

INTERNATIONAL AND TEMPORARY PROTECTION IN EU LAW: LEGAL FRAMEWORKS AND CHALLENGES OF PRACTICAL IMPLEMENTATION

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DOI: <https://doi.org/10.61345/1339-7915.2024.4.3>

Annotation. The article analyzes the legal foundations for the protection of refugees and internally displaced persons (IDPs) within the context of the European Union (EU) and Ukraine. The focus is on international and European legal instruments that regulate refugee status and provide temporary protection to individuals affected by armed conflicts. The article particularly examines the EU's Temporary Protection Directive (2001/55/EC) and the Qualification Directive (2011/95/EU) and the Asylum Procedures Directive (2013/32/EU), which harmonize refugee protection across Member States and ensure consistency in asylum procedures establishing legal frameworks for granting protection to those fleeing war, especially in the context of Russia's aggression against Ukraine.

The urgency of this article is highlighted by the war in Ukraine, which has led to unprecedented displacement in Europe, testing the capacities of EU Member States and exposing both strengths and gaps in existing legal frameworks. The paper also addresses the evolving nature of international refugee protection and its alignment with human rights doctrines, offering a comprehensive analysis of how international and regional legal standards interact in practice.

This article explores how international frameworks for refugee protection, particularly the 1951 Refugee Convention and its 1967 Protocol, have been incorporated into the European Union's legal system. These international instruments define the rights of refugees and the obligations of states, especially regarding the principle of non-refoulement, which prohibits the return of individuals to countries where their lives or freedom may be at risk. In the EU, these frameworks are primarily integrated through the Common European Asylum System (CEAS) and its key component - the Qualification Directive (2011/95/EU), which aligns EU law with international standards on refugee protection.

The study emphasizes the importance of procedural safeguards, including fair and transparent asylum processes and special protections for vulnerable groups. In addition, the EU's Temporary Protection Directive (2001/55/EC) plays a key role in addressing mass displacement, offering immediate protection in situations of crisis. This directive was activated for the first time in 2022 in response to the war in Ukraine, providing a coordinated EU-wide approach to managing the influx of displaced Ukrainians and preventing the collapse of national asylum systems.

The article also discusses the legal challenges and issues that the EU and Ukraine face in providing protection and support to refugees and IDPs. The research underscores the importance of coordination between the EU and Ukraine's legal systems to ensure proper protection for asylum seekers. An essential aspect is the harmonization of approaches and the improvement of the effectiveness of legal mechanisms in response to current global migration challenges. The findings emphasize the need for continued legal collaboration between the parties to create a more comprehensive and consistent system for refugee protection.

Key words: migration law, refugees, IDPs, EU, temporary protection, Ukraine, international law.

1. Introduction.

The refugee flows have become a critical global issue, particularly in regions such as Ukraine and the European Union (EU), where the protection of refugees and internally displaced persons (IDPs) poses significant challenges. The recent geopolitical crises, such as russia's aggression against Ukraine, have further exacerbated the pressures on both national and regional systems. This paper seeks to explore the complex legal frameworks governing temporary and international protection of refugees in the EU and Ukraine. By examining international legal instruments and national legislation, this paper assesses the theoretical foundations and practical difficulties in the legal regulation of refugee protection, IDPs, and beneficiaries of temporary protection.

The relevance of this topic lies in its urgency, given the ongoing war in Ukraine and displacement crises, particularly in Europe. The unprecedented displacement caused by the war in Ukraine has not only tested the capacity of EU Member States to provide protection but has also illuminated gaps and strengths in the existing legal frameworks. Moreover, the discussion is essential for understanding the evolving nature of international refugee protection and its alignment with human rights doctrines.

Refugee protection is fundamentally grounded in international legal instruments, notably the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol [1]. These frameworks establish the rights and obligations of states regarding refugees, enshrining the principle of non-refoulement, which prohibits the return of individuals to territories where their lives or freedom may be endangered. The definition of a refugee under the Convention remains a cornerstone for determining the legal status of those in need of protection.

In addition to these refugee-specific instruments, international human rights law, including the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights, plays a complementary role [2, 3].

Together, these legal frameworks ensure that refugees' fundamental rights are respected. The interaction between refugee law and human rights doctrines provides a comprehensive approach to safeguarding the rights, freedoms, and dignity of displaced persons.

2. Analysis of scientific publications.

The issue of legal regulation of refugee and internally displaced persons (IDPs) protection has been extensively studied by scholars both in Ukraine and the European Union. The researchers have thoroughly examined the legal aspects of internal displacement in the context of conflict and the role of international law in protecting IDPs in Ukraine. General theoretical issues of migration law and migration regimes have been explored in the works of Kashchavtseva K., Levandovsky K., Svyaschuk A., Bondarenko Y., Polivanova O, Boyko I. by analasing international refugee protection standards and their implementation within the Common European Asylum System (CEAS). Also, the researchers have thoroughly examined the legal aspects of internal displacement in the context of conflict and the role of international law in protecting IDPs in Ukraine. Their works contribute significantly to understanding the legal challenges related to refugee and IDP protection amid geopolitical crises, such as russia's aggression against Ukraine.

3. The aim of the work.

By combining research on international legal instruments with an analysis of EU legislation and its practical implementation connected to russia full scale aggression against Ukraine, this paper aims to assess the theoretical foundations and practical difficulties that shape the legal regulation of refugee protection, IDPs, and beneficiaries of temporary protection. This paper will explor the complex legal frameworks governing temporary and international protection of refugees in the EU.

4. Review and discussion.

Within the EU, refugee protection is enshrined in a variety of legal instruments that harmonize the efforts of EU Member States. The Common European Asylum System (CEAS) seeks to establish uniform standards for refugee protection to ensure consistency across the EU. The Qualification Directive (2011/95/EU) codifies the refugee definition within EU law, aligning it with the criteria established by the Refugee Convention [4]. This directive outlines the rights and benefits afforded to refugees, including access to education, healthcare, and social assistance.

Furthermore, the Asylum Procedures Directive (2013/32/EU) governs the procedures for reviewing asylum applications, emphasizing fair and efficient processes while upholding the principle of non-refoulement [5].

The Qualification Directive (2011/95/EU) plays a central role within CEAS, as it harmonizes the refugee definition across EU Member States and aligns it with the criteria outlined in the 1951 Refugee Convention and its 1967 Protocol (hereinafter referred to collectively as the Refugee Convention). The directive is aimed at establishing a consistent and comprehensive approach to the recognition of refugees in EU Member States, thereby contributing to the formation of a unified asylum regime that respects the rights and obligations enshrined in international refugee law.

The definition of a refugee in the directive is articulated in Article 2(c), where a “refugee” is described as a person who meets the criteria set out in Article 1(A) of the Refugee Convention. This alignment underscores the directive’s intent to bring EU law into conformity with international standards. According to Article 1(A)(2) of the Refugee Convention, a refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside their country of nationality and is unable or unwilling to avail themselves of the protection of that country [1].

The Qualification Directive goes beyond merely reiterating the Refugee Convention’s definition; it also provides further elaboration on key concepts and criteria inherent in the definition of a refugee. Article 4 of the directive offers a detailed interpretation of “persecution,” emphasizing that actions such as physical or psychological violence, discriminatory measures, or legal or administrative sanctions that are disproportionately severe or exceptionally discriminatory may collectively constitute persecution.

Aligning the Qualification Directive (2011/95/EU) with the criteria of the Refugee Convention ensures a consistent and coherent approach to refugee protection within EU Member States. Through the codification of the refugee definition and the development of key concepts, the directive not only guarantees that individuals deserving of international protection receive it but also contributes to the evolution of a unified European asylum system that respects and upholds the principles established in international refugee law.

When analyzing the EU’s legal framework for refugee protection, particular attention should be given to the Asylum Procedures Directive (2013/32/EU), which stands as a fundamental legal instrument within the Common European Asylum System (CEAS). This directive is designed to establish a comprehensive procedural framework for the examination of asylum applications across EU Member States. Its importance lies in its role of standardizing procedural safeguards and ensuring that asylum seekers are afforded fair, transparent, and efficient processes, aligned with international obligations such as the principle of non-refoulement.

The Asylum Procedures Directive plays a crucial role in safeguarding the rights of asylum seekers by ensuring they have access to proper and transparent procedures. The directive emphasizes the need for efficient, fair, and uniform processes throughout the Member States. By harmonizing asylum procedures, the directive helps mitigate disparities between national systems and reduces the likelihood of individuals experiencing vastly different outcomes depending on the country in which they seek asylum. One of the key features of the directive is its focus on ensuring that asylum seekers have the right to effective access to the asylum procedure (Article 6). This provision mandates that



Member States register applications for international protection and ensure that individuals can submit their applications without undue delay. The directive also outlines specific guarantees for vulnerable groups, such as minors and individuals with special needs, who may require additional procedural accommodations.

This directive establishes several key procedural safeguards for asylum seekers, including the right to a personal interview (Article 14). This requirement ensures that applicants can present their case in a comprehensive manner, providing decision-makers with essential information to assess the validity of their claims. Moreover, the right to legal assistance and representation (Article 20) is another critical safeguard, allowing asylum seekers to be adequately supported throughout the process, especially during the appeal phase in cases of negative decisions. One of its notable provisions emphasizes special procedures for vulnerable applicants (Article 24). This article acknowledges that certain asylum seekers, such as unaccompanied minors or those suffering from trauma, may require additional support and procedural adaptations to ensure they can fully participate in the process. This sensitivity to vulnerability is fundamental to ensuring the principle of fairness in the asylum process, acknowledging that certain applicants may face greater challenges in navigating complex legal procedures [5].

The directive also provides for accelerated procedures (Article 31), where applications that are deemed manifestly unfounded or made with the intention of delaying removal can be fast-tracked. While the intent behind this provision is to streamline cases that may not meet the necessary criteria for protection, it is important to note that safeguards are in place to ensure that the rights of asylum seekers are not compromised during this accelerated process. The right to an effective remedy (Article 46) ensures that individuals retain the ability to appeal decisions, even in cases processed through accelerated procedures. In addition to accelerated procedures, the directive regulates border procedures (Article 43), allowing Member States to examine asylum applications at the border or transit zones in specific circumstances. This provision seeks to balance the need for efficient processing with the protection of asylum seekers' rights by mandating that decisions are made within a reasonable timeframe and providing access to legal representation during these processes [5].

The Asylum Procedures Directive is a pivotal element in ensuring consistency and fairness in how asylum applications are processed across the EU. Its harmonization of procedures seeks to reduce the "asylum shopping" phenomenon, where asylum seekers might choose to apply for protection in countries perceived as having more favorable procedures. Furthermore, the directive strengthens the principle of non-refoulement by ensuring that procedural safeguards are in place to prevent the return of individuals to countries where their lives or freedom may be threatened. Through its procedural guarantees, the directive aims to enhance the efficiency and reliability of asylum systems in the EU while maintaining a strong commitment to human rights and international protection obligations. By codifying these processes, it's not only benefits asylum seekers by affording them clearer and fairer pathways to protection but also assists Member States in managing asylum applications in a coordinated and just manner.

The Asylum Procedures Directive (2013/32/EU) provides a robust procedural framework for the examination of asylum applications across the EU, aligning national practices with international standards and ensuring that asylum seekers are treated fairly and efficiently. Its emphasis on procedural guarantees, such as the right to a personal interview, legal representation, and tailored procedures for vulnerable applicants, underscores the EU's commitment to upholding the rights of asylum seekers. Additionally, the directive's provisions on accelerated and border procedures provide flexibility for Member States while maintaining core protections for applicants, ensuring that the principle of non-refoulement is upheld throughout the asylum process. This directive remains a cornerstone in the development of a unified and comprehensive asylum system in the EU.

Apart of asylum procedure, temporary protection is a key component of the EU's international protection system, designed to address situations where individuals are at immediate risk and require urgent assistance. This legal mechanism becomes particularly relevant in circumstances where large-scale movements of displaced persons strain the capacity of host states to grant full

refugee status. The Directive on Minimum Standards for Providing Temporary Protection in the Event of a Mass Influx of Displaced Persons and Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof (2001/55/EC) - hereinafter referred to as the Temporary Protection Directive - facilitates the provision of temporary protection to beneficiaries who do not qualify as refugees but nonetheless require immediate and temporary shelter due to exceptional circumstances. It defines "temporary protection" as an exceptional procedure for providing immediate protection in the event of a mass or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin. This is particularly relevant when there is a risk that the asylum system may become overwhelmed, compromising both its effectiveness and the interests of the displaced individuals and others seeking protection.

The Temporary Protection Directive (2001/55/EC) was developed to address situations of sudden mass displacement, where the regular asylum system may not have the capacity to process applications efficiently due to the sheer volume of displaced persons. This directive offers a streamlined and rapid procedure for granting temporary protection in such cases, thereby relieving pressure on national asylum systems.

For instance, Article 2(a) of the directive defines "temporary protection" as a special measure designed to provide immediate protection for a limited duration, particularly in cases of mass influx where standard asylum procedures would be inadequate. This provision ensures that those who may not meet the criteria for refugee status under the 1951 Refugee Convention, but are nonetheless fleeing persecution, war, or violence, can still access protection within the EU. Furthermore, Article 5 grants the Council of the European Union the authority to declare the existence of a mass influx and trigger temporary protection across the Member States, ensuring a coordinated and unified response. Once this declaration is made, Member States are obliged to provide temporary protection for a minimum of one year, which can be extended for up to three years. During this period, beneficiaries are granted rights such as access to healthcare, education, and employment, as well as guarantees for family reunification (Articles 8-14) [6].

In the conditions of the ongoing Russian aggression against Ukraine, the Temporary Protection Directive has become a vital instrument for the EU's response to the mass displacement of individuals fleeing the war. The directive was activated for the first time in March 2022, marking a significant step in the EU's humanitarian efforts. By offering temporary protection to millions of displaced Ukrainians, the directive has helped prevent the collapse of national asylum systems, particularly in Member States neighboring Ukraine, such as Poland, Romania, and Hungary.

The Temporary Protection Directive also complements other international legal instruments by offering protection to those who may not meet the refugee definition under the 1951 Refugee Convention, yet are in dire need of shelter and safety. Its role in responding to the Ukraine crisis has highlighted its capacity to act as a flexible and rapid tool for addressing large-scale displacement, particularly in instances where returning to the country of origin is not an option in the foreseeable future.

The significance of the Temporary Protection Directive in the context of the war in Ukraine cannot be overstated. Article 17 of the directive underscores the importance of solidarity and burden-sharing among Member States, promoting a balanced approach to the reception of displaced persons. This article highlights the need for equitable distribution of responsibilities to ensure that no single Member State is disproportionately affected by the influx of displaced persons. In the case of Ukraine, the directive's activation allowed for a coordinated approach across the EU, providing support to frontline states while ensuring displaced persons received the necessary protection and services.

As millions of people were forced to flee their homes due to the full-scale Russian aggression against Ukraine, the activation of this directive ensured that they could immediately access protection and basic rights within the EU. The directive's ability to facilitate rapid protection in cases of mass displacement proved crucial in alleviating pressure on national asylum systems and maintaining the orderly functioning of asylum procedures across the EU.

By granting temporary protection to displaced Ukrainians, the directive has enabled individuals to access essential services, such as healthcare, education, and the labor market, while also offering a path to longer-term solutions, should the situation in Ukraine prevent their safe return in the near future. Moreover, the directive's provisions for family reunification have played a key role in reuniting families separated by the conflict, contributing to the well-being and stability of displaced persons.

The Temporary Protection Directive therefore serves not only as an essential humanitarian tool but also as a practical mechanism for ensuring that the EU can respond to crises swiftly and effectively, in line with its international obligations. By providing immediate protection without the need for lengthy asylum procedures, the directive has demonstrated its value in maintaining the integrity of the EU's asylum system while upholding the fundamental rights of displaced individuals during periods of crisis. It has emerged as a critical legal instrument within the EU's international protection system, particularly in the context of the war in Ukraine. By offering immediate protection to displaced persons who do not meet the criteria for refugee status, the directive has ensured that vulnerable individuals fleeing conflict and persecution are not left without recourse. Its provisions for solidarity and burden-sharing among Member States further reinforce the directive's importance in managing large-scale displacement in a fair and equitable manner. As the EU continues to face challenges related to mass migration the Directive remains a key mechanism for ensuring that those in need receive timely and effective protection, while safeguarding the functioning of national asylum systems.

More broadly, the Temporary Protection Directive has proven to be an essential instrument to provide immediate protection in the EU and the Commission considers that it should remain part of the toolbox available to the European Union in the future. It proved to be both strong and flexible enough to enable a collective and quick response, backed by strong EU coordination through the Solidarity Platform. This has helped to forge new connections and foster cooperation between public authorities, social partners, civil society, and those fleeing the Russian aggression against Ukraine [7].

In parallel, targeted support is needed for persons who, having fled Ukraine, want to go back home. The Commission has already intervened on the issue with targeted guidance in the form of Frequently Asked Questions, clarifying the different consequences of short-term visits to Ukraine and voluntary return to Ukraine [8], and providing safeguards for those wishing to go home back to Ukraine so they can easily re-access their protection if they need to flee again [9].

In the Report was admitted that The Commission will continue to monitor the situation, to make sure that Member States take the necessary measures to cater for the voluntary return of persons who, in full knowledge of the facts, decide to go home, and to support such decisions with Home Affairs Funds. The Commission is also stepping up efforts under the Multi-agency Donor Coordination Platform to support Ukraine's repair, recovery, and reconstruction process. The return of those displaced will be an important consideration in this context.

However, experience has shown that the types of migratory challenges the Union faces can vary greatly, particularly with regards to the scale of the flows or their composition. It is therefore essential that the EU be equipped with a variety of tools and prepared to reply to all types of crises. The Commission will work with the co-legislators to make sure the European Union is equipped with the tools it needs in the future and ensure proper articulation with the Commission proposal for a Crisis and force majeure Regulation [10].

In June 2024, the European Council extended the protection regime until March 4, 2026. If the situation in Ukraine improves, EU authorities can end temporary protection, in which case the residence permits granted under this rule would become invalid. EU countries would also have to individually publish national laws in this regard. To be effective at the domestic level, EU Member States must domestically implement the Directive. In doing so, they have considerable leeway to determine both procedural and substantive aspects. Accordingly, there is variation in the ways that EU Member States have legislated and implemented Temporary Protection Status, including (among other factors) regarding the scope of eligible applicants as well as the application process itself.

5. Conclusions.

The EU's legal framework for refugee and temporary protection, grounded in international law, plays a critical role in addressing the ongoing challenges posed by mass displacement. The activation of the Temporary Protection Directive in response to the war in Ukraine highlights the flexibility and effectiveness of the EU's protection mechanisms. While the Qualification and Asylum Procedures Directives offer structured and consistent approaches to refugee protection, the Temporary Protection Directive provides a rapid response tool for crises of mass displacement. Continued efforts to refine these legal frameworks and ensure their uniform application across Member States will be essential for the EU's ability to respond to future refugee crises effectively.

It's important that the EU's Common European Asylum System (CEAS) harmonizes refugee protection efforts across its Member States. The Qualification Directive (2011/95/EU) aligns the refugee definition within EU law with the 1951 Refugee Convention's criteria, outlining the rights and benefits afforded to refugees, such as access to education, healthcare, and social assistance. Moreover, the Asylum Procedures Directive (2013/32/EU) establishes procedures for reviewing asylum applications, ensuring fair and efficient processes while upholding the principle of non-refoulement. Also, the Qualification Directive (2011/95/EU) plays a pivotal role in harmonizing refugee protection across the EU, aiming to establish a unified asylum regime that aligns with international standards. This directive not only codifies the refugee definition but also elaborates on key concepts, such as the meaning of persecution, which includes physical or psychological violence and discriminatory measures. These clarifications ensure consistency in how refugee status is granted across Member States.

One of the key challenges, however, lies in the implementation of these directives across diverse national legal systems. While the directives provide a solid legal foundation, the practical application often varies between Member States, leading to discrepancies in asylum procedures and outcomes. For instance, while some states may have well-established systems for accommodating vulnerable groups, others may lack the resources or infrastructure to provide adequate protection.

As for the Asylum Procedures Directive (2013/32/EU), it seeks to address these challenges by harmonizing asylum procedures, ensuring that applicants have access to fair and transparent processes. It establishes key procedural safeguards, such as the right to a personal interview and legal assistance, while also addressing the needs of vulnerable groups like minors and those with special needs. However, despite these harmonized procedures, the directive's implementation continues to face practical hurdles, particularly in countries with overwhelmed asylum systems. Temporary protection is a crucial component of the EU's international protection system, particularly during times of mass displacement. The Directive on Minimum Standards for Providing Temporary Protection (2001/55/EC), known as the Temporary Protection Directive, was designed to provide immediate shelter and rights to individuals who may not qualify as refugees but still require urgent protection due to exceptional circumstances [12].

The relevance of this directive became particularly clear during the ongoing Russian aggression against Ukraine. In March 2022, the EU activated the Temporary Protection Directive for the first time to address the mass displacement of Ukrainians fleeing the war [13]. By offering temporary protection to millions of displaced persons, the directive prevented the collapse of national asylum systems in frontline states like Poland, Romania, and Hungary. During the protection period, beneficiaries were granted rights such as healthcare, education, and employment, ensuring they could live with dignity while displaced. And a significant feature of this Directive is its emphasis on solidarity and burden-sharing among EU Member States. This was particularly important in the context of the war in Ukraine and stopping Russian aggression, where a coordinated EU response was necessary to support frontline countries while ensuring displaced persons received the protection and services they needed.

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