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Maintaining Mobility for Those Fleeing the War in Ukraine

From Short-term Protection to Longer-term Perspectives

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Europe is currently experiencing the largest refugee crisis since World War II. The European Union (EU) has activated the Temporary Protection Directive for the first time. Accordingly, refugees from Ukraine can freely choose where to go, and they have the right to work and receive social benefits in their chosen host country. Even if the number of refugees appears overwhelming, the EU should stick to this approach and build on refugees' social ties and the strong engagement by civil society. A mandatory EU-wide relocation scheme cannot and should not be advanced against the will of many member states and affected refugees. The forced displacement from Ukraine can be managed if self-relocation is actively supported across the entire Schengen zone, if the EU provides sufficient solidarity and financial support for reception and integration measures, and if member states start preparing for sustainable long-term stays from the outset.

The humanitarian crisis in Ukraine rages on. Russia's withdrawal from regions around Kiev has revealed indiscriminate killings of civilians and other war crimes committed during the previous weeks of occupation. More intense fighting and atrocities are to be expected in Southern and Eastern Ukraine, where Russian forces continue their shelling and bombardment of civilian targets. Critical infrastructures (water, electricity, heating) are under systematic attack in many population centers. Supplies of food and medicine are running low, while humanitarian corridors remain fragile. Evacuation routes for civilians regularly come under fire. The situation of

internally displaced persons (IDPs) as well as people who cannot or do not want to flee is increasingly precarious. Even before the current war of aggression, the Office of the United Nations High Commissioner for Refugees (UNHCR) registered 1.46 million IDPs in Ukraine, 854,000 of them in the Donbas. In the first week of April, the estimate has risen to more than 7 million IDPs. Overall, more than 13 million people may be in urgent need of humanitarian assistance inside Ukraine. As of April 1, 2022, more than 4 million had fled the country, most of them (approximately 3.6 million) to the EU. In addition, Ukrainian refugees in Moldova need special support. As the



poorest country in Europe, Moldova is dealing with a very high share of refugees in relation to its small population, all in the shadow of the unresolved conflict with Russia over the breakaway Transnistria region. EU interior ministers recently agreed to step up relocation efforts from Moldova, with 14,500 places currently being offered.

The Activation of the EU Directive: A Historic Decision

As the main response to the exceptionally large movement of refugees from Ukraine, on March 4, 2022, the EU activated for the first time the Temporary Protection Directive, which was adopted two decades ago. According to this decision, all Ukrainians and their family members who entered the EU after the military invasion by Russian forces on February 24, 2022, are eligible for temporary protection and residence permits. This status is initially valid for one year, and – in the absence of a decision to the contrary by the Council of the EU – is automatically extended twice for six months. If a safe return is still not possible, a final renewal for another year can be offered.

Activating this group-based procedure was the right decision – despite objections that well-equipped asylum systems may provide for more extensive rights on the basis of individual protection status. The advantages of the EU Temporary Protection Directive are obvious: Its application provides efficiency gains for administrations and prevents the overburdening of asylum systems. All Ukrainians who have fled their country are given clear, albeit temporary prospects. In addition, applying for asylum at a later date remains an option. Third-country nationals from Ukraine in need of protection and long-term residents there may also be granted temporary protection at the discretion of the respective EU states in which they reside – provided they cannot safely and permanently return to their country or region of origin.

The directive and the current decision to grant group-based protection must be transposed into national law by each member state. While the implementation is monitored by the EU Commission, so far there is no systematic and reliable evidence as to how far all member states actually fulfill the aims and positive standards of the directive. Among other things, the refugees should have access to schooling, the labor market, healthcare, and minimum social benefits.

A special feature of the directive and the current situation is that refugees from Ukraine enjoy a certain degree of freedom of movement. In contrast to the classic asylum procedure under Dublin rules, countries of first arrival do not bear a primary legal responsibility. Rather, refugees can file their application for temporary protection in an EU member state of their choice. This reflects the right of Ukrainian citizens to enter the Schengen zone without a visa (granted mid-2017). Although they are (according to the Temporary Protection Directive) generally expected to remain in place once they have changed their status from visa-free tourists to beneficiaries of temporary protection, member states have declared that they will not return those who are already registered with this status in another country – a corresponding provision of the Temporary Protection Directive (Art. 11) is not to be applied. Instead, the organized relocation to another EU member state requires the agreement of the person concerned (Art. 26). In any case, there are no legal means to coercively move refugees from Ukraine to other EU countries.

Although the number of people crossing the borders of Ukraine toward Europe has fallen significantly from the peak of more than 100,000 per day in the early phase, passport controls need to remain relaxed in order to allow all people who desire to leave Ukraine to enter the EU. Downstream identity checks in border areas can be used to a greater extent, especially in case of onward travel to other Schengen states. But this should not lead to the widespread return of internal border controls in the

Schengen zone. Instead, in order to meet legitimate security concerns, for example in the area of organized crime or political crimes, the details of protection seekers should be made accessible for security checks on an EU-wide basis. The technical means for doing so still have to be created, as registration systems are neither consolidated at the national level nor interoperable across borders.

The current political consensus to prioritize rapid assistance, flexibility, and openness when dealing with refugees from Ukraine is unprecedented. All EU member states welcome the involvement of private and civil society networks. According to initial estimates, half of all refugees from Ukraine can draw on existing social links inside the EU. These people continue to choose their place of residence based on where family members, friends, or acquaintances reside. This potential for reception and longer-term integration must be maintained over the medium to long term.

The Problem with Relocation

Previous experiences with the reception of large groups of refugees — whether during the Bosnian war in the 1990s or in the context of the so-called European refugee crisis of 2015 and 2016 — show that an initially positive attitude can quickly turn sour if state structures appear overstretched. As the primary country of first arrival now hosting more than 2 million refugees from Ukraine, Poland faces this danger. To date, church-based and private organizations as well as individuals have provided the vast majority of Polish assistance to Ukrainian nationals, although until recently the government actively hampered civil society from supporting refugees. While there is still enormous goodwill in the general population, large Polish cities such as Warsaw and Krakow are reaching the limits of their reception capacities, as refugees now make up as much as 15 percent of residents. A growing number of Ukrainians are moving to smaller towns or leaving Poland to

head toward other parts of the EU. However, the number of independent onward journeys — or first tentative wave of returnees to Ukraine — is not yet sufficient, especially since further arrivals of more vulnerable or traumatized refugees (such as from Mariupol) are to be expected. The absorption capacities of Germany's major cities that often serve as the next onward destination for Ukrainians is also reaching a limit.

Yet calls by German politicians for the organized redistribution of refugees from the states bordering Ukraine to other, more distant EU member states, including through an "airlift," have not been supported elsewhere. Poland itself remains opposed, which is in part motivated by concerns that any mandatory burden-sharing could set a precedent for the EU's wider asylum and refugee policy. Instead, during their last extraordinary meeting on March 28, the interior ministers of EU member states agreed on a "10-Point Plan on stronger European coordination on welcoming people fleeing the war against Ukraine" that entails a number of more voluntary or indirect support measures. Among these are the establishment of coordinated transport hubs to better inform refugees and coordinate their self-directed movements across Europe. This is especially relevant for vulnerable individuals and unaccompanied minors. Furthermore, the EU's solidarity platform that is meant to support the implementation of the Temporary Protection Directive should integrate various EU agencies, sectoral experts (transport and others), and member states. In particular, the EU Agency for Asylum, which only recently received an upgraded legal mandate, should assess the reception needs and standards in all member states, including private capacities for accommodation. In addition, the EU Commission plans to develop a new index that reflects the overall "pressure" arrivals are placing on each member state. This, in turn, forms the basis for the development of national contingency plans to address medium- to long-term needs that could then draw on further European support.

Relocation beyond the EU, such as to Canada or the United States, is presented as a flanking measure in the 10-Point Plan, but only in an open-ended and voluntary format.

Any top-down planning for distribution is being severely hampered by the fact that less than a third of Ukrainians within the EU have so far registered for protection. This is both due to capacity limits in the countries of reception as well as the visa-free mobility of up to 90 days (extended by a further three months in Germany) for Ukrainians. In Poland, appropriate procedures and the necessary infrastructure were not put in place until March 16, after more than 1.8 million Ukrainians had already crossed the border. The registration backlog is immense. In the vast majority of cases, state benefits can only be paid out after this administrative act. Germany, too, is currently under great pressure to mobilize technical means and human resources to ensure the proper and timely registration of persons in need of protection. It will remain uncertain for weeks – and possibly months to come – as to how many refugees are located in which EU member states. There are also no reliable estimates of how much onward migration between EU member states is to be expected over the medium term.

In this extremely fluid context, the EU Commission continues to focus on financial, humanitarian, and administrative support. Early on, the Council of the EU approved the Commission's proposal to use funds from the EU's Cohesion's Action for Refugees in Europe (CARE) funding mechanism for the support of Ukrainian refugees. The affected member states will be able to access unclaimed funds from the 2014–2020 period without a financial contribution of their own from April 2022. In addition, funds that were previously earmarked for dealing with the Corona pandemic can now be used for the same purpose. Taken together, these measures are estimated to release almost €17 billion, according to the EU Commission.

A Three-phase Strategy

To effectively deal with the enormous challenges ahead, it is helpful to distinguish between different phases and priorities over time. This includes the need to – from the outset – plan for the long-term and sustainable integration of Ukrainian refugees who intend to, or may be forced to, stay in the EU for good.

Phase 1: Accommodation and access to services

The demographic composition of the current immigration from Ukraine poses a particular challenge. According to estimates of the United Nations, 90 percent of the refugees so far have been women and children, with the latter accounting for around 50 percent. This may change if the movement of refugees continues. Over time, more vulnerable people will seek protection – such as the elderly – or people injured and traumatized by the brutal Russian warfare. These groups should be identified as early as possible and given special assistance. The latest 10-Point Plan of the EU's interior ministers stresses the need to reduce the risk of human trafficking and pledges support to unaccompanied minors. It is yet unclear, though, just how many resources will be mobilized for these purposes.

Temporary protection under the EU directive stipulates access to education and health services, which should also include psychosocial support. Children and adolescents should attend regular schools and classes as soon as possible. In addition, the low vaccination rate of Ukrainians against Covid-19 (as well as measles) needs to be tackled over the medium term. Authorities have already recognized these and many other needs. However, the actual implementation phase has only just begun. Policymakers have to tread a fine line over the coming weeks: On the one hand, the states need to take more control and guarantee better service provision over the medium to long term. On the other hand, it is equally important to keep civil society

engaged and to develop a cooperative relationship with refugees. This places a limit on top-down planning.

One concrete example of this balancing act is how to handle private accommodation. Authorities in Germany and elsewhere have stepped up their efforts to limit the potential for abuse and sexual or labor exploitation by private sponsors. Yet it is also vital to maintain a bottom-up process of providing accommodation, not least because the living arrangements this gives rise to are often better than in large reception centers, and because private contacts open new opportunities for integration. In view of the high number of people arriving in big cities, the German federal government is increasingly operating the mandatory system for redistributing registered refugees (Königstein Key) across German states. However, people who are supported by friends, relatives, or civil society institutions should remain exempt as far as possible from redistribution. Such an exemption is possible when there is a longer-term private accommodation commitment or a rental agreement for refugees. Questions remain as to how generously this will be applied in practice and whether it will be maintained over time as numbers continue to increase. EU member states that are not strongly affected may soon face similar choices.

One model for housing refugees in cities with severe housing shortages could be financial support for private individuals who provide accommodation for refugees free of charge. In the United Kingdom, for example, a monthly government subsidy is to be offered to those who agree to provide accommodation for at least six months. Similar arrangements could make sense for other EU countries, as this would create a smooth transition between self-help and state assistance. The EU Commission has yet to give more details about its related “safe homes” initiative. In order to prevent abuse, however, government controls would be indispensable.

Government scrutiny of private initiatives will also be necessary in areas such as

education, training, and labor market access. The official process of accrediting qualifications that have been acquired in Ukraine may be too cumbersome for many member states, and private platforms for job offers have already grown dynamically. Yet again, this does not mean that state authorities can and should simply leave this field unregulated or unsupervised.

Phase 2: Transition from immediate needs to societal and labor market integration

Many refugees still hope to return home soon, not least because men of military age have had to stay behind in Ukraine and families have been separated. But even in the rather unlikely event of a durable ceasefire, a significant proportion of refugees will want or need to stay, not least because their homes have been destroyed. Therefore, as in other refugee situations, it is of central importance to encourage societal participation and create income opportunities for these people.

In several EU states, including Poland, there is a clear interest in having Ukrainian nationals fill gaps in the national labor market. The assessments available so far, for example from the German Institute for Employment Research (IAB), regarding the labor market prospects for Ukrainian refugees are encouraging. Provided that there is no major new recession due to an abrupt cut in energy supplies, labor markets in many Central and Northern European states are ready to absorb new workers, not least due to Ukrainians having comparatively high levels of education. Nevertheless, a considerable portion of those who have fled to the EU will not be able to earn their own livelihoods quickly. This is especially true for women with children in need of care, but also for those increasingly vulnerable or traumatized protection seekers who are still expected to come. Existing obstacles to regular employment, such as a lack of administrative capacity, communication difficulties, and lengthy recognition procedures, should be reduced as far and as quickly as

possible. Likewise, ways out of irregular or illegal employment that may develop in the meantime must be promoted.

While it cannot be avoided that employment opportunities and social benefits are going to differ between countries, all member states should take active steps beyond the minimum standards of the Temporary Protection Directive and turn a passive right to access the labor market into a proactive or supportive policy. As indicated by the EU Commission, the initiative of a “talent pool,” which had initially been created for third-country nationals last fall, could be broadened for Ukrainian refugees in order to match their skills with openings across the EU. A range of concrete tools to provide more information for job seekers and joint initiatives of EU member states to support labor-related, voluntary mobility – such as early checks of general job competences – should be developed.

It is also essential that capacities in language courses and in needs-based education and training are greatly expanded. Any such positive initiatives should be eligible for support from the EU CARE funds. Possibilities for knowledge exchange on integration policy within the framework of city partnerships and networks should also be supported. In the case of longer-term schooling for children, the aim should be to integrate them into regular classes by the fall of this year at the latest. In any case, teaching children according to their needs will be an immense challenge in countries such as Germany, where there is already a shortage of teachers. By employing refugee teachers and educators at daycare centers and schools, the shortage of specialists in this area could be at least partially offset. At the same time, the people employed in this way would be offered an income opportunity.

It is entirely unclear at the time of writing as to how many Ukrainian refugees may be willing to return to Ukraine once fighting has stopped, or to those parts of Ukraine where Russia is scaling back its military activities. In any case, the factor of geographic and cultural-linguistic proximity

to Ukraine may become less relevant over time. This means that refugees who have spent the first weeks and months in one of the EU states bordering Ukraine could move on within Europe rather than return. Therefore, Germany and others should be prepared for the substantial and sustained immigration of Ukrainians, even if primary reception capacities remain severely stretched. One also needs to factor in that many male relatives who are currently barred from leaving Ukraine due to general mobilization might eventually want to join their family members.

Against this backdrop, EU funding should be used in such a way that support for Ukrainian refugees goes beyond ad hoc support and instead aims at building future prospects. At the same time, it is important to adhere to the political agreement to mutually refrain from returning people who have already registered as beneficiaries of temporary protection in another member state. The secondary migration of people in need of protection who have no relation to the war in Ukraine, for example from Greece to Germany, is likely to continue unabated. By stepping up their efforts to provide for these other groups, states that are less immediately affected by the current inflow of displaced persons from Ukraine can and should contribute toward tackling the overall pressure on the EU’s asylum policy. The argument that because of the presence of a large number of Ukrainian refugees on EU territory there is now no room for other asylum seekers should be firmly rejected.

Phase 3: Flexible transition to long-term residency

A strategic approach to refugees from Ukraine includes thinking about the expiration of temporary protection status. It is likely that a considerable proportion of people who have been forcibly displaced from Ukraine are likely to stay in the EU beyond two or three years – the longer the war lasts, the more so. If the status granted by the Temporary Protection Directive ex-

pires without early follow-up options, many of those affected might exercise their right to apply for asylum. Individual applications for protection that the implementation of the Temporary Protection Directive was intended to avoid would return to the fore.

One alternative solution could be an amendment to the EU directive on the status of long-term residents from third countries, which was already on the agenda. Within this framework, it could be decided that a permanent residence permit may be issued after only three years – instead of five years as is currently the case. If such a reform could be swiftly adopted, beneficiaries of temporary protection who legally resided under this framework for three years in one EU member state may seamlessly transfer into long-term residency – provided that they fulfill the other criteria for such a status, such as a stable and regular source of income and compliance with integration measures.

Allowing protection status for a large group of people to expire at the same time, thus obliging them to leave the country, is not generally advisable. Forced returns of previous beneficiaries of temporary protection would likely be damaging to political relations with Ukraine. Previous experiences have shown that, even if safe remigration is possible, mass returns within a short period of time can lead to conflicts, for example over land or jobs. Post-conflict societies, which are fragile anyway, should not face such unnecessary burdens. In any case, as Ukrainians continue to enjoy visa-free travel to the EU, promoting sustainable returns only make sense if they are genuinely voluntary. This adds to the undoubted enormous financial and humanitarian needs of Ukraine during post-conflict reconstruction. EU assistance will need to be very sizeable and oriented toward the long term. Despite labor market needs in many EU member states, it must also be a strategic objective to provide strong positive incentives for qualified Ukrainians to return home.

Conclusion

The Temporary Protection Directive gives EU member states a flexible, if still operationally vague framework to address the enormous challenges of the Ukrainian refugee crisis. The bold decision to grant group-based protection and to draw upon, rather than hinder, the self-directed mobility of refugees should be followed through, despite the many challenges. EU institutions and member states need to work further on the coherent implementation of the directive across Europe. The recent 10-Point Plan is a constructive step in this direction, but not enough in itself. Many questions have not yet been collectively addressed or gone beyond initial ideas, such as with regard to facilitating access to the labor market. Beyond the urgent issue of registration, all member states should soon agree on and communicate the longer-term prospects for the beneficiaries of temporary protection, ranging from concrete offers for labor market integration to the possible termination of protection status and shift to other forms of legal stay. This message is more important than symbolic debates about binding relocation schemes.

In order to promote the integration of refugees while retaining the greatest amount of flexibility for a possible change in the course of the war, the basic idea of self-distribution and mobility should be adhered to, even if this means a fundamental shift in European asylum and migration policy and its much criticized Dublin system. In this way, the potentials of the people who have fled can be mobilized, and the vulnerable among them can be protected. At the same time, the burdens and transaction costs for the receiving countries will be lower than with the traditional relocation approach. Accompanying monetary compensation that supports the destination countries and, as far as possible, the local authorities is essential in this context.

An important side effect of the proposed three-phase approach is that it would efficiently maintain the parallel existing EU asylum system while opening it to other protection seekers. After all, major unresolved refugee and displacement problems persist in other areas of the world, and these could be exacerbated by the economic and geopolitical upheavals of the Ukraine war. Last but not least, we can potentially expect people to flee an increasingly authoritarian Russia.

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