://www.delorscentre.eu/en/detail/publication/temporary-protection#:~:text=When%20transitioning%20from%20crisis%20response%20to%20implementing%20temporary%20protection%2C%20the,see%202.1)%20and%20require%20comprehensivem), accessed 14 July 2023.
- SCHULTZ, J., et al., “Collective Protection as a Short-Term Solution: European Responses to the Protection Needs of Refugees from the War in Ukraine”, *EU Immigration and Asylum Law and Policy*, 8 March 2022, <https://eumigrationlawblog.eu/collective-protection-as-a-short-term-solution-european-responses-to-the-protection-needs-of-refugees-from-the-war-in-ukraine/>, accessed 12 July 2023.
- SKORDAS, A., “Temporary Protection and European Racism”, *Global Asylum Governance and the European Union’s Role*, 3 June 2022.
- SKORDAS, A., “Temporary Protection Directive 2001/55/EC”, in THYM, D., y HAILBRONNER, K., (eds.), *EU Immigration and Asylum Law. Article-by-Article Commentary*, Nomos, 3rd edition, 2022, pp. 1177-1227.
- STÜNZI, R., “Back in the USSR: the Policy Response to the Ukrainian Refugee Crisis”, *National Centre of Competence in Research On the Move Blog*, 7 April 2022, <https://nccr-onthemove.ch/blog/back-in-the-ussr-the-policy-response-to-the-ukrainian-refugee-crisis/>, accessed 12 July 2023.

THYM, D., “Temporary Protection for Ukrainians: the Unexpected Renaissance of ‘Free Choice’”, *EU Immigration and Asylum Law and Policy Blog*, 7 March 2022, <https://eumigrationlawblog.eu/temporary-protection-for-ukrainians-the-unexpected-renaissance-of-free-choice/>, accessed 14 July 2023.

VAN SELM–THORBURN, J., *Refugee Protection in Europe. Lessons of the Yugoslav Crisis*, Martinus Nijhoff, The Hague, 1998.



# PEACE & SECURITY

## PAIX ET SÉCURITÉ INTERNATIONALES

11  
2023

EUROMEDITERRANEAN JOURNAL OF INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

TABLE OF CONTENTS / January-December 2023 / No 11

### IN MEMORIAM

César VILLEGAS DELGADO, Joaquín ALCAIDE-FERNÁNDEZ  
In Memoriam António Augusto Cançado Trindade (1947-2022), humanista y (re)humanizador del Derecho Internacional

### EDITORIAL

Alejandro DEL VALLE GÁLVEZ  
Ad Portas Europae. Singularity of Migrations in the Strait of Gibraltar Area. Southern External Borders, European Narratives and Values  
Pablo MARTÍN RODRÍGUEZ  
Apuntes críticos de la Conferencia sobre el Futuro de Europa de 2022, su seguimiento y efectos

### STUDIES

Joana ABRISKETA URIARTE  
The Activation of the Temporary Protection Directive 2001/55/CE for Ukrainian Refugees: A Demonstration of its Uniqueness  
Murat SÜMER  
Circumnavigating the Aegean question: Joint development of the Aegean Sea by Greece and Türkiye  
Isabel LIROLA-DELGADO  
Compliance with the International Gender Framework in Maritime Mixed Migration Interception and Rescue Operations: The Case of Spain in a European Context  
María AVELLO MARTÍNEZ  
EU Borders and Potential Conflicts between New Technologies and Human Rights  
Francesco SEATZU, Paolo VARGIU  
Is the UNSC Resolution No. 2664 (2022) on Humanitarian Exemption a Paradigm Shift for Sanction Regimes?

### NOTES

Jesús VERDÚ BAEZA  
Climate Refugees, Human Rights and the Principle of Non-Refoulement  
Siham ZEBDA  
How can the effective integration of immigrants in Spain be achieved?

### DOCUMENTATION

Declaración Conjunta XX Reunión de Alto Nivel Marruecos-España (1-2 de febrero 2023) – Déclaration Conjointe XXème Réunion de Haut Niveau Maroc-Espagne (1er et 2 Février 2023)  
Resolución del Parlamento Europeo, de 19 de enero de 2023, sobre la situación de los periodistas marroquíes, en particular el caso de Omar Radi (español e inglés)

### ANNOTATED BIBLIOGRAPHY

SOROETA LICERAS, J., La Corte Internacional de Justicia y la descolonización, 1949-2019, Madrid, Reus, 2022, 226 pp. Por J. D. TORREJÓN RODRÍGUEZ  
OANTA, G.A. and SÁNCHEZ RAMOS, B. (eds.), Irregular Migrations in Europe: A Perspective from the Sea Basins, Editoriale Scientifica, Naples, 2022, 362 pp. By C. R. SCHREINMOSE  
COLOM PIELLA, Guillem (ed.), La guerra de Ucrania. Los 100 días que cambiaron Europa, Madrid, Catarata, 2022, 172 pp. Por C. CASTILLA CID  
BADÍA MARTÍ, A.M., HUICI SANCHO, L. (dirs.), El Brexit y sus consecuencias, Madrid, Marcial Pons, 2022, 167 pp. Por F. A. DOMÍNGUEZ DÍAZ



Observatory for  
MIGRATION &  
HUMAN RIGHTS

