



# THE EU ASYLUM SYSTEM AND THE UKRAINIAN HUMANITARIAN CRISIS

## ABSTRACT

This policy brief sums up the main findings of an international roundtable to discuss the future of the European Union asylum policies after the war in Ukraine.

The roundtable took place in Como, Italy, from 7 to 8 October 2022. It was organised by the Foundation for European Progressive Studies (FEPS), the Friedrich Ebert Foundation Italian Office, the Fondation Jean Jaurès and the Centro Studi di Politica Internazionale (CeSPI), in conjunction with the German-Italian Centre for the European Dialogue, Villa Vigoni.

The objective of the workshop was to promote an essential and timely debate on the political pathways through which the EU can shape its asylum and migration policies, avoiding previous imbalances and injustice.

Thanks also to a preliminary background paper, "War in Ukraine, refugees, inclusion and human mobility: The challenges for a progressive European Union policy" (A. Stocchiero, September 2022, CeSPI), the high-level debate underlined different critical aspects and agreed upon some relevant recommendations in order to enrich a progressive policy agenda regarding the EU migration and asylum policies in the medium and long term.



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## Lessons learnt from the EU response to the Ukrainian humanitarian crisis

Since the Russian invasion of Ukraine (24 February 2022), almost 8 million people have been forced to flee the war and are now displaced across Europe.<sup>1</sup> While it is not the first time that the EU member states handle large refugee flows, what makes this case different from previous ones is the rapid EU response in triggering a normative measure – the **Temporary Protection Directive** – that had never been applied before.<sup>2</sup> The Directive represents a "tentative" good practice and an exception from the current and quite ineffective **Dublin III Regulation**,<sup>3</sup> offering instead quick assistance and a simplified process to apply and obtain international humanitarian protection. Thanks to this instrument, displaced persons from Ukraine can be entitled to temporary humanitarian protection in any EU country, with the possibility to work and move to any other member state,<sup>4</sup> and have the right to submit their application for asylum. For all other displaced persons and asylum seekers in the EU, the Dublin III Regulation still applies. This means that asylum seekers cannot choose the country where they file the international protection application,<sup>5</sup> nor where to live and work.<sup>6</sup>

The second element that made the EU response to the Ukrainian crisis exceptional – compared to the past – is the common and homogeneous wave of **openness and shared solidarity** from member states to host displaced persons and mobilise resources.

Taking into consideration the **Ukrainian hosting experience in Poland**,<sup>7</sup> on the one hand, the complications occurring in the country,<sup>8</sup> beyond the immediate and inclusive crisis response, highlight an urgency for an organised medium- to long-term management perspective with regard to refugees medium- to long-term

refugee organised management perspective. The sincere voluntary mobilisation of all players (mainly the third sector, as well as Polish and Ukrainian families) is now easily giving way to **crisis fatigue** in search of an institutional takeover to step out from emergency. On the other hand, the limits of the EU Temporary Protection Directive, whose scope of application seems to be too narrow, appeared self-evident – opening the way to rights-based discriminatory treatment between Ukrainians and all other third-country national displaced persons and asylum seekers in the EU. This de facto double-standard approach represents a negative lesson learnt, creating a **two-tier asylum system** relying on cultural stereotyping between white, Caucasian, Catholic refugee seekers versus black-African/non-European-Muslim migrants.

The Temporary Protection Directive shows that more adequate and effective instruments to manage flows of asylum seekers, although still able to be improved, could be effectively put in place by the EU. Responding to the Ukrainian massive displacement across the EU (also thanks to the front-line involvement of the so-called Visegrad countries) with an **alternative approach to the Dublin III Regulation** offered a successful test and lesson learnt, overall confirming the **need to reform** the current legislation and to push on sustainably restructuring the existing EU migration policies in this proven direction.

Nevertheless, technical best practices must not be mistaken for political best practices, lessons learnt with desirable and illusory aspirations that might today hardly obtain political agreement at the national and EU level. Concerns and confirmation arise from the recent political elections in Sweden and Italy, with right-oriented governments clearly and largely defining immigration as a monetary burden and a risk to national security.

Overall, it is in fact doubtful that the Ukrainian case is entirely considered good practice. It is, rather, sound proof of the potential of coordinating management responses to migration.

### The urgency of reviewing the asylum system and policies

A progressive vision and commitment should bring about long-term universal and durable solutions, that are not "copied and pasted" from the Ukrainian case and are distinct from its specificities.<sup>9</sup> The overall objective shall be an EU migration and asylum system capable of correctly responding to all humanitarian quests for international protection<sup>10</sup> and formally offering and organising clear and accessible legal labour migration channels, while favouring a perspective that strengthens the **agency of migrants** as members of mobile global communities and citizens with equal rights and dignity in the place of arrival.<sup>11</sup>

While an EU asylum system based on collective responsibility and solidarity-sharing should safeguard all vulnerable groups including asylum seekers, refugee protection appears often too weak and intermittent. Too frequently and primarily, the EU approach is focused on preventing **irregular human mobility**<sup>12</sup> instead of ruling on feasible legal and safe migration channels.

From 2015 onwards, a massive and indistinct recourse to international protection applications to access the EU took place, due also to the severe restrictions and **limitations in legal labour migration opportunities and channels**.

As a consequence of the 2015 migration crisis<sup>13</sup> and of the inadequacy of the EU system to respond to it, in September 2020, the European Commission proposed a New Pact on Migration

and Asylum<sup>14</sup> to improve the EU approach to managing migration and asylum. Nevertheless, the discussion and work beyond the **Pact** on Migration and Asylum is ongoing and quite discouraging. The Pact is still too far from abandoning a defensive approach, based on the reinforcement of external border control and return/re-admission programmes, and it is too distant from adopting a solidarity principle among the EU member states. Despite the expectations on and promises of the Pact, the **political orientations** and discussions in Brussels mostly and largely emphasise the securitisation of asylum policies, the instrumentalisation of migration and the shrinking of the humanitarian protection space.

Given this premise, a number of proposals shall be taken into consideration to tackle migration at the EU level in a more consistent way. They shall overall aim to:

- Commit to an extensive **reform of the Dublin III Regulation** ensuring the possibility for asylum seekers to freely relocate across Europe and putting in place the principle of **solidarity** and **responsibility-sharing** among EU member states. Among the possible replicable principles of the EU Temporary Protection Directive are the reorganisation of resettlement rules<sup>15</sup> and the definition of harmonised criteria between EU member states for receiving displaced persons in need of international protection, and the possibility of offering entry visas to one of the member states on humanitarian grounds.
- Restructure and reinforce existing **legal migration pathways** according to a better matching between national labour market skill shortages, demographic perspectives, cohesion policies<sup>16</sup> and migration policies/entry visa quotas. For instance, it is suggested pre-departure migration centres in countries of origin (as for instance in North Africa or where

large flows generate) be established in order to provide all needed information, avoid the risks of smuggling and offer sets of pre-departure preparation, including language, cultural aspects and skills training.

- Review the general **monetary dimension beyond migration and asylum policies** along with a more transparent evident "connectivity" between costs, responsibilities and obligations. Resources should be better employed to improve the EU migration-management system instead of insisting on security and control actions. Additionally, in line with a Dublin III Regulation reform, establish common EU standards for refugees offering the same benefits in all countries and granting asylum seekers/refugees a "portability" of monetary resources.

- Re-establish an EU strategy of **search and rescue missions** and include more humanitarian corridors.

- Reinforce the institutional **dialogue between destination/EU and origin countries**, aligned with the Global Compact for a safe, orderly and legal migration framework.<sup>17</sup> For example, relationships with African countries shall be strengthened, especially through more homogeneous bilateral agreements (although different in scope from re-admission and return bilateral agreements), through a common framework for certain forms of economic migration and professional circular mobility, and along a reinforced development-based approach. Additionally, a reviewed multilateral and multilevel governance of migration flows at the EU level shall require that key new actors, such as local authorities – which most often are faced with all arrival and integration challenges – could assume a stronger role to better design migration policies.

- Commit to a shared effort to build and spread a different and trustworthy **public narrative on migration and asylum**, cleaning the communication of biased nationalistic views that only function for electoral purposes and anti-solidaristic perspectives. On the opposite side, a progressive **narrative** shall more efficiently show the fairness and the consequent advantages of modifying the current restrictive policies (Dublin III Regulation) towards a more constructive legislation (applying the Temporary Directive features to all other asylum seekers and refugees in the EU). At the same time, in order to facilitate the exchange among committed individuals in a progressive agenda-setting on migration policies, it is suggested to establish a networking platform involving both members of the European Parliament and members of the national parliaments with the aim of supporting common challenges and reinforcing mutual dialogue and public narrative.

Altogether, the Ukrainian case makes it evident that the current and future challenges linked to global human mobility urgently require a more cooperative, solid and fair EU system of migration and asylum management, and reviewed and coherent policies on migrant reception and integration, within a multilevel whole-of-society approach.



## Endnotes

- 1 "Ukraine refugee situation". Operational Data Portal website, accessed 9 November 2022.
- 2 "Migration and home affairs: Temporary protection". European Commission website.
- 3 "Migration and home affairs: Country responsible for asylum applications". European Commission website.
- 4 Including access to: a residence permit; labour markets; housing; medical assistance; and education for children. These rights are granted in the country where issued, but people are allowed to move to another host country in the EU, which will issue another temporary protection and a new residence permit. Beneficiaries of the temporary protection can move to other countries that are part of the Schengen Area with only a time limitation (for 90 days within a 180-day period). The current temporary protection regime will expire on 4 March 2025. (EU member states have agreed to initially grant immediate protection for one year, until 4 March 2023. Should the reasons for displacement persist, temporary protection is automatically extended up to twice for a period of six months each.) "EU solidarity with Ukraine: Information for people fleeing the war in Ukraine". European Commission website.
- 5 The requests for international protection are due and processed in the EU country of first arrival.
- 6 Asylum seekers under the Dublin Regulation are generally entitled to work and live in the country of application (they do not have the automatic right to work, nor are they entitled to travel freely within the Schengen Area).
- 7 During the meeting "What is progressive?", the work of the Ocalenie Foundation in Poland was illustrated.
- 8 Impacts on the local labour market and the housing market, limited qualification recognition and language barriers, difficulties in securing the Ukrainian children enrollment in the national Polish school system and lack of adequate childcare services for the female Ukrainian workforce in Poland.
- 9 Among the crucial aspects affecting the future EU asylum measures for Ukrainians and the EU Temporary Directive are the final outcome of the war and the final decision that many displaced Ukrainians will take in an unclear timeframe, whether to go back to their homeland or stay abroad.
- 10 Especially in consideration of the growing migratory pressure in origin countries, as in Africa, due to the increasing instability and to the onset climate change socio-economic impacts.
- 11 In the long term it is suggested to go beyond the simple opposition between the right of asylum and immigration for improved schemes of human protection guaranteed access, easier mobility and labour circulation.
- 12 Also, in considering the recurrent denouncing of violence at many EU/national border controls. "Delay in setting up monitoring mechanism for Croatian border management regrettable, says Ombudsman". European Ombudsman website, 23 February 2022.
- 13 Wagner, Martin (2015) "2015 in review: How Europe reacted to the refugee crisis". ICMPD website.
- 14 The proposed Pact includes a series of legislative proposals and recommendations aiming at: improving procedures and member states responsibility-sharing, better targeting irregular migration, developing legal migration pathways and reinforcing partnerships with origin and transit. "New pact on migration and asylum". European Commission website.
- 15 The resettlement is to be understood as the transfer of third-country nationals or stateless persons, identified as being in need of international protection, to an EU state where they are admitted either on humanitarian grounds or because of their refugee status.
- 16 Considering for instance that the largest part of the current management of Ukrainian displaced persons comes from the EU social cohesion budget.
- 17 "What is the Global Compact for Safe, Orderly and Regular Migration?" European Union External Action website, 14 November 2018.

## About the author



### ANNA FERRO

Anna Ferro is a senior researcher and international consultant with over 20 years of work experience on migration, diaspora engagement and development, currently collaborating with CeSPI, the Study Centre for International Politics in Italy. Among her research interests are migration and remittances, policies of diaspora engagement, migrants' capacity-building, financial inclusion and education, the European Union migration- and asylum-management system, the Balkan migratory route to Europe, climate change, and migration in the Sahel.



This Policy Brief was produced with the financial support of the European Parliament. It does not represent the view of the European Parliament.

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