

# British and Polish Temporary Protection Schemes Addressing Displaced Persons from Ukraine\*

Marika Kosiel-Pająk\*\*, Piotr Sadowski\*\*\*

## Abstract

The UK has responded strongly to the Russian aggression against Ukraine. Since February 2022 British actions have been noticeable compared to those taken by other NATO allies. In the face of a mass influx of refugees, the Home Secretary travelled to the Polish-Ukrainian border and announced launching a special migration route for Ukrainians. The analysis examines temporary protection schemes in terms of the UK's entire migration system after Brexit and compares it with the Polish (with some references to Czech) systemic solutions addressing displaced persons from Ukraine in a wider legal and political context.

## Keywords

Refugees; War in Ukraine; Directive 2001/55/EC on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons; Council Implementing Decision (EU) 2022/382; Humanitarian Visas.

## Introduction

The British government's response to the Russian aggression against Ukraine which started on 24 February 2022 has been remarkable. Not only was the UK the first to deploy anti-tank guided missiles, but they also took quite progressive steps in targeting Russian fossil fuels and leading the general campaign to condemn the Russian government's unprovoked and premeditated invasion of Ukraine. Polish reactions within NATO, EU, OSCE Chairmanship and as a neighbor of both parties in the armed conflict were very bold and generous when it came to welcoming the immediate mass influx (hereinafter: MI) of persons leaving Ukraine. Ukrainian society and politicians have greatly praised the actions of Britain and Poland.

Many commentators argue that the Russian aggression served as a leverage against the political disputes in Britain as the Brexit/Bregret, the COVID-19 pandemic, and the economic

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\*\* Dr Marika Kosiel-Pająk, Women in International Security, Poland / E-mail: [marikakosiel@gmail.com](mailto:marikakosiel@gmail.com) / ORCID: 0000-0002-6455-2133

\*\*\* Dr Piotr Sadowski, Human Rights Department, Faculty of Law and Administration, Nicolaus Copernicus University in Toruń, Poland / E-mail: [psadowski@umk.pl](mailto:psadowski@umk.pl) / ORCID: 0000-0002-7013-3410

challenges that have affected voters. Many observers fear that the situation confronting the Polish ruling majority, particularly with regards to the rule of law and the EU, can result in a *de facto* “legal Polesit”<sup>1</sup>. Thus, these governments reacted within distinct legal and political frameworks.

For the UK, the context of Brexit was important. It has always been shown as a liberating process that allowed the country to decide solely based on its short- or long-term interests<sup>2</sup>. However, the assistance for the Ukrainian non-combatants that flee from the war is far from being perceived as more efficient than the EU’s response, which was coordinated under 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 Art. 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection<sup>3</sup>. Similarly to the UK, also in Poland, much weight was carried by ordinary citizens and local governments and communities, while central governments were criticized for transferring responsibilities without sufficient funding.

This article is focused on an identification and an analysis of differences and similarities between the UK’s and Polish regulations that apply to persons fleeing war in Ukraine. Legal and doctrinal analysis has proved that, although the UK’s law was much aligned and Polish law is in-line with the Common European Asylum System, including with, *inter alia*, rules applicable to MI situations, and although both countries are parties to essential international human rights treaties, the current organization and deployment of assistance programs for the Ukrainians (and others) fleeing the country after the Russian invasion, is very different. Nevertheless, some challenges appear to be similar.

The UN Refugee Convention and the European regional systems for protecting human rights (the Council of Europe, and the EU) emphasize the importance of individualizing asylum procedures. To accomplish this, an individualized assessment should be conducted, taking into account, among other things, whether there is well-founded fear of persecution or a danger to the applicant’s right to life and freedom from torture<sup>4</sup>. These regulations have successfully fulfilled their intended purpose in Europe, and (after the New York protocol was adopted in 1967) in the world. Still, the war in the former Yugoslavia proved that the individualized approach may be inefficient if large number of persons seek protection (MI). This is because the asylum policy of the EU is the result of applying pragmatic solutions, which were supposed to address the problems encountered in practice. This hinders the development

<sup>1</sup> EASTON, A. Poland stokes fears of leaving EU in “Polesit”. *BBC News* [online]. 9. 10. 2021 [cit. 10. 3. 2023]. Available at: <https://www.bbc.com/news/world-europe-58840076>; BARCZ, J. et al. Praworządność a unijne fundusze (prawne i praktyczne aspekty interpretacji ustaleń Rady Europejskiej z 11. 12. 2020 r.). *Państwo i Prawo*. 2021, no. 11, pp. 140–155.

<sup>2</sup> CASALICCHIO, E., KIJEWski, L. Did Brexit help Britain help Ukraine? *Politico Pro* [online]. 28. 4. 2022 [cit. 10. 3. 2023]. Available at: <https://www.politico.eu/article/brexit-britain-help-ukraine/>

<sup>3</sup> OJ EU L 71 of 4. 3. 2022, pp. 1–6. *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 EC L 212 of 7. 8. 2001, pp. 12–23.

<sup>4</sup> The ECtHR judgements of 23 July 2020, *M.K. and Others vs. Poland*, App. no. 40503/17, 42902/17 and 43643/17, and of 8 July 2021, *D.A. vs. Poland*, App. no. 51246/17.

of an international refugee law<sup>5</sup>. That perspective is partly supported by the lack of amendment to the UN Refugee Convention since the adoption of the New York protocol. No other UN-level treaty has also been adopted to address mass influx situations. M. Ineli-Ciger, the leading researcher on temporary protection issues, has accurately stressed that “*There is simply no structured international legal regime governing aspects of temporary protection such as: precise eligibility conditions for being granted temporary protection; rights and entitlements of the temporarily protected persons, maximum time limit of protection, and termination of temporary protection.*”<sup>6</sup> Thus, the EU’s Directive 2001/55/EC is an exceptional piece of an international law<sup>7</sup>. It aims at:

- establishing minimum effective, coherent and solidary standards for giving temporary protection in the event of a MI of displaced persons to avert the risk of secondary movements of displaced persons and
- taking measures to promote a balance of efforts between the EU Member States in receiving and bearing the consequences of receiving such persons.

Researchers have emphasized that “*Particularly in mass migration situations, states determine border rules or enforcement measures aimed at halting migration or asylum flows*”<sup>8</sup>. Still, during the works on Directive, the UNHCR’s views that the fundamental importance of the principles of admission to the territory and *non-refoulement*, including non-rejection at the frontier<sup>9</sup> have been shared by the EU Member States. Directive 2001/55/EC contains such an explicit reference. The study’s originality arises from the observation that Poland and the UK have established specific measures applicable to those seeking refuge from the war in Ukraine in response to the Council’s first decision regarding a mass immigration crisis. The suggested amendments to the law were aimed at maintaining the effectiveness of international regulations without violating the fundamental principles of EU law. A comparative analysis of the Polish and UK practices could help ascertain why pre-war research findings asserting that states would attempt to narrowly interpret the subjective scope of law<sup>10</sup> have not materialized even in countries that have been skeptical about immigration and asylum issues.

<sup>5</sup> BYRNE, R., NOLL, G., VEDSTED-HANSEN, J. Understanding Refugee Law in an Enlarged European Union, *European Journal of Migration and Law*. 2004, Vol. 15, issue 2. DOI: <https://doi.org/10.1093/ejil/15.2.355>

<sup>6</sup> INELI-CIGER, M. A. Temporary Protection in Line with International Law: Utopia or Real Possibility (Opens in new window). *International Community Law Review*. 2016, Vol. 18, no. 3–4, p. 279. DOI: <https://doi.org/10.1163/18719732-12341332>

<sup>7</sup> SADOWSKI, P. Czy zakres podmiotowy prawa polskiego jest zgodny z Decyzją wykonawczą Rady (UE) 2022/382 w sprawie masowego napływu wysiedleńców z Ukrainy? *Studia Iuridica*. 2022a, Vol. 94. DOI: <https://doi.org/10.31338/2544-3135.si.2022-94.20>; INELI-CIGER, M. The Missing Piece in the European Agenda on Migration, the Temporary Protection Directive. *EU Law Analysis Blog*, 8 July 2015.

<sup>8</sup> SAHIN-MENCUTEK, Z., BARTHOMA, S., GÖKALP-ARAS, N. A., TRIANDAFYLIDOU, A. A crisis mode in migration governance: comparative and analytical insights. *Comparative Migration Studies*. 2022, Vol. 10, no. 1, p. 5. DOI: <https://doi.org/10.1186/s40878-022-00284-2>

<sup>9</sup> UNHCR Commentary on the Draft Directive on Temporary Protection in the Event of a Mass Influx. *UNHCR* [online]. 15. 9. 2000, comment to Art. 3 [cit. 18. 9. 2023]. Available at: <https://www.refworld.org/docid/437c5ca74.html>

<sup>10</sup> GRZEŚKOWIAK, M. Transpozycja zasady non-refoulement do polskiego systemu ochrony uchodźców. *Studia Iuridica*. 2018, Vol. LXXVI, p. 212. DOI: <https://doi.org/10.5604/01.3001.0012.8619>

The selection of countries is based on their relationship with the EU, discrepancies in their immigration situations, and the impact on the availability of integration programs.

Firstly, since 2004 Poland has been an EU Member State (hereinafter: EUMS), while the UK has ceased to be an EUMS. However, there were legal differences between these countries in the EU even prior to Brexit. Poland had to adopt fully adopt the *acquis communautaire* in the Area of Security and Justice, whereas the UK retained its opt-in clause, enabling the Government in London to “decide on a case-by-case basis whether to participate in certain measures [and after adoption of the Lisbon Treaty] [...] abstain from any further measures in the [above-mentioned] area”<sup>11</sup>. Poland is also a Schengen area state, whereas the UK did not apply these norms. These differences can provide insight into whether national norms have been adopted so as to adhere to a literal interpretation of Directive 2001/55/EC in the UK.

Secondly, before the war, Poland had one of the most homogeneous populations in Europe, with foreigners accounting for only 2.5%<sup>12</sup> (compared to the Czech Republic, where foreigners made up 10% of the population<sup>13</sup>). The vast majority of foreigners were persons coming for a short-term employment from neighboring countries, predominantly from Ukraine<sup>14</sup>. There was no obligation for them to learn Polish as they were only expected to fill labor market gaps in Poland. The national law has not changed despite an influx of roughly 130,000 immigrants from non-European countries, mainly India, Vietnam, China, Uzbekistan, Bangladesh, Egypt, and Nepal, who have increasingly arrived in Poland under the Law and Justice Government<sup>15</sup>, which has consistently advocated against immigration. As a result, integration programs are accessible only to those who have received international protection. The establishment of such programs has been necessitated by EU legislation.

Unlike Poland, the UK has continued to be perceived as a popular destination country by foreigners, despite the Brexit aim to substantially decrease immigration. As per the new policy, labor migration schemes require a certified knowledge of English. With a significant proportion of foreigners (14.4% of the population born outside the UK<sup>16</sup>), some of them really well assimilated and others living in their communities without an even

<sup>11</sup> AMBOS, K. European criminal law and Brexit. In: BÖSE, M., BOHLANDER, M., KLIP, A., LAGODNY, O. (eds.). *Justice without borders: essays in honour of Wolfgang Schomburg*. Leiden-Boston: Brill, 2018, p. 11. DOI: <https://doi.org/10.1163/9789004352063>

<sup>12</sup> PEŃDZIWIATR, K., MAGDZIARZ, W. The reception and integration of refugees from Ukraine in Poland, Czechia, Slovakia and Hungary – the New Immigration Destinations of Central Europe. *Problemy Polityki Społecznej Studia i Dyskusje*. 2022, Vol. 59, no. 4, p. 350. DOI: <https://doi.org/10.31971/pps/162968>

<sup>13</sup> JELÍNKOVÁ, M., TOLLAROVÁ, B. Support for Ukrainian refugees remains makeshift, strategic governance is failing. *Charles University* [online]. 15. 11. 2022 [cit. 5. 9. 2023]. Available at: <https://fsv.cuni.cz/sites/default/files/uploads/files/Support%20for%20Ukrainian%20refugees%20remains%20makeshift%2C%20strategic%20governance%20is%20failing.pdf>

<sup>14</sup> SADOWSKI, P. Are Foreigners' Human Rights Protected if Foreigners are Employed under the Polish Facilitated Access to Labor Market Scheme? *Studia Iuridica Lublinensia*. 2022b, no. 1, pp. 149–168. DOI: <https://doi.org/10.17951/sil.2022.31.1.149-168>

<sup>15</sup> Data from KARWOWSKA, A. Rząd PiS wprowadził otwartą politykę dla migrantów ekonomicznych. Są „ręce do pracy”, ale jest i rasizm. *Wyborcza.pl* [online]. 26. 6. 2023 [cit. 5. 9. 2023]. Available at: <https://wyborcza.pl/7,75398,29909970,ponad-130-tys-migrantow-z-azji-i-afryki-pracujacych-w-polsce.html>

<sup>16</sup> Migration Observatory at the University of Oxford. Migration Observatory Analysis of Annual Population Survey, 2021. Available at: <http://www.migrationobservatory.ox.ac.uk> [cit. 5. 9. 2023].

basic knowledge of language and culture traits, integration played a role also in programed humanitarian visas. Although English is a widely spoken language globally, the London government has enhanced the initiative by introducing a personalized welcome package for displaced individuals from Ukraine through the STEP Ukraine program. This program provides online English lessons and employment assistance.

In Central Europe, a significant MI led to a demographic shift in the affected countries. However, as the UK does not share a direct border with Ukraine, the arrival of a substantial number of Ukrainian refugees has not occurred.

Directive 2001/55/EC has minimal requirements, leaving individual states with a broad range of options in implementing measures to handle MI situations effectively. Despite the expiry of its implementation period, the law remained inactivated until 2022. Therefore, a critical comparison of the asylum systems in Poland and the UK is especially valuable as it analyses their initial implementation practices.

Thirdly, while the UK is not geographically adjacent to Ukraine, it has chosen to provide support to Ukrainian citizens. Conversely, Poland has experienced a substantial influx of individuals arriving directly from the war-torn country. Thus, it is feasible to compare the approach of Poland, which prioritizes the rapid admission of individuals seeking protection from the attacked country, with that of the UK, which facilitates the access of those who meet politically determined criteria. This can challenge the notion that Europe has implemented an unwarranted double-standard policy on asylum.

Fourthly, Poland and the UK have implemented Directive 2001/55/EC into their national laws. Following the Russian invasion of Ukraine, both nations implemented specific regulations for handling MI situations. These norms are regulated by statutes, similarly to e.g. the Czech Republic<sup>17</sup> and Spain, but also Denmark – a country not bound by Directive 2001/55/EC. Still, that EU law was adopted to prepare the EUMSs for a *pro futuro* crisis situation. Thus, it aimed at providing rules which would have an immediate effect and when an MI situation is declared by the Council. This will facilitate the prompt registration and necessary assistance of persons requiring protection, as individualized procedures may not be feasible during MI incidents. Consequently, suggestions for amending Directive 2001/55/EC have been provided, based on a comparative review of Polish and UK law, along with select examples from other EUMSs. Consequently, the research findings presented in this article may also be useful to other states, despite its focus on the norms of Poland, the UK, and the EU.

The interpretation of the law in this research is complicated owing to the frequent changes in national legislation, especially in Poland and the Czech Republic. These limitations must be taken into account when analyzing the context of the law. While the Directive has only been utilized once, new challenges related to immigration have emerged, requiring timely government intervention. Moreover, this article focuses on only selected aspects of providing protection (entry to a territory, right to remain, access to accommodation, education, and integration programs).

<sup>17</sup> Zákon 65/2022 Sb. ze dne 17. března 2022 o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invází vojsk Ruské federace, zdroj: Sbírka Zákonů ročník 2022, částka 36, ze dne 21.3.2022. [Act no. 65/2022 of 17 March 2022 on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, Journal of Laws of 2022, no. 36 of 21. 3. 2022].

The first chapter stresses that the current British policy towards Ukrainians is extensively based on previous British experiences in relocations and resettlements. A comparison of those approaches with the Polish perspective shows that Poland (where anti-immigration played an important role in 2015–2016<sup>18</sup>) has been open to some categories of protection seekers, also those not asking for protection directly at Polish borders. The second chapter identifies similarities and differences between British and Polish laws addressing displaced persons from Ukraine. Finally, lessons learned and new challenges in addressing displaced persons from Ukraine needs are presented. The text ends with a short summary.

## 1 The Pre-war British and Polish Immigration and Asylum Policies

A new migration route for Ukrainian war refugees in the UK did not emerge in isolation. Rather, it builds upon lessons drawn from the Syrian and Afghan programs, along with the Hong Kong British Nationals visa initiatives. Nevertheless, adaptations were made to better fit the distinct humanitarian visa needs of the Ukrainian Scheme. That scheme was also significantly influenced by the creation of new mechanisms in the British immigration system, which were adopted after the EU Withdrawal Agreement came into force.

Under that Agreement some EU laws (called “retained EU law” – 2,417 pieces of EU law across 300 policy areas) are still binding on the UK. However, the UK’s “Ministers are given broad and sweeping powers to choose which retained EU law should become ‘assimilated’ or retained”<sup>19</sup>, although retaining is the default option<sup>20</sup>. Therefore, the UK would need to explicitly state that it refuses to continue to apply the MI directive (what has already been analyzed<sup>21</sup>), but until such a declaration is made, it is in force in that country.

Former British special programs that relied on humanitarian visas or relocation systems for Syrians (with the UNHCR’s involvement) and Afghans, had similar commitments from the host country. They addressed safeguards for former personnel or service providers for the military and vulnerable citizens who should have basic health, education, employment, and accommodation assistance necessary for their integration into society<sup>22</sup>. The Syrian Resettlement at its start concerned 3,000 vulnerable refugees and then another threshold of 20,000 persons was set in 2015. In their first year all costs of financing support

<sup>18</sup> KABATA, M., JACOBS, A. The “migrant other” as a security threat: the “migration crisis” and the securitising move of the Polish ruling party in response to the EU relocation scheme. *Journal of Contemporary European Studies*. 2022.

<sup>19</sup> GROGAN, J., BARNARD, C. The Retained EU Law (Revocation and Reform) Bill. *UK in a Changing Europe* [online]. 5. 1. 2023 [cit. 10. 3. 2023]. Available at: <https://iosh.com/about-iosh/our-influence/consultations/retained-eu-law-revocation-and-reform-bill-government-bill/>

<sup>20</sup> SENNED CYMRU WELSH PARLIAMENT. Will there be a sunset for retained EU law in Wales? Ymchwil y. *Senedd Senedd Research*. 2022. Available at: <https://research.senedd.wales/research-articles/will-there-be-a-sunset-for-retained-eu-law-in-wales/>

<sup>21</sup> INELI-CIGER, M. Protection Gaps and Temporary Protection. *Max Planck Yearbook of United Nations Law Online*. 2017, no. 1. DOI: [https://doi.org/10.1163/13894633\\_02001013](https://doi.org/10.1163/13894633_02001013)

<sup>22</sup> More on the scheme in SELM, J. van. Community-based sponsorship of refugees resettling in the UK. In: GOŹDZIAK, E. M., MAIN, I., SUTER, B. (eds.). *Europe and the refugee response: a crisis of values?* London, New York: Routledge, 2020, p. 191.

to refugees were funded by the central government (using the overseas aid budget). Then, local authorities received funds that were decreasing with time<sup>23</sup>.

Poland had small-scale resettlement or relocation experiences. Still, two contradictory policies can be noted. A welcoming response to Syrians and Afghans, and a negative response to relocations from Italy and Greece.

In 2013, during the Mediterranean boat people crisis<sup>24</sup>, a group of six Eritreans and Somalis from Malta came to Poland. They were joined by their families (a total of 27 people). On 9 December 2014, during a ministerial conference organized by the UNHCR in Geneva, Poland declared a launch of a 2016 pilot project to resettle 100 Syrian refugees. In September 2015, responding to the significant migration pressure on the systems of Greece and Italy after the “Arab Spring”, the European Council deployed an emergency plan to relocate migrants arriving in Europe from the Middle East and North Africa. The respective number of persons to be relocated to each participating EUMS was determined in the appendix to relocation Decisions<sup>25</sup>. Poland was expected to relocate a symbolic number of persons, but after the former opposition party won the Parliamentary elections, their initial positive response to the call for solidarity changed. As a result, Poland opted to deploy Border Guard liaison officers to Italy and Greece instead of taking part in the relocations. This reluctance led to the Court of Justice of the European Union’s judgment on 2 April 2020 in the Joined Cases C-715/17, C-718/17, and C-719/17<sup>26</sup>. In response to the European Commission’s complaints against Poland, Hungary, and the Czech Republic, the Court rejected these countries’ argument that the case was inadmissible owing to the expiration of the relocation decision’s application period in September 2017. The Court declared that there was a violation of EU law, which has been widely discussed in the literature<sup>27</sup>.

The Afghan Citizens Resettlement Scheme which was formally launched on 6 January 2022<sup>28</sup> was a far more advanced version of the Syrian scheme<sup>29</sup>. It was addressed at two groups of beneficiaries. First of all, members of Afghan civil society who supported the UK (LES,

<sup>23</sup> HOME OFFICE. *Syrian Vulnerable Persons Resettlement Scheme (VPRS). Guidance for local authorities and partners*. London, 2017. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631369/170711\\_Syrian\\_Resettlement\\_Updated\\_Fact\\_Sheet\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631369/170711_Syrian_Resettlement_Updated_Fact_Sheet_final.pdf)

<sup>24</sup> STRYJEK, M. Malta – bezpieczny port? *Biuletyn Migracyjny*. 2014, Vol. 46, pp. 7–8.

<sup>25</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 EU L 239, 15. 9. 2015; *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 EU L 248, 24. 9. 2015.

<sup>26</sup> All CJEU cases cited after the CURIA at: <http://www.curia.europa.eu> [cit. 31. 1. 2023].

<sup>27</sup> ZDANOWICZ, M. Poland’s Stance on the Refugee and Migration Crisis in the European Union. *Białostockie Studia Prawnicze*. 2021, no. 1. DOI: <https://doi.org/10.15290/bsp.2021.26.01.07>; KARSKA, E., MORAWSKA, E. H., CZEPEK, J., DĄBROWSKI, Ł. D., OREŻZIAK, B., GAŁKA, K. *Human Rights in the European Paradigm of the Protection of Aliens*. Warsaw: Cardinal Stefan Wyszyński University in Warsaw, 2023, p. 192. DOI: <https://doi.org/10.13166/hr/QHLC7301>

<sup>28</sup> The Defence Secretary and Home Secretary jointly announced the Afghan Relocations and Assistance Policy (ARAP) on the 29 December 2020. Subsequently it was opened from 1 April 2021.

<sup>29</sup> The UK’s Syria Resettlement Programme: Looking Back, and Ahead. *UNHCR* [online]. 23. 3. 2021 [cit. 10. 3. 2023]. Available at: <https://www.unhcr.org/uk/news/latest/2021/3/6059f1fd4/the-uks-syria-resettlement-programme-looking-back-and-ahead.html>

Locally Employed Staff in Afghanistan). The British ranked relocations within 4 categories of risk<sup>30</sup>. Secondly, the vulnerable groups at higher risk (females, LGBT activists, and minority groups) were to be subject of the policy. There was no traditional application process. Instead, a referral process, the “Operation Warm Welcome”, was managed by Victoria Atkins (the new Minister for Afghan Resettlement). The Government planned to resettle more than 5,000 Afghans in the first year. The maximum threshold was set at 20,000 people in total for the next few years. Above 7,000 LES and their families have been relocated in 2021<sup>31</sup>. Anyone resettled through the scheme receives an indefinite permission to stay – a “leave to remain”, and a right to apply for British citizenship after 5 years of stay in the UK.

Both of the UK’s schemes addressed a relatively small number of applicants. Still, the overall financial cost of the programs was much higher than anticipated. The idea was to quickly evacuate successful applicants and then find local solutions for them. The reality is that Afghans, including families with children, are still living in hotels, which is economically inefficient<sup>32</sup>, and is not supporting long-term integration (contrary to the scheme’s intention)<sup>33</sup>.

A project addressing a similar category of Afghans was also implemented in Poland. The Government in Warsaw has evacuated 1,300 persons (300 for other countries) from Afghanistan after ending the U.S. mission in that country<sup>34</sup>. Prior to departing from Kabul, Afghans who worked with NATO were verified by the Ministry of Foreign Affairs and granted humanitarian visas. After their arrival in Poland, they were required to apply for refugee status. All persons who have stayed in Poland until a final decision has been made in their cases have received that status<sup>35</sup>. They have received support which is provided under the Polish Act on granting protection to foreigners within the territory of the Republic

<sup>30</sup> Guidance. Afghan Relocations and Assistance Policy: further information on eligibility criteria, offer details and how to apply. *MINISTRY OF DEFENCE* [online]. 23. 1. 2023 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance>

<sup>31</sup> National statistics. How many people do we grant asylum or protection to? *GOV.UK* [online]. 3. 3. 2023. Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/how-many-people-do-we-grant-asylum-or-protection-to>

<sup>32</sup> TAYLOR, D. Thousands of Afghans stuck in UK hotels as resettlement plan stalls. *The Guardian* [online]. 15. 2. 2022 [cit. 10. 3. 2023]. Available at: <https://www.theguardian.com/uk-news/2022/feb/15/thousands-of-afghans-stuck-in-uk-hotels-as-resettlement-plan-stalls>

<sup>33</sup> Cf. TOWNSEND, M. Councillor Danny Thorpe of the Royal Borough of Greenwich, south-east London. *The Guardian* [online]. 9. 10. 2021 [cit. 31. 1. 2023]. Available at: <https://www.theguardian.com/world/2021/oct/09/afghan-refugees-uk-hotels-operation-warm-welcome>; BULMAN, M., KELLY, N. Revealed: UK has failed to resettle Afghans facing torture and death despite promise [online]. 3. 12. 2022 [cit. 31. 1. 2023]. Available at: <https://www.theguardian.com/world/2022/dec/03/revealed-uk-has-failed-to-resettle-afghans-facing-torture-and-death-despite-promise>

<sup>34</sup> PAP. Przydacz podsumował ewakuację z Afganistanu: W 14 samolotach przetransportowano prawie 1300 osób, w tym 1000 do Polski. *Dziennik Gazeta Prawna* [online]. 26. 8. 2021 [cit. 3. 3. 2023]. Available at: <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8232251,przydacz-podsumowal-ewakuacje-z-afganistanu-w-14-samolotach-przetransportowano-prawie-1300-osob-w-tym-1000-do-polski.html>

<sup>35</sup> Ochrona międzynarodowa w 2021 r. *Urząd do spraw cudzoziemców* [online]. 12. 1. 2022 [cit. 3. 3. 2023]. Available at: <https://www.gov.pl/web/udsc/ochrona-miedzynarodowa-w-2021-r>



of Poland<sup>36</sup> to recognized refugees. This proves that Poland issues humanitarian visas, providing protection seekers with the possibility of safely traveling to Poland. Still, persons fleeing from countries with no Polish embassy would be unable to receive such a visa, but this does not contravene EU law<sup>37</sup>.

A recent British scheme, the Hong Kong British Nationals visa program, has been running since the end of January 2021. It provides eligible applicants (5,4 million Hong Kong residents, so 70% of the territory's population) with the ability to enter or remain in the UK for up to 5 years to live, work, and study in the UK, but without accessing public funds. After that time, beneficiaries will be able to apply for an indefinite leave to remain and, after a further 12 months, for British citizenship. The estimation is that 300,000 people might use this scheme in the coming years.

## 2 Ukraine Scheme vs the Situation in Poland

### 2.1 Right to Enter and Stay

On 2 March 2022 the Commission launched the procedure to grant temporary protection in the EU to those fleeing the war in Ukraine (activating Directive 2001/55/EC). Two days later, the Justice and Home Affairs Council unanimously passed an implementing decision introducing this scheme for persons fleeing Ukraine because of the war. The first activation of the Directive is of benefit not only to Ukrainians and stateless persons, but also nationals of third countries (including refugees recognized in Ukraine) that were residing in Ukraine and were unable to go to their region of origin (hereinafter jointly: DPUs). These regulations are also binding in the UK<sup>38</sup> because the Directive is a retained EU law under Section 2–4 of the European Union Withdrawal Act<sup>39</sup>.

Before the eruption of the war, Polish asylum law contained rules applicable in MI situations. Temporary protection was initiated only if the Council adopted an implementing decision. A state with an external EU border can be faced with large number of arriving third country nationals who are in need of international protection quicker than other EUMSs, so previously the Council would adopt an implementing decision, and when a decision would not be taken. The lack of the possibility of applying MI law to sovereign decisions of the Polish government has already been contested<sup>40</sup>. Comparable regulations have been

<sup>36</sup> *Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw*. Unified text, Polish Journal of Laws from 2022, item 1264.

<sup>37</sup> Cf. CJEU judgement of 7 March 2017, *X and X vs. État Belge*. 2017, case C-638/16 PPU.

<sup>38</sup> Immigration Rules part 11A: temporary protection. *GOV.UK* [online]. 25. 2. 2016, updated 30. 1. 2023 [online]. 25. 2. 2016 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11a-temporary-protection>

<sup>39</sup> *European Union (Withdrawal) Act 2018*. Available at: <https://www.legislation.gov.uk/ukpga/2018/16/crossheading/retention-of-existing-eu-law>

<sup>40</sup> SADOWSKI. *Czy zakres*; MALANCHUK, I.I. Legal Framework for the Protection of Ukrainian Refugees: a Comparative Study. *Problems of legality*. 2023, no. 160, p. 239. DOI: <https://doi.org/10.21564/2414-990X.160.272931>

introduced in e.g. the Czech Republic<sup>41</sup>. While the country was unlikely to encounter a direct sudden MI of displaced persons, these norms were respected when transfers of DPU to the country established under the Dublin mechanism<sup>42</sup> were suspended by the Council implementing the decision. This Czech focus on ensuring the efficiency of EU law and the appreciation of the minimal nature of Directive 2001/55/EC has to be appreciated. Similar rules should be introduced in Poland.

In Poland a special regulation applicable to the majority of persons displaced from Ukraine<sup>43</sup> (hereinafter: PSL) explicitly mentions that it enters into force after promulgation, but (as a rule) it is considered valid as of 24 February 2022. Under Art. 2(1) of that law DPUs who have crossed the border with Poland from 24 February 2022 owing to military operations on the territory of their country and declare their intention to stay in Poland will have their stay recognized as legal for a period, counting from 24 February 2022. According to the amended regulation it is irrelevant if the entry to Poland took place directly from Ukraine or not.

The legal situation of DPUs is more favorable in PSL. The pre-war lack of these regulations has resulted in leaving persons displaced from Ukraine in a legal vacuum for some time – they were permitted to enter Poland, but they did not receive the appropriate recognition of their legal status. Such an approach to persons who may have already been exposed to stress, and be unfamiliar with the Polish language etc. increases their vulnerability. Therefore, while it is important to acknowledge that their legal status has been resolved in reverse, new rules should be adopted in Poland to address this issue in the future. This primarily concerns the right to enter the country and to be registered as a person in a need of protection. Under the pre-war Polish norms, displaced persons in Poland would be granted temporary residence permits issued individually by the centralized Office for Foreigners (Act of 13 June 2003 on granting protection to foreigners in Poland). This was a rule indicated in a law which was in force before the war re-erupted. However, the special law which was adopted at the beginning of the new stage of the war has changed that. The National Audit Chamber has, however, highlighted the structural inefficacy of Polish immigration services e.g. owing to understaffing<sup>44</sup>. Moreover, policies that have

<sup>41</sup> § 1(4) Zákon 221/2003 Sb. ze dne 26. června 2003 o dočasné ochraně cizinců, Sbirka Zákonů ročník 2003, částka 79, ze dne 31.7.2003 [Act no. 221/2003 of 26 June 2003 on temporary protection of foreigners, Journal of Laws of 2003, no. 79 of 31. 7. 2003].

<sup>42</sup> Currently: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180 29. 6. 2013, p. 31.

<sup>43</sup> Polish Law of 12 March 2022 on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine, Polish Journal of Laws of 2022, item 583, with subseq. changes. Currently: Consolidated text Polish Journal of Laws of 2023, item 103, with subseq. changes. A comparison of subjective scopes of these laws in SADOWSKI, *Czy zakres*, pp. 346–351; LYSIENIA, M. Following the EU Response to the Russian Invasion of Ukraine? The Implementation of the Temporary Protection Directive in Poland. *Central and Eastern European Migration Review*. 2023, Vol. 12, no. 1, pp. 183–200. DOI: <https://doi.org/10.54667/ceemr.2023.14>

<sup>44</sup> Informacja o wynikach kontroli – Przygotowanie administracji publicznej do obsługi cudzoziemców. *Najwyższa Izba Kontroli* [online]. 2019, p. 12, Doc. no. LWR.430.001.2019, 24/2019/P/18/105/LWR [cit. 23. 6. 2022]. Available at: <https://www.nik.gov.pl/plik/id,20963,vp,23595.PDF>

proved inadequate on a small scale were expected to be effective in the face of mass immigration. There was no special procedure of a facilitated issuance of that permit. Instead, the Government in Warsaw has decided to oblige local authorities to register these persons. Thus, Poland has recently reformed its asylum system by decentralizing the provision of protection. This confirms that being immediately faced with mass arrivals of DPUs, Poland has prioritized its efficiency in providing support to people in need over a bureaucratic approach, and refrained from its anti-immigration policy.

Polish special law stipulates that its beneficiaries obtain a PESEL – an identification number for people residing in Poland. In the case of DPUs the document confirms their eligibility to receive the benefits provided to displaced persons. A PESEL is obtained on request in a municipality office. Moreover, all Ukrainian citizens displaced from Ukraine who have crossed the Ukrainian-Polish border since 24 February 2022 receive Diia.pl. This is an electronic document in a mobile application prepared by Poland. The document was notified by Polish government to the European Commission and Schengen states “as a confirmation of the legality of stay in Poland”<sup>45</sup>. Together with a valid travel document (e.g. a valid passport), it entitles Ukrainians to cross Polish borders, including the external EU border, and to move within the Schengen area under Schengen rules, for 90 days during each 180-day period.

Reliance on a residence permit procedure in MI situations has been common in the EUMSs. Nevertheless, it is not the name of the permit which is important, but the mode of its issuance. To meet the goals of Directive 2001/55/EC the national mode has to provide a facilitated registration of DPUs. An example from the Czech Republic where “*Temporary protection can [...] be considered a new residence permit in the territory [...], which corresponds to permanent residence and which opens the labour market to the holder and ensures social rights in the Czech Republic*”<sup>46</sup> confirms the correctness of that view, because it relies on supports from regional centers of the Ministry of Interior and Police for widespread dealing with applications. The residence permit system can also be found e.g. in Sweden (where family members and holders of a valid Ukrainian residence permit have to apply for a visa<sup>47</sup>), and in Denmark. The legal situation of the last of the above-mentioned countries is particularly interesting, because it is not bound by the Directive 2001/55/EC, because this area of law falls in opt-in procedure and Denmark has not decided to opt-in to this law. However, it has introduced Denmark’s Special Act of May 2022, which has established additional rules on temporary residence permits for DPUs.

<sup>45</sup> Diia.pl - pierwsze w UE w pełni cyfrowe pozwolenie na pobyt! *Ministerstwo Cyfryzacji* [online]. 2022 [cit. 26. 10. 2022]. Available at: <https://www.gov.pl/web/cyfryzacja/diia-pl---pierwsze-w-ue-w-peelni-cyfrowe-pozwolenie-na-pobyt>

<sup>46</sup> HEIDENHAIN, S., HRADICKÝ, F. Vybrané otázky institutu dočasné ochrany v rozhodnutí EU číslo 382/2022 v českém právu. bnt attorneys in CEE 24. 5. 2022 [cit. 5. 9. 2023]. Available at: <https://bnt.eu/cs/vybrane-otazky-institutu-docasne-ochrany-v-rozhodnuti-eu-cislo-382/2022-v-ceskem-pravu/>

<sup>47</sup> Massflyktsdirektivet aktiveras – Tillfälligt skydd i Sverige. *Alylrättscentrum* [online]. 2022, p. 6 [cit. 5. 9. 2023]. Available at: <https://sweref.org/wp-content/uploads/2022/06/massflyktsdirektivet-aktiveras-tillfalligt-skydd-i-sverige.pdf>

Also, the UK's system applicable in an MI situation relies on the individualized processing of applications. Art. 355 of Immigration Rules part 11A: temporary protection<sup>48</sup> explicitly states that „An applicant for temporary protection will be granted temporary protection if the Secretary of State is satisfied that: (i) the applicant is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and (ii) the applicant is a person entitled to temporary protection as defined by, and in accordance with, the Temporary Protection Directive”. A key question is, however, when “the Secretary of State is satisfied” that the applicant should receive protection. The law refers to persons excluded from protection and to persons who already benefit from temporary protection in other EUMS, and refers as well to people who may be a danger to the security of the UK or, having been convicted by a final judgment of a particularly serious crime, to be a danger to the community of the UK. Those norms comply with Directive 2001/55/EC. It can, therefore, be deduced that making a decision on granting protection would be rather easy in most cases. British norms may be effective if the Secretary of State were to appropriately organize the system of granting temporary protection. An example from the Czech Republic could be used in that regard, because in that country the Ministry of the Interior (which has its regional centers) or the Police may designate a place for a foreigner to submit an application for the granting of temporary protection pursuant to this Act<sup>49</sup>. On the other hand, Poland does not have asylum processing centers outside Warsaw, but it has re-organized its administration system by e.g. modifying the responsibilities of different institutions and by transferring public officials to registration duties. Both practices confirm that the delegation of the registration to regions (whether to central administration units or to local administration) should help to ensure that the applicants submit their applications in a bigger number of places, so that it will be less likely that some divisions of public administration will be overloaded with their registration duties.

The above-mentioned examples from the laws of the Czech Republic and Denmark (although limited) provide an interesting insight into approaches of the EUMSs which are not directly neighboring with non-EUMSs. They can be, therefore, compared with the UK's norms. According to Sarah Overton “*The UK Government's initial reaction was to point Ukrainians to conventional migration routes, such as the Seasonal Worker Scheme and family visas for those with family members already in the UK.*”<sup>50</sup> This view should be contrasted with Art. 355(ii) of Immigration Rules part 11A: temporary protection which (as indicated in the above) explicitly states that an applicant for temporary protection has to be already present in the United Kingdom or has to have arrived at its port of entry.

Still, even though that regulation (which implemented Directive 2001/55/EC into the UK's law) was already in force, the Government in London decided to support Ukrainian

<sup>48</sup> Immigration Rules. *GOV.UK* [online]. 25. 2. 2016, updated 9. 8. 2023 [cit. 5. 9. 2023]. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11a-temporary-protection>

<sup>49</sup> § 4(5) of Czech Act no. 65/2022.

<sup>50</sup> OVERTON, S. Russian invasion of Ukraine: UK and EU refugee responses. *UK in a Changing Europe* [online]. 8. 2. 2022 [cit. 5. 9. 2023]. Available at: <https://ukandeu.ac.uk/explainers/russian-invasion-of-ukraine-uk-and-eu-refugee-responses/>

citizens (direct relatives of British citizens) by waiving visa fees<sup>51</sup>. This has occurred although the UK has still been bound by EU law owing to Section 2-4 of the EU Withdrawal Agreement, so Art. 355(ii) of the Immigration Rules could be applied. Ukrainians staying in the UK were exceptionally allowed to switch into a different leave without a necessity to re-enter the UK. Still, all the lengthy visa security checks were sustained<sup>52</sup>.

A reference to visas in the above-mentioned paragraph is important, because at the time of the escalation of the war, visa-free travel between Ukraine and Schengen countries (including Poland) was in force (since 11 June 2017)<sup>53</sup>. Ukrainian biometric passport holders could cross the EU external border and stay in the Schengen area without needing to have a visa for short-term stays (90 days within a consecutive period of 180 days). Still, they had to: justify the purpose and conditions of the planned stay, have the required financial means, and not pose a threat to public order and internal security. Taking into account the heavy burden of registering persons who intended to stay in the UK after Brexit (roughly 6 million applications at the time), Home Office human resources were moved to the Ukrainian scheme, resulting in lags in both procedures.

Therefore, it would need to be analyzed in detail if the British approach to DPUs has provided that the rights from Directive 2001/55/EC are ensured in practice. The negative answer to the above question could result in the initiation by the European Commission of an infringement procedure. The Commission has already proved that even after Brexit it can take such an action<sup>54</sup>. This would be a test verifying whether the Commission attaches the same importance to the rights of all persons to whom EU law applies.

These British norms confirm the appropriateness of the view that in MI cases registration formalities should be limited. An example of how this aim can be achieved can be found in new Polish norms, which have extended the visa-free travel regime. Art. 42 of the law also prolonged the validity of documents such as temporary residence permits and visas for Ukrainians who arrived in Poland before 24 February 2022. Initially the validity of their

<sup>51</sup> Press release. Home Secretary announces visa concessions for Ukrainians. *GOV.UK* [online]. 24. 2. 2022 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/government/news/home-secretary-announces-visa-concessions-for-ukrainians>; DESMOND, A. Chapter 9. Visas Still Required: The UK Response to the Protection Needs Generated by Russian Aggression in Ukraine. In: CARRERA, S., INELI CIGER, M. (eds.). *EU responses to the large-scale refugee displacement from Ukraine: an analysis on the temporary protection directive and its implications for the future EU asylum policy*. Florence: European University Institute, 2023, p. 177.

<sup>52</sup> SPARROW, A., TAYLOR, D., O'CARROLL, L. Changes to UK visa rules for Ukrainians called "shameful" by Labour. *The Guardian* [online]. 27. 2. 2022 [cit. 10. 3. 2023]. Available at: <https://www.theguardian.com/uk-news/2022/feb/27/uk-expected-ease-visa-restrictions-ukrainians-fleeing-war>

<sup>53</sup> The legal basis for visa-free travel between Poland and Ukraine is *Regulation (EU) 2017/850 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EC) No 539/2001, which lists third countries entitled to cross external borders without a visa. The Regulation included Ukraine in the list with effect from 11 June 2017*. OJ EU L 133 of 22. 5. 2017, pp. 1–3. Repealed by *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 and those whose nationals are exempt from that requirement (codification)*, PE/50/2018/REV/1, OJ L 303, 28. 11. 2018, p. 39–58.

<sup>54</sup> KUCHARCZYK, M. Brexit: KE wszczęła procedurę naruszeniową wobec Wielkiej Brytanii. *EURACTIV.pl* [online]. 1. 10. 2020 [cit. 5. 9. 2023]. Available at: <https://www.euractiv.pl/section/institucje-ue/news/brexit-ke-wszczela-procedure-naruszeniowa-wobec-wielkiej-brytanii/>

documents was extended until 31 December 2022 and later it was prolonged until 24 August 2023<sup>55</sup>. This is a notable modification, because about 84% of the citizens of Ukraine have temporary residence in Poland (77% of them – with a right to work). Similar extension rules apply to visa-free travel beneficiaries. On the other hand, the validity of the residence card, the Polish identity documents of the Ukrainian citizen, and “consent for tolerated stay” documents were extended for a period of 18 months, counting from the end of the legal stay. The same applied to visa-free movement and Schengen visa – the possibility of legal stay was extended by 18 months. Having in mind that the above-discussed British norms were addressed primarily to displaced persons from Ukraine who have already been in the UK<sup>56</sup> the Government in London could feel encouraged by these Polish norms.

Certainly, a threat to public order and internal security should be verified if authorities have doubts about the risk created by an individual. An individualized verification procedure should be conducted. Nevertheless, persons creating particularly high risk to security or public order (e.g. convicted war criminals, but also members of the groups of volunteers who are well-known for committing war crimes) could be given a decision denying entry and stay based on their explicit negation of the UN values<sup>57</sup>. Finally, a temporary (until the final decision is made) right to enter a country or to remain in a country should be granted, and later the need to revoke that right may be verified. It is possible to detain beneficiaries, but this should be ordered only individually, and used only if less coercive measures would be inadequate. To sum up – national law can give preference for a facilitated registration of persons in MI situations, and it can limit the number of displaced persons who will need to undergo more detailed security checks. However, in all cases a state should provide protection to persons in need, but it should have a right to revoke protection after closer verification of the application.

Steps taken by Poland (which has established an almost new system) can be compared also with the UK’s new law adopted in response to the MI from Ukraine into the bordering EU states and Moldova. The UK’s norms were promoted as a result of consultations with national organizations, but also with the Polish and Ukrainian Governments. The Home Secretary even went to the Polish-Ukrainian border crossing in Medyka where she announced this emergency visa scheme<sup>58</sup>. Straight from the beginning, in all parliamentary debates, Secretary Priti Patel and her successor Suella Braverman repeatedly stressed the security of the UK as the first and most important principle of any immigration scheme. Meanwhile in Poland the communication focused on the safety and security of civilians

<sup>55</sup> Since an entry into force of Ustawa o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw z dnia 13 stycznia 2023 r. (Polish Journal of Laws of 2023, item 185).

<sup>56</sup> DESMOND, op. cit., Chapter 9, pp. 177–178.

<sup>57</sup> More in SADOWSKI, P. Sytuacja prawna na granicy polsko-białoruskiej po wybuchu wojny rosyjsko-ukraińskiej – wyzwanie dla procedur udzielania ochrony międzynarodowej. *Studia Politologiczne*. 2023, Vol. 68, pp. 105–118. DOI: <https://doi.org/10.33896/SPolit.2023.68.6>

<sup>58</sup> HUGHES, D. Priti Patel travels to Polish border with Ukraine to launch new visa scheme. *Independent* [online]. 4. 3. 2022 [cit. 10. 3. 2023]. Available at: <https://www.independent.co.uk/news/uk/priti-patel-ukraine-polish-home-secretary-british-government-b2028286.html>

fleeing Ukraine, mostly women, children, and the elderly<sup>59</sup>, and citizens of other countries residing in Ukraine prior to the war<sup>60</sup>. Therefore, Polish politicians have started to underline a need to provide humanitarian assistance to foreigners, and they have warned against fake news distributed in social media concerning DPUs<sup>61</sup>. This was a radical political shift, because during 2015–2016 that government underlined a deemed existence of a link between immigration and a threat to state security.

This change should be appreciated. In 2022-2023 when already a million people had passed through the border to Poland, had been quickly registered, and had found shelters mainly in private houses (though, organized collective accommodations have also been prepared), only the first applications within the British scheme were under examination<sup>62</sup>.

The full Ukraine Scheme in the UK (hereinafter: the UKUS) sets out 3 routes for persons arriving in that country:

- the Ukraine Family Scheme (for family members of British citizens or settled citizens),
- the Homes for Ukraine Sponsorship Scheme (for individual or institutional sponsors taking responsibility of the accommodation for the Ukrainian applicants), and
- the Ukraine Extension Scheme (for Ukrainians that were legally in the UK on or after 1 January 2022 who apply to extend their stay).

Ukrainians arriving in the UK under the UKUS are granted 3 years valid leave to remain. This is a notable difference, if compared with Art. 355C of Immigration Rules which provides a maximum 12-months long valid residence permit. Both norms, however, entitle to work, as well as to access social benefits, health, and public services. The UK's special rules duration of legal stay differs substantially from the temporary nature of EU displacement regulations, which provide that persons from Ukraine may stay in the EU until March 2024<sup>63</sup>. Polish PSL (with a lack of rules on integration of displaced persons) still underlines the short-term nature of DPUs, and can, therefore, be contrasted with the UK's mid-term perspective on that displacement, and with the Czech approach to the integration of displaced persons from Ukraine which is described below. Nevertheless, as regards admission to the territory, the Polish norms have been much more open at this stage than in the UK, where a visa-free stay (without an employment possibility, apart from exceptions of permitted

<sup>59</sup> DÜVELL, F., LAPSHYNA, I. On war in Ukraine, double standards and the epistemological ignoring of the global east. *International Migration*. 2022, no. 4, p. 210. DOI: <https://doi.org/10.1111/imig.13038>

<sup>60</sup> Similar rules on holders of Czech residence permit. See § 3 of Czech Act no. 65/2023.

<sup>61</sup> TONDO, L. People of colour fleeing Ukraine attacked by Polish nationalists. *The Guardian* [online]. 2. 3. 2022 [cit. 10. 3. 2023]. Available at: <https://www.theguardian.com/global-development/2022/mar/02/people-of-colour-fleeing-ukraine-attacked-by-polish-nationalists>

<sup>62</sup> MCVEIGH, K. “They are frozen”: Poland praised for generous welcome to 1m Ukrainians. *The Guardian* [online]. 7. 3. 2022 [cit. 10. 3. 2023]. Available at: <https://www.theguardian.com/world/2022/mar/07/over-1-million-people-have-fled-ukraine-for-poland-since-invasion-says-border-guard>

<sup>63</sup> Solidarity with Ukraine: EU takes new steps to provide certainty and access to employment to beneficiaries of Temporary Protection. *European Commission* [online]. 10. 10. 2022 [cit. 10. 3. 2023]. Available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10430>

activities)<sup>64</sup> applied only to EU citizens. Thus, the acceptance of almost all persons fleeing directly from the country at war (exceptions are possible in cases of persons who e.g. may create a risk to public security) differs significantly from the UK's approach. Regrettably, although the Home Office plans for the digital border before 2025 and case of UKUS could be ideal as a pilot program for digital IDs<sup>65</sup> (and already with lessons learnt as in use in Poland), the British system opted for analogue biometric resident permits.

## 2.2 Access to Social Benefits

The Polish special law, Czech Act no. 221/2003, Denmark's Special Act of May 2022, and a set of Spanish Special Laws<sup>66</sup> confirm that Poland was not the only EUMS, which lacked law to effectively address the MI situation. The devil is, however, in the details. Some of the above-mentioned norms (e.g. Czech law) mainly clarified some of the older regulations, but they have not rebuilt the system. Regrettably, (in contrast to e.g. Czech law) the Polish pre-war regulations did not specify the services which were available to beneficiaries of temporary protection, or the financing of these benefits<sup>67</sup>. This has not taken into account the need to ensure their adequate treatment and has not made it possible to address their needs in an organized way. Without an open approach to those Poles who voluntarily in their private time and with their own money supported persons in need, the number of risks to which DPUs could have been exposed and the harshness of their living conditions would have been higher. In such situations, a well-organized state should not rely mainly on the sympathy of individuals and their financial resources, but it should use them only to support its own actions. To meet that standard these deficiencies of Polish law were partially corrected in 2022. Nevertheless, they still miss any reference to clearly specified financing.

An analysis of available social benefits should start with access to accommodation. EU law refers to a non-specified standard of "adequate accommodation". Still, "*when implementing the Council's decisions, the Member States are obliged to respect the Charter [in particular its Art. 34] [...] and to comply with the spirit of Directive 2001/55/EC*"<sup>68</sup>. In the UK and in Poland individual sponsors can provide homes or a spare room rent-free. Refunds are provided to landlords, respectively: GBP 350 per month and 40 PLN per day<sup>69</sup>. In the UK renting time must

<sup>64</sup> Immigration Rules Appendix Visitor: Permitted Activities GOV.UK [online]. 25. 2. 2016, Updated 30. 1. 2023 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-permitted-activities>

<sup>65</sup> More in KOSIEL-PAJĄK, M. UK border digitalization – a commentary on the current state of affairs. *Applied Cybersecurity & Internet Governance*. 2022, Vol. 1, no. 1. DOI: <https://doi.org/10.5604/01.3001.0016.1052>

<sup>66</sup> Including e.g. Orden PCM/169/2022, de 9 de marzo, por la que se desarrolla el procedimiento para el reconocimiento de la protección temporal a personas afectadas por el conflicto en Ucrania, BOE-A-2022-3715.

<sup>67</sup> CILAK, M., SADOWSKI, P. Polish national financing of support to mass arrivals of persons fleeing Ukraine after 24 February 2022. *Krytyka prawa*. 2003, Vol. 15, no. 3. DOI: <http://doi.org/10.7206/kp.2080-1084.621>

<sup>68</sup> EUROPEAN COMMISSION. *Communication from the Commission on Operational Guidelines for the Implementation of Council Implementing Decision 2022/382*, 2022, OJ EU C 126 I/1 of 21. 3. 2022, p. 3.

<sup>69</sup> In Czech Republic an amount of support depended and depends on whether this is a shared or a separate accommodation. SCHREIBEROVÁ, Z. Lex Ukrajina II of 29. 6. 22. *Migraceonline.cz* [online]. [cit. 5. 9. 2023]. Available at: <https://migraceonline.cz/cz/e-knihovna/lex-ukrajina-ii>



be longer than 6 months (refund of GBP 350 per month). In Poland a minimum duration of accommodation is unspecified in law. Moreover, joint accommodation centers have been prepared in Poland, and some local authorities benefited from the law, which has made it easier for the involved partners, e.g. local authorities, to adapt unused buildings to accommodate displaced persons. Regrettably, contrary to the Czech Republic, Poland has not introduced monitoring mechanisms to verify standards of housing of DPUs.

According to the welcome guidebook for incoming Ukrainians, the extent and manner of assistance varies in different parts of the UK. In Wales and Scotland where under the UK law some pieces of the British legislation do not have legal effect<sup>70</sup>, the visa sponsor may be the local government which provides the applicant with an information package on his/her new place of residence and the available assistance. The first facility is free domestic travel, which is valid for either 2 or 7 days (Northern Ireland).

In addition, in the UK the assistance in the new place of residence can be expected from both the local authority (Council) and local residents. In terms of institutionalized support, Ukrainians can receive a one-off payment (GBP 200 per person), permanent benefits (social benefits) depending on their personal situation (subsidies for children, rent for housing, fees for courses, and job counselling). On their own initiative, neighborhood associations organize participation in sports or cultural events<sup>71</sup>.

Seemingly, a similar approach has been taken in Poland. Polish local authorities can provide DPUs with additional benefits, if they have sufficient financial resources for that purpose. However, there is a fundamental difference between UK and Polish law – under Polish law actions are not reimbursed in advance from the state budget and the law does not guarantee *ex ante* reimbursement<sup>72</sup>. This greatly limits the extent of Polish local government's support to DPUs and shifts the burden to non-governmental organizations. However, prior to the eruption of the war non-governmental organizations had been systematically institutionally discouraged from supporting immigrants and refugees<sup>73</sup>. Therefore, a lot of their capacities and institutional knowledge has been lost, but under the commonly positive approach to DPUs<sup>74</sup> both the non-governmental organizations and local authorities are supporting e.g. the learning of Polish (there are no government-organized courses of Polish language), and integrating displaced persons (e.g. local Polish-Ukrainian sport activities for displaced children).

<sup>70</sup> This applies in particular when a non UK-wide law is adopted and “where the devolved legislatures could but do not necessarily want to bring their own laws on the way”. GUDERJAN, M. *Intergovernmental relations in the UK: cooperation and conflict in a devolved unitary state*. London-New York: Routledge, 2023, p. 95. DOI: <https://doi.org/10.4324/9781003349952>

<sup>71</sup> Guidance. Move to the UK if you're coming from Ukraine. *GOV.UK* [online]. 28. 3. 2022, last updated 22. 2. 2023 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/guidance/move-to-the-uk-if-youre-from-ukraine>

<sup>72</sup> CILAK, SADOWSKI, op. cit., pp. 78–83.

<sup>73</sup> Cf. KLAUS, W. Karanie za pomoc – jak rządy zniechęcają organizacje społeczne wspierające migrantów i ich aktywistów do działania. *Trzeci Sektor*. 2018, Vol 4.

<sup>74</sup> STANISZEWSKI, R. M. Społeczna percepcja uchodźców z Ukrainy, migrantów oraz działań podejmowanych przez rząd Mateusza Morawieckiego - raport z badania opinii publicznej. *ResearchGate* [online]. 31. 8. 2022. DOI: <http://dx.doi.org/10.13140/RG.2.2.17930.34243>

In Poland access to benefits starts with immediate access to medical services. It is expanded over basic emergency cases, which is a minimal standard under EU law. It also includes the possibility of organizing transport for persons with medical needs. Moreover, Poland ensures social benefits, including social security and assistance benefits, for DPUs who have legalized their stay in Poland. The assistance includes:

- a one-time benefit of 300 PLN per person,
- a benefit from the Family 500+ program – granted for each child up to the age of 18,
- the Family Care Capital Program benefit – granted for the second and subsequent child aged 12–35 months,
- subsidizing the fee for a child’s stay in a crèche, a children’s club, or at a day-care center in the amount of PLN 400,
- the school starter allowance from the program Good Start 300+ granted for each child up to the age of 20 (or up to 24 in the case of a student with disabilities) who lives in Poland and attends school. This aid is aimed at the parent, the temporary guardian, and the person taking foster care of the child<sup>75</sup>.

Consequently, both the Polish and the UK systems have given full access to social benefits with additional rather symbolic payment for the accommodation.

Moreover, contrary to the UK (the mid-term validity of a permit to stay promotes participation in integration activities, even though they are mainly provided voluntarily by local authorities) and the Czech approach (the Government in Prague has conducted an analysis of the possible short-, medium-, and long-term implications of a displacement and of establishing norms on integration), the Government in Warsaw has decided not to apply an organized integration program for adults. In Poland, individualized programs (including linguistic training, if needed) have not been guaranteed to asylum seekers. Thus, Poland is the only country from the above-mentioned list of states which considers MI as a short-term issue. Even in times of a very high demand for workers a lack of an access to trainings may result e.g., in overuses of foreigner’s rights in employment<sup>76</sup>, as well as in an increased number of accidents at the workplace<sup>77</sup>.

The negative consequences for children would be even bigger than they are in the case of adults. The integration of minors integration has not been regulated in law except for rules on providing them with limited support in learning the Polish language in Polish schools. Researchers have stressed that *“Ukrainian refugee students in the Czech Republic faced a three-fold disadvantage in establishing peer relationships in schools – becoming an ethnic minority in an educational system operating in an ethnically homogeneous society, lacking proficiency in the Czech language, and managing psychosocial adjustment problems stemming from their relocation and war experience in their home*

<sup>75</sup> CILAK, SADOWSKI, op. cit., pp. 76–78.

<sup>76</sup> BRZEZICKI, T., NOGA, M., WANTOCH-REKOWSKI, J., Wydawanie decyzji interpretacyjnych przedsiębiorcom przez ZUS. Warszawa: Wolters Kluwer Polska, 2020; SADOWSKI, 2002b, op. cit., pp. 157–164.

<sup>77</sup> PAWŁOWSKI, S. Wykonywanie zawodu lekarza przez cudzoziemca niebędącego obywatelem państwa członkowskiego UE a znajomość języka polskiego. *Studia Prawa Publicznego*. 2022, Vol. 37, no. 1, pp. 9–28. DOI: <https://doi.org/10.14746/spp.2022.1.37.1>

country.”<sup>78</sup>. These views are accurate also in a context of DPUs’ children in Polish schools. The “ethnically homogeneous society” and the linguistic barrier make different the situation of Poland and the Czech Republic from that of the UK.

Finally, we should stress that in Poland and the Czech Republic DPUs do not have to reside in a place designated by public authorities, but they are encouraged to stay in various parts of these countries. This reasoning can be deduced from the fact that these states have provided free of charge transport to displaced persons. In Poland this has encouraged these persons to reside in non-border areas<sup>79</sup>. Research from the Czech Republic shows that in that state DPUs reside mainly in „in just three administrative districts [...], i.e. Prague (*Hlavní město Praha*) – 78,454 (23.5 percent of all Ukrainian refugees), Brno-město – 16,557 (4.9 percent), and Plzeň (*Plzeň-město*) – 12,702 (3.8 percent) ...”<sup>80</sup> Still, in Poland and in the Czech Republic some regions had relatively small experiences in immigration and asylum issues, because the number of foreigners in these regions was small. This situation has seriously affected social services in these regions e.g. regarding an access to social services, accommodation, and schools. To exemplify these constraints at the beginning of the 2022/23 school year Ukrainians constituted 5% of children in Czech primary education<sup>81</sup>. This has occurred although DPUs children could have continued their education in Ukraine using on-line classes.

An unequal distribution of protection seekers, which has been stressed in the context of outlining the foundations of the EU Common European Asylum System<sup>82</sup> can also take place in an individual country, even if persons seeking protection come from a country which is a direct neighbor to the EU. Therefore, it should be appreciated that Poland and the Czech Republic have decided not to apply restrictions on the freedom of movement of DPUs. It also proves the correctness of the British approach, which emphasizes the importance of a diaspora<sup>83</sup>, which can support arriving persons, but also encourages immigrants (especially asylum seekers) to reside outside main immigration areas. A more in-depth research into the consequences of the differences between the methods of applying the visa sponsor program in different parts of the UK could also show whether positive incentives organized by the local authorities affect the geographic distribution of displaced persons, but such an analysis goes beyond the goals of this article.

<sup>78</sup> LINTNER, T., DIVIÁK, T., ŠEĎOVÁ, K., HLADO P., Ukrainian refugees struggling to integrate into Czech school social networks. *Humanities and Social Sciences Communications*. 2023, Vol. 10, p. 2. DOI: <https://doi.org/10.1057/s41599-023-01880-y>

<sup>79</sup> Obywatele Ukrainy w Polsce – raport. *Urząd do spraw cudzoziemców* [online]. Warszawa: Urząd do Spraw Cudzoziemców, 2021. Available at: <https://www.gov.pl/web/udsc/obywatele-ukrainy-w-polsce--raport>  
Detailed information on residency of displaced persons in Poland in ZUBEL, M. W tym polskim mieście mieszka najwięcej Ukraińców. Nowe liczby. *wp.pl* [online]. 23. 2. 2023 [cit. 3. 3. 2023]. Available at: <https://wiadomosci.wp.pl/w-tym-polskim-miescie-mieszka-najwiecej-ukraincow-nowe-liczby-6869606977948288a>

<sup>80</sup> ADUNTS, D., BOHDANA KURYLO, B., ŠPECIÁNOVÁ, J. Location Choice and Dispersal Policies: Ukrainian War Immigrants in the Czech Republic. *Policy Paper*. Výzkumný ústav práce a sociálních věcí, v. v. i. 2022, no. 3, p. 6.

<sup>81</sup> LINTNER, DIVIÁK, ŠEĎOVÁ, HLADO, op. cit.

<sup>82</sup> Cf. CRAIG, S., ZWAAN, K. Legal Overview. In: GILL, N., GOOD, A. (eds.). *Asylum Determination in Europe Ethnographic Perspectives*. Cham: Palgrave, 2019, p. 31; SADOWSKI, P. *Wspólny Europejski System Azylowy – historia, stan obecny i perspektywy rozwoju*. Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, 2019, pp. 166–168.

<sup>83</sup> SELM, op. cit., p. 193.

### 3 **Lessons Learned and New Challenges in Addressing Displaced Persons' Needs**

Firstly, temporary protection cannot limit the possibilities of relying on individualized refugee recognition systems. Displaced persons from Ukraine who benefit from Directive 2001/55/EC can submit asylum applications in EUMSs. Three types of legal situations can be identified in DPUs cases who have applied for a refugee status:

- before special regulations have entered into force,
- before special regulations have entered into force, but that person has withdrawn such an application after the special regulation has entered into force, and
- when that person has already been benefiting from special regulations.

In Poland most applications for refugee status were submitted in March 2021, so it can be assumed that at least some of them could have been submitted before the Council Implementing Decision was adopted. Displaced persons from Ukraine submitted 1,500 applications out of all 7,400 asylum applications, and they have received 700 individualized decisions granting protection. These statistics can be contrasted with 202 asylum applications submitted in the UK between 24 February 2022 and the Ukraine extension scheme launching (2 May 2022)<sup>84</sup>. That number is far lower. Apart from that, post-Brexit UK has been enlarging the backlog of asylum cases. These statistics confirm that in Poland and in the UK access to refugee status determination procedures has not been made obsolete under the temporary protection scheme, although in the case of the former the priority is put on the scheme rather than “classical” asylum.

Art. 2(3) of the Polish special regulation explicitly states that it does not apply to persons who have, or have applied for, international protection in Poland. The form of the already possessed protection (e.g. refugee status or a subsidiary protection) is irrelevant. This should be supported, because those people have already been protected from *refoulement*. Nevertheless, protection from special regulation applies to DPUs who have withdrawn their application for refugee status. This is a correct approach, because otherwise they could be exposed to a risk of *refoulement*.

Finally, if a beneficiary of MI protection in Poland applies for refugee status, then the Office for Foreigners proceeds with this application. This rule undermines the efficiency of the Polish protection system. This is because processing a refugee application is more time consuming than providing MI protection. In the case of DPUs – they would be protected from *refoulement*, so there is no risk to their life and they are free from the risk of torture. Refugee status is a more durable solution than temporary protection. However, the state should primarily protect as many persons from a risk to their life and exposition to torture as possible. Therefore, resources which are spent on processing their applications in times of an increased number of arrival of persons in need are not being used efficiently.

<sup>84</sup> National statistics. Statistics on Ukrainians in the UK. *GOV.UK* [online]. 2023 [cit. 5. 9. 2023]. Available at: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/statistics-on-ukrainians-in-the-uk>

Polish law could, therefore, be amended. The UK and Czech norms could be used as an example. The UK Art. 355G of Immigration Rules has explicitly stated that „If a person who makes an asylum application is also eligible for temporary protection, the Secretary of State may decide not to consider the asylum application until the applicant ceases to be entitled to temporary protection”. Similar regulation can be found in § 6(4) of Czech Act no. 65/2022. These norms confirm that in Poland, the UK, and the Czech Republic access to refugee status determination procedures has not been made obsolete under the temporary protection scheme, but (to facilitate support to large number of displaced persons) it has been limited. The extent of the rights of beneficiaries of Directive 2001/55/EC is similar to the rights of recognized refugees and it is wider than the extent of the rights of asylum seekers (e.g. in Poland they cannot work in the first 6 months of their asylum procedure), so this limitation would not seriously affect most of their rights.

Secondly, the first use of the Directive provides a chance to identify some deficiencies of that EU law. Two issues regarding the duration of protection are particularly problematic: only 1 prolongation is possible, and the total duration of protection. The Directive can be seen as a short-term and *ad-hoc* solution to the needs of displaced persons. It can be used at the beginning of the crisis. This proves that there is a need to develop a longer solution e.g. providing beneficiaries of Directive 2001/55/EC with a facilitated possibility to change their legal status (whether to temporary residence permits or subsidiary protection). Here, the British 3-years valid permit which can be seen as a mid-term approach can serve as an example.

Thirdly, Directive 2001/55/EC has proved its efficiency especially in the case of persons seeking protection in neighboring countries. According to the UNHCR's data, the UK has received 147,800 Ukrainians. This is not many in comparison to EU countries like Poland (1,529,355), Germany (1,021,667) or the Czech Republic (466,872, this is the highest per capita rate in the EU<sup>85</sup>)<sup>86</sup>. The UK data from December 2022 show that there were 253,700 applications to the scheme, mostly within the sponsorship part. The backlog decreased from 21,000 in September to 15,000 in December 2022. Total arrivals of UKUS holders in the UK were 150,600 for mid-December 2022 and can be divided into arrivals via the Ukraine Family Scheme (42,600 persons), and via the Ukraine Sponsorship Scheme (108,000 persons). Total permissions to extend stay in the UK amounted to 18,200<sup>87</sup>. Depending on the time and form of application the permission gives physical proof of a vignette in passport or a standard “Permission to Travel” letter issued by UK Visas and Immigration.

<sup>85</sup> MCVICAR, D. Costs of Accommodating the Most Ukrainian Refugees Per Capita in the EU: The Czech Case (Part Two)[online]. *Eurasia Daily Monitor*. 2023, Vol. 20, issue 6 [cit. 18. 9. 2023]. Available at: <https://jamestown.org/program/costs-of-accommodating-the-most-ukrainian-refugees-per-capita-in-the-eu-the-czech-case-part-two/>

<sup>86</sup> Operational Data Portal. Ukraine Refugee Situation. *UNHCR* [online]. Updated 20. 9. 2022 [cit. 10. 3. 2023]. Available at: <https://data.unhcr.org/en/situations/ukraine>

<sup>87</sup> Transparency data. Ukraine Family Scheme, Ukraine Sponsorship Scheme (Homes for Ukraine) and Ukraine Extension Scheme visa data. *GOV.UK* [online]. Update 9. 3. 2023 [cit. 10. 3. 2023]. Available at: <https://www.gov.uk/government/publications/ukraine-family-scheme-application-data/ukraine-family-scheme-and-ukraine-sponsorship-scheme-homes-for-ukraine-visa-data--2>

Under the Polish general rules applicable to MI (less favorable than regulations applicable to Ukrainians) 1,200 persons have received protection in Poland. These were mainly citizens of Russia and Belarus who resided in Ukraine prior to the war<sup>88</sup>. The efficiency of that law can be seen in the context of the 1,400,000 registrations which have been made under the PSL. It also proves that the law has provided flexibility in addressing the individualized needs of different categories of DPUs. Such an approach should be appreciated.

Finally, Poland has had experience with asylum claims received at the EU's Eastern borders. Currently, two contradicting approaches of the Polish government can be noted in that region. A welcoming approach to DPUs has been adopted, whereas persons attempting to cross the Polish-Belarusian border are pushed back, without providing them with a possibility to apply for asylum and without receiving in paper decisions rejecting a right to enter Poland<sup>89</sup>, and non-governmental actors were denied a right to support persons who illegally crossed that border<sup>90</sup>.

These double standards in the Polish and British approaches favoring resettlements confirm that the practice has not been changed since 2006 when E. Feller correctly stressed that “*The international protection regime does not establish a hierarchy where certain groups of refugees have greater priority over others. [...] Recently, [...] resettled refugees are [perceived as] the only ‘genuine’ refugees and that spontaneous arrivals are, at best, ‘queue jumpers’ or, worse, abusers of the system.*”<sup>91</sup> W. Klaus has noted that a similar approach could be found also in other EUMSs<sup>92</sup>. This partially confirms the creation of a two-tier asylum system in Europe, which “*raises concerns over a racial bias*”<sup>93</sup>. Still, in the Polish case, such discrimination would be fully identified “*only if the Council objected to adopting a decision in situations similar to the war in Ukraine*”<sup>94</sup>. However, the British experience can prove that a two-tier approach to protection seekers already exists in practice. Nevertheless, it cannot be forgotten that a decision to participate

<sup>88</sup> All data for September 2022 cited after <https://www.gov.pl/web/udsc/postepowania-uchodzcie-po-iii-kwartale-2022-r2> [cit. 5. 9. 2023].

<sup>89</sup> Humanitarian crisis at the Polish-Belarusian border. *GRUPA GRANICA* [online]. 10. 12. 2021. Available at: <https://konsorcjum.org.pl/storage/2023/10/Grupa-Granica-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf>

<sup>90</sup> Poland: MSF team leaves border region after aid agencies blocked from assisting migrants and refugees. *Doctors Without Borders* [online]. 6. 2. 2023 [cit. 3. 3. 2023]. Available at: <https://www.doctorswithoutborders.ca/article/poland-msf-team-leaves-border-region-after-aid-agencies-blocked-assisting-migrants-and>. More in KLAUS, W. How Does Crimmigration Unfold in Poland? Between Securitization Introduced to Polish Migration Policy by Its Europeanization and Polish Xenophobia. In: KOULISH, R., WOUDE, M. van der (eds.). *Crimmigrant Nations: Resurgent Nationalism and the Closing of Borders*. Fordham University Press, 2020, pp. 298–314. DOI: <https://doi.org/10.2307/j.ctvrxpzh.16>

<sup>91</sup> FELLER, E. Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come. *International Journal of Refugee Law*. 2006, no. 3–4. DOI: <https://doi.org/10.1093/ijrl/eel016>

<sup>92</sup> KLAUS, 2020, op. cit., pp. 302–303.

<sup>93</sup> DÜVELL, LAPSHYNA, op. cit., p. 210.

<sup>94</sup> MIKOŁAJCZYK, B. The Migrant Crisis and Refugees – a Crisis of EU Solidarity. *Polish Review of International and European Law*. 2020, no. 2, p. 193. DOI: <https://doi.org/10.21697/priel.2020.9.2.07>; CARRERA, S. et al. The EU grants temporary protection for people fleeing war in Ukraine. Time to rethink unequal solidarity in EU asylum policy. *CEPS Policy Insights*. 2022, no. 2022–09. Available at: [https://www.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-09\\_ASILE\\_EU-grants-temporary-protection-for-people-fleeing-war-in-Ukraine-1.pdf](https://www.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-09_ASILE_EU-grants-temporary-protection-for-people-fleeing-war-in-Ukraine-1.pdf)

in resettlements is of a political nature. This is because there is no legally binding obligation in that regard. The destination country can also select candidates for resettlement. It can, therefore, rely on “*humanitarian, humanist, cultural, and faith-based values*”<sup>95</sup>. However, it needs further analysis to check if the UK’s law is fully in line with Directive 2001/55/EC.

Although persons displaced from Ukraine have facilitated access to protection in Poland and can benefit from additional services in the UK, some challenges exist in addressing their social needs. The problems are, however, unrelated to the country of their origin (or permanent residence).

The list of issues to be solved starts with the limited number of accommodation places. In Poland and the Czech Republic DPUs should seek accommodation on their own. This is a substantial difference compared to general rules on accommodation of persons seeking protection where the current Polish ruling party favored accommodating refugee seekers in common reception centers. This should be welcomed because it fosters integration and helps widespread DPUs. Still, in Poland there is no central database of trustworthy (verified e.g. by local governments) landlords. To limit these problems experiences from the Czech Republic could be used. In that state the Ministry of Labour has established a national housing register<sup>96</sup>. This limits possible overuses from bogus flat owners.

Moreover, in times of rising inflation and soaring living costs, national financial support to accommodate DPUs is far from sufficient to cover the costs of hosting them by private households. The UK’s Refugees minister Lord Harrington had been lobbying the Treasury to double the amount, but even 6-months continuation of financing is uncertain. The Department for Levelling Up, Housing, and Communities is appealing continuously for new applicants willing to provide a room or house for the Programme for a minimum of six months. Only one government member is known to have invited a family from Ukraine in the program, thus there is no real example to follow.

In contrast to this, in Poland a new law has partially limited support to displaced persons by e.g. introducing partial payments for communal accommodation<sup>97</sup>. Financial support has also been limited by amendments to Czech law<sup>98</sup>. Such steps are unsurprising having in mind the limited financial support which (in times of high inflation) cannot be substantially compensated by the EU funds. As F.J. Durán Ruiz correctly states “*Member States will receive funding for temporary protection from the Asylum, Migration, and Integration Fund, as provided for in art. 24 of the Directive. [...] the resources available to it are distributed as follows: a) 8 million euros for each Member State, except Cyprus, Malta, and Greece, which receive 28 million; b) the remaining resources are divided: 35% for asylum, 30% for legal migration and integration and 35% for the fight against irregular immigration, including returns; c) of the 35% allocated to asylum, 60% of the resources go to applicants*

<sup>95</sup> SELM, op. cit., p. 192.

<sup>96</sup> DITKO, J. Czech Republic: Changes to support for refugees from Ukraine. *Seznam Zprávy* [online]. 23. 6. 2023 [cit. 5. 9. 2023]. Available at: [https://ec.europa.eu/migrant-integration/news/czech-republic-changes-support-refugees-ukraine\\_en](https://ec.europa.eu/migrant-integration/news/czech-republic-changes-support-refugees-ukraine_en)

<sup>97</sup> Art. 17a and 17b added by *Ustawa o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw z dnia 13 stycznia 2023 r.*

<sup>98</sup> MCVICAR, op cit.

for international protection and only 30% (that is, less than 12% of the total after fixed aid to Member States), is intended for refugees, stateless persons or beneficiaries of subsidiary protection and beneficiaries of temporary protection, all with already recognized status.”<sup>99</sup> [Translation of the Authors]

Nevertheless, unlike the Government in Prague<sup>100</sup>, Poland has not decided to limit the maximum time of communal accommodation. Thus, the Government in Warsaw continues to take at least minimal steps to fight homelessness among DPUs. Nevertheless, it is alarming that up until now most of the benefits delivered in Poland do not have funding guaranteed in the state budget. The total costs of supporting DPUs are also unknown, because the Government is using financing which is not subject to parliamentary control<sup>101</sup>. Local authorities’ spendings (which had been cut down by amendments to budget law) are not guaranteed to be covered *ex ante* as well. Still, they offer some support, but it is more limited than intended. This uncertainty on the continuation of support affects also DPUs, especially owing to a lack of incentives to cover by themselves integration programs (e.g. language courses). This may negatively affect their mental health, as has already been observed in Poland<sup>102</sup>. Research findings from the Czech Republic where 45% of displaced persons declared that the language barrier makes it difficult to communicate with a doctor confirms this view<sup>103</sup>. However, it can also increase a brain drain when insufficient language skills would force DPUs to work below their qualifications. This may decrease the efficiency of their work and encourage them to leave Poland. Therefore, Poland (a country with an increasing labor shortage) should change its perspectives from short-term humanitarian solutions to mid- or long-term labor immigration. The facilitated legalization of DPUs legal residence in Poland may be particularly useful when the Council implementing decision will no longer be in force. This should be the first step in increasing the capacities of Polish institutions dealing with integration of non-Poles.

<sup>99</sup> DURÁN RUIZ, F.J. La regulación de la protección temporal de los desplazados por la guerra de Ucrania y su compatibilidad con otras formas de protección internacional en el contexto de una nueva política migratoria de la UE. *Revista de Derecho Comunitario Europeo*. 2022, Vol. 73, pp. 969–970. DOI: <https://doi.org/10.18042/cepc/rdce.73.07>

<sup>100</sup> “The maximum period does not apply to people who belong to vulnerable groups (children aged under 18; students aged under 26; carers of a child aged under 6; pregnant women; people aged over 65; disabled people; carers of disabled people).” Czech Republic: Fifth amendment to ‘Lex Ukraine’ law package. *European Commission* [online]. 1. 4. 2023 [cit. 5. 9. 2023]. Available at: [https://ec.europa.eu/migrant-integration/library-document/czech-republic-fifth-amendment-lex-ukraine-law-package\\_en](https://ec.europa.eu/migrant-integration/library-document/czech-republic-fifth-amendment-lex-ukraine-law-package_en)

<sup>101</sup> This theme is analysed in-depth in CILAK, SADOWSKI, op. cit.

<sup>102</sup> STANISZEWSKI, R., KOWNACKI, T. *Diagnoza życia, postaw oraz planów obywateli Ukrainy, którzy przybyli do Polski w wyniku działań wojennych tj. od dnia 24 lutego 2022 roku*. Warszawa: Uniwersytet Warszawski, 4. 9. 2023.

<sup>103</sup> KAVANOVÁ, M. Část uprchlíků nevyužívá zdravotnictví, i když by potřebovali. Brání jim jazyk a neinformovanost. *PAQ Research* [online]. 14. 11. 2022 [cit. 5. 9. 2023]. Available at: <https://www.paqresearch.cz/post/hlas-ukrajincu-zdravi-sluzby>



## Conclusions

The aggression against Ukraine has undoubtedly shaped new legal institutions to answer the humanitarian crisis. Although some see it as a localized conflict its repercussions go far beyond the borders of that country. Therefore, the effects of the war and their consequences call into question the existing legal solutions for a mass influx for people fleeing the conflict. These problems have been identified in many countries, not only direct neighbors dealing with the mass influx first.

Both the migration systems compared have had to adapt to the extreme situation that was a direct result of the Russian invasion of Ukraine. They differ greatly in legal terms and numbers of displaced Ukrainians. Also procedures are run in different ways and by different entities. The Polish system relies on temporary protection providing persons fleeing war with a chance to safely enter Poland and stay in private accommodation or in organized shelters (before they find a place to rent or be hosted), whereas, the British system for persons displaced from Ukraine is a visa regime, although with lifted fees, facilitated approval, and procedures made much more user-friendly than in case of typical labor immigration schemes. Moreover, there are big regional differences with Scotland and Wales acting as super-sponsors in the system.

The generosity of the UK has always been highlighted by the officials despite all the critical assessments and visible drawbacks of the humanitarian visas<sup>104</sup>. The migration scheme was set up relatively quickly in comparison with other undertakings of British administration, probably because the “competition” with the EU was at stake. Its first and far most important feature is the initial security check. The issue of the need for a biometric document has been settled partly with visits to visa centers in European countries. The procedure started with delays, but they seem to have improved since the summer of 2022.

In contrast to the UK, the Polish system does not try to portray itself as generous, although in comparison it may well be seen as much more generous than the British. *Inter alia*, Poland has ensured immediate access to medical services (expanding over basic emergency cases required by EU law) and to the labor market. Displaced children can also attend Polish kindergartens and schools. A special offer has also been made available to students.

The most positive side of the process of establishing Ukraine Schemes is the engagement of Ukrainian and British organizations and charities and most importantly locally set groups. A more individual reception is important as some of the newcomers may receive really tailored-made solutions, including studies, exams to prove qualification, or the possibility of working in their field. In Poland these issues have been delegated to non-governmental organizations.

<sup>104</sup> HARRINGTON, R. Ukraine refugee schemes are generous despite criticism - Minister for Refugees Richard Harrington. *The Yorkshire Post* [online]. 25. 4. 2022 [cit. 10. 3. 2023]. Available at: <https://www.yorkshirepost.co.uk/news/opinion/columnists/ukraine-refugee-schemes-are-generous-despite-criticism-minister-for-refugees-richard-harrington-3667911>

From both countries, the remaining most troublesome issue is accommodation, with rather symbolic financial help from the governments, and inflation soaring and generally worsening the situation. As the housing markets were already demanding and costly for the newcomers, this issue will become even more visible with the coming economic problems.

The UK and Poland have both been criticized for setting up double standards. In the case of the UK, there is concern over the welcoming entry for Ukrainians, British nationals from Hong Kong, and Afghan refugees. However, the British system is more and more rigid towards refugees that come through the English Channel (the so called “boat people”). Those are considered illegal and the administration is acting on the verge of human rights violation. In this regard the European Court for Human Rights is the only institution that can limit the “hostile environment” approach. It is the top priority of the government in London that post-Brexit Britain is self-reliant when it comes to its workforce; thus there is a prerequisite to diminish the numbers of immigrants coming to the UK, especially “boat people”, but also including students and Skilled Worker visa holders. Consequently, the approach to Ukrainians is very unusual when looking at the whole immigration system.

Polish migration policy has also been changing quite rapidly in recent years, although when it comes to refugees and mass influx it had to stay within the EU law. It has been constantly observed by the EU institutions. It has in many ways had to improvise and adapt to the new situation of a humanitarian crisis.