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Proposal for a

COUNCIL IMPLEMENTING DECISION

establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Activating the application of Council Directive 2001/55/EC of 20 July 2001 by way of a Council implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, having the effect of introducing temporary protection in accordance with the provisions of this Directive

Following the start of the Russian military invasion of Ukraine on 24 February 2022, the European Council, in its conclusions issued the same day, condemned the Russian Federation's (hereafter Russia) unprovoked and unjustified military aggression against Ukraine in the strongest possible terms, underlining the gross violation of international law and the principles of the UN Charter and the risk to European and global security and stability. The European Council demanded Russia's full respect for Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders, which includes Ukraine's right to choose its own destiny. EU Member States' heads of state and government also confirmed that the Russian government bears full responsibility for its act of aggression causing human suffering and loss of lives, and that it will be held accountable for its actions. In solidarity with Ukraine, the European Council agreed on a second package of sanctions.

In this context, the European Council called for work to be taken forward on preparedness at all levels and invited the Commission to put forward contingency measures.

The European Union is directly impacted by the war on its external borders, notably through increasing migratory pressure resulting from the many thousands of persons seeking protection in EU Member States. Within a few days, by the beginning of March, more than 650 000 displaced persons had arrived in the European Union through Poland, Slovakia, Hungary and Romania. These numbers are expected to increase even more. The UN launched a UN Humanitarian Flash Appeal for protection and assistance needs in Ukraine and the Regional Refugee Response Plan for Ukraine providing details on the numbers of people in need and those to be targeted by assistance.

Ukraine is a visa-free country[1] for entry into the EU. Therefore, holders of Ukrainian biometric passports are exempted from visa requirements when travelling into the EU. Based on the experience in the aftermath of the illegal Russian annexation of the Autonomous Republic of *Crimea* and the city of Sevastopol and war in the eastern Ukraine, expectations are that half of the Ukrainians coming to the European Union, benefitting from visa-free travel, will join family members or seek employment in the European Union, while the other

[1] Regulation (EU) 2018/1806 , which lists the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (Annex I to the Regulation) and those whose nationals are exempt from that requirement for stays of no more than 90 days in any 180-day period (Annex II to the Regulation). The exemption from the visa requirement applies to the holders of biometric passports issued by Ukraine in line with standards of the International Civil Aviation Organisation (ICAO).

half may request international protection. Depending on how the conflict evolves, the EU is likely to host a significant number of persons. Estimates suggest a possible figure of between 2.5 million and 6.5 million persons displaced due to the armed conflict, of which between 1.2 and 3.2 million may seek international protection. The United Nations High Commissioner for Refugees estimates that that under the worst-case scenario up to 4 million people may flee Ukraine.

These figures, the gravity of the war and its proximity to the EU external borders show that the European Union is likely to face a situation characterised by a mass influx of Ukrainians and other third-country nationals or stateless persons legally residing in Ukraine at the time of the conflict, who are forced to leave Ukraine because of the Russian invasion.

To respond to this situation, the Commission is bringing forward a proposal for a Council implementing Decision allowing the Council to establish the existence of a mass influx of displaced Ukrainians and other third-country nationals and stateless persons legally residing in Ukraine at the time of the conflict, based on the Temporary Protection Directive 2001/55/EC of 20 July 2001[2].

This Directive was adopted in the aftermath of the conflict in the former Yugoslavia, when, for the first time since the Second World War, Europe was confronted with mass displacements of people across Europe, resulting from a conflict in Europe. It was specifically conceived to promote a balance of efforts to jointly manage intra-European displacements, by giving immediate protection to persons fleeing war, thereby avoiding Member States' asylum systems to becoming overwhelmed. The provisions included in the Temporary Protection Directive and implementing national measures would allow the Member States to manage the flows of displaced persons fleeing from Ukraine in a controlled and effective way, with full respect for fundamental rights and international obligations.

The objective of this proposal is to activate the application of the Temporary Protection Directive outlining in accordance with Article 5 of the Directive the main elements, including a description of the specific groups of persons to whom the temporary protection should apply and the date on which the temporary protection will take effect. The Council implementing Decision, once adopted, requires the Members States to apply the measures they have taken to transpose and implement the Temporary Protection Directive, and thus fulfil their obligations towards persons enjoying temporary protection set out in Chapter III of the Directive.

The proposal introduces temporary protection for three categories of people:

- Ukrainian nationals residing in Ukraine who are displaced as of 24 February 2022 following the military invasion by Russian armed forces on that date;

- Third-country nationals or stateless persons legally residing in Ukraine who are displaced as of 24 February 2022 following the military invasion by Russian armed forces on that date and who are unable to return to their country or region of origin in safe and durable conditions because of the situation prevailing in that country. This could include persons enjoying refugee status or equivalent protection, or who were asylum seekers in Ukraine at the time of the events leading to the mass influx. Third-country nationals who were legally residing in Ukraine on a long-term basis at the time of the events leading to the mass influx should enjoy temporary protection

[2] OJ L 212, 7.8.2001, p.12.

regardless of whether they could return to their country or region of origin in safe and durable conditions; and

- Family members of the above two categories of people, in so far as the family already existed in Ukraine at the time of the circumstances surrounding the mass influx, regardless of whether the family member could return to his or her country of origin in safe and durable conditions. In line with Council Directive 2001/55, a family member is considered as the spouse of the above two categories of people or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couple in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the of the above two categories of people or of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted; other close relatives who lived together as part of the family unit at the time of the circumstances surrounding the mass influx, and who were wholly or mainly dependent of the above two categories of people.

Temporary protection is the appropriate instrument in the present situation. Given the extraordinary and exceptional nature of the military invasion of Ukraine by Russia, and the scale of the mass influx, temporary protection should quickly allow displaced persons to enjoy harmonised rights across the Union that offer an adequate level of protection, including a residence permit, the possibility to engage in employed or self-employed activities, access to suitable accommodation, the necessary social welfare assistance, medical or other assistance, and means of subsistence. In the case of unaccompanied minors, temporary protection should further allow them to enjoy legal guardianship. Persons under 18 years should also enjoy access to education.

Introducing temporary protection would also benefit the Member States concerned by the mass influx as the rights accompanying temporary protection should limit the need for these displaced persons to immediately seek international protection and overwhelm the asylum systems of the Member States, by reducing formalities to a minimum because of the urgency of the situation. The measures included in the Temporary Protection Directive and implementing national measures would therefore allow the Member States to manage the influx of displaced persons in a controlled and effective way with full respect for fundamental rights and international obligations.

Temporary protection would allow Member States to be prepared in order to face the current and imminent influx of displaced persons from Ukraine seeking international protection. It would also allow Member States to deal with those Ukrainians who, benefitting from visa-free travel, will be looking for another form of status once the 90 days of legal stay in the Union has expired. As per the experience in 2014, it can be expected that many will then start seeking international protection as their only alternative. This proposal therefore also responds to the call from the European Council to work on preparedness and readiness and forms part of the Union's response to the migratory pressure resulting from the Russian military incursion into Ukraine.

Last but not least, the provisions under the Temporary Protection Directive instrument promote a balance of efforts between the Member States bearing the consequences of receiving displaced persons from Ukraine. Ukrainian nationals, as visa-free travellers, will be able to move freely within the EU after being admitted into the territory, allowing them to join their family and friends across the significant diasporas that currently exist across the European Union, and thereby facilitating a balance of efforts between the Member States. It

would help the Union and its Member States to ensure an efficient, controlled management of the flow of displaced persons from Ukraine within the European Union at a moment where there are mass arrivals.

The Council implementing Decision will allow the EU to coordinate and closely monitor the reception capacity in the Member States in order to take action and provide additional support where needed. The Directive requires the Member States in liaison with the Commission to cooperate and exchange information to facilitate the implementation of temporary protection. This can be done through a 'Solidarity Platform' whereby Member States exchange information regarding their reception capacities and the number of persons enjoying temporary protection on their territories. For this purpose, the proposal includes a coordinating role for the Commission. Furthermore, in recent years, different platforms have been established with the aim of ensuring cooperation between Member States. Amongst these platforms, the proposal includes the use of the Migration Preparedness and Crisis Management Network (in accordance with Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration) as the most appropriate forum for the administrative cooperation foreseen in Directive 2001/55/EC.

In the years since the adoption of the Directive, several EU agencies have been established or strengthened their mandates. For this reason, the proposal specifically includes the need for the Commission to cooperate with the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency and the European Union Agency for Law Enforcement Cooperation (Europol) with a view to keeping the situation under constant monitoring and review.

In accordance with Directive 2001/55/EC, the duration of temporary protection shall be one year, and unless terminated otherwise, it may be extended automatically by six monthly periods for a maximum of one year. The Commission, as part of its monitoring role, and in accordance with Article 6 of Directive 2001/55/EC, may at any time propose to the Council to end the temporary protection, based on the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection. The Commission may also propose to the Council to extend the temporary protection, if the initial period is not considered sufficient to allow the Member States to effectively manage the situation, or if the situation still does not allow the persons enjoying temporary protection to return safely to Ukraine.

- **Consistency with existing policy provisions in the policy area**

This proposal is fully consistent with the EU asylum *acquis* as the Temporary Protection Directive forms an integral part of the Common European Asylum System and was foreseen to face an extraordinary situation of mass influx of displaced persons as is currently the case due to the invasion of Ukraine by the Russian Federation. It is also fully consistent with the European Union's objective of establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek international protection in the European Union.

The elements of the proposal are also consistent with the Pact on Migration and Asylum of September 2020 and the accompanying legislative proposals. As part of the Pact, the Commission proposed to repeal the Temporary Protection Directive and replace it with an improved Regulation, preserving the concept of temporary protection status but addressing

more broadly situations of crisis and force majeure in the field of migration and asylum, ensuring that the new European tools will act coherently together within the new comprehensive approach proposed by the Pact. However, as the relevant legislative proposals are currently under negotiation and their adoption is not imminent, the Regulation addressing crisis and force majeure cannot serve as response to the immediate challenges of the Ukrainian crisis. The Temporary Protection Directive is the current *acquis* in force offering the relevant tool to address the situation effectively and in a proportionate manner.

- **Consistency with other Union policies**

This proposal is fully consistent with the need to maintain strong external borders by allowing Member States to process potential applications for international protection in an orderly manner without overwhelming their asylum systems in case of a mass influx of displaced Ukrainians, thereby avoiding problems at border crossing points located at the European Union's Eastern external borders. It is also consistent with, and should be used in parallel to, the Union's external action, such as EU sanctions and other restrictive measures. This proposal is part of a comprehensive set of EU actions responding to the Russian military incursion into Ukraine.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is the 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 and in particular Article 5 thereof.

- **Subsidiarity (for non-exclusive competence)**

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e., if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

A situation where the proper functioning of the asylum systems of the Member States are at risk because of a mass influx of displaced persons from a country neighbouring the European Union who have fled areas of armed conflict, should be considered as impacting the EU as a whole and therefore requiring EU solutions and EU support. There is a need for all Member States to quickly react and rally support to effectively respond to such an influx and ensure the same standards and harmonised rights across the Union.

Achievement of these objectives requires action at the EU level since they are cross-border by nature. It is clear that actions taken by individual Member States cannot satisfactorily reply to the need for a common EU approach to a common problem.

Such a common approach cannot be sufficiently achieved by the Member States individually and can, by reason of the scale and effects of this proposed Council implementing Decision, be better achieved at Union level. The Union must therefore act and may adopt measures, in

accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on the European Union, this proposed Council implementing Decision describes the specific group of persons to whom it applies, the date on which the temporary protection will take effect and an estimation of the scale of the displaced persons.

All elements of the measures proposed to deal with the specific situation of a mass influx of displaced Ukrainians to the European Union are clearly described in the Temporary Protection Directive and are limited to what is necessary to ensure Member States can manage the situation in an orderly and effective way while ensuring the equality of treatment in terms of rights and guarantees for the persons concerned. In line with the requirements under the Temporary Protection Directive, the duration of these measures is also limited in time and are necessary to enable the Member States concerned to address a situation at the European Union's Eastern external borders that endangers the European Union's security and stability. The Directive allows Member States to apply more favourable provisions.

- **Choice of the instrument**

Article 5 of Council Directive 2001/55/EC requires a Council implementing Decision to establish the existence of a mass influx of displaced persons and to introduce temporary protection for displaced persons.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Evidenced-based policy making**

The proposal was prepared as a matter of urgency as befitting the situation at hand. The proposal includes provisions on cooperation, between the Commission, Member States and EU agencies, as well as on the obligation of Member States to report relevant data and statistics via the EU Migration Preparedness and Crisis Management Network. The evidence about the potential scale of the movements has been based on the most recent data shared in the framework of EU Migration Preparedness and Crisis Management Network and the scenarios prepared starting with UN agencies scenarios for internally displaced people, information gathered on the movements (both asylum seekers and legal migration) experienced post-2014, as well as the size and composition (Russian/non-Russian) of the population of the regions affected in the various scenarios. Five initial scenarios were developed depending on the intensity of the Russian intervention in Ukraine.

Scenario D assumes a military invasion of a large part of Ukraine, including the three largest cities: Kyiv, Kharkiv and Odesa, as is currently happening. Scenario E assumes a dramatic increase in hostilities and the whole country invaded. Based on these scenarios, it can be expected that between 2.5 and 6.5 million displaced persons would enter the European Union. The United Nations High Commissioner for Refugees estimates that that under the worst-case scenario up to 4 million people may flee Ukraine.

Considering the trends recorded for residence permits and applications for international protection in the aftermath of the 2014 events, about half of the displaced persons are likely to be absorbed by the significant existing diaspora networks across the EU and will make use of legal migration opportunities, mainly but not only in "traditional" destination countries (Poland, Czech Republic, Germany, Italy and Spain), without putting pressure on the reception capacity of these countries. The other half, between 1.2 million and 3.5 million persons, might seek international protection in a two-year period.

- **Stakeholder consultations and collection and use of expertise**

When the possibility of a possible Russian military intervention in Ukraine started to become clear, the Commission activated the regular monitoring mechanism through the Migration Preparedness and Crisis Management Network to consult with the Member States, the European External Action Service, and relevant EU Agencies, as well as to share data, information and insight, which are reported regularly. The Commission also consulted the United Nations High Commissioner for Refugees, which has been assessing the situation and provided relevant input. The High Commissioner welcomed the support expressed by many Member States to activate Directive 2001/55/EC as enabling immediate and temporary refuge in the Union and facilitating the sharing of responsibility for people fleeing Ukraine among European States.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, as well as the obligations stemming from international law, including the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967.

4. BUDGETARY IMPLICATIONS

Due to the nature of this proposal, it is not possible to estimate a priori the possible budgetary impact. It will be accommodated within the budget of the existing EU funding instruments under the period 2014-2020 and 2021-2027 in the field of migration, asylum and border management. The Commission will explore options for making full use of the financing under the Home Affairs Funds. Where exceptionally necessary, if the situation aggravates further, the availability within the MFF 2021-2027 could be redeployed. In case further exceptional needs arises, the flexibility mechanisms within the MFF 2021-2027 could be activated.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1 establishes the existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict.

Article 2 describes the group of persons to whom the temporary protection would apply. The provision introduces temporary protection for displaced Ukrainian nationals residing in Ukraine who have been displaced as of 24 February 2022 following the military invasion by Russian armed forces on that date. To respect the spirit of Directive 2001/55/EC, Article 2 also introduces temporary protection to third country nationals and stateless persons legally

residing in Ukraine who have been displaced as of 24 February 2022 and who are unable to return to their country or region of origin in safe and durable conditions because of the situation prevailing in that country. This could include persons enjoying refugee status or equivalent protection, or those who were asylum seekers in Ukraine at the time of the events leading to the mass influx. Third-country nationals who were legally residing in Ukraine on a long-term basis at the time of the events leading to the mass influx should enjoy temporary protection regardless of whether they could return to their country or region of origin in safe and durable conditions.

As it is also important to preserve the unity of families and avoid different members of the same family enjoying different statuses, Article 2 also introduces temporary protection for family members, where families already existed in Ukraine at the time of the circumstances surrounding the mass influx, regardless of whether the family member could return to his or her country of origin in safe and durable conditions. A family member is considered as the spouse of the person enjoying temporary protection or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couple in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the person enjoying temporary protection of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted; and other close relatives who lived together as part of the family unit of the circumstances surrounding the mass influx, and who were wholly or mainly dependent on the person enjoying temporary protection at the time.

Article 3 establishes that the Migration Preparedness and Crisis Management Network will be used as the main platform for ensuring administrative cooperation for the purposes of Article 27 of Council Directive 2001/55/EC. The provision also foresees that Member States should also contribute to a Union common situational awareness through sharing of relevant information through the integrated political crisis response and consultation with the European External Action Service where relevant. The provision also establishes that the Commission will have a coordinating role to ensure cooperation and exchange of information among Member States in particular in relation to monitoring the reception capacities in each Member State and identifying any need for additional support. For this purpose, the Commission, in cooperation with the Member States, the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency and the European Union Agency for Law Enforcement Cooperation (Europol) will keep the situation under constant monitoring and review. Furthermore, these EU agencies should support Member States.

Article 4, given the exceptional situation and urgency sets the entry into force the Council implementing Decision on the day of its publication.

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establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[3], and in particular Article 5 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 24 February 2022, Russian armed forces launched a large-scale invasion of Ukraine at multiple locations from the Russian Federation, from Belarus and non-governmental controlled areas of Ukraine.

(2) As a result, substantial areas of Ukrainian territory now constitute areas of armed conflict from which thousands of persons have fled.

(3) Following this invasion, the European Council, in its conclusions of 24 February 2022, condemned Russia's unprovoked and unjustified military aggression against Ukraine in the strongest possible terms, underlining the gross violation of international law and the principles of the UN Charter, and which seeks to undermining European and global security and stability. The European Council demanded Russia's full respect for Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders, which includes Ukraine's right to choose its own destiny. The European Council also confirmed that the Russian government bears full responsibility for its act of aggression causing human suffering and loss of lives, and that it will be held accountable for its actions. In solidarity with Ukraine, the European Council agreed on a second package of sanctions, called for work to be taken forward on preparedness at all levels and invited the Commission to put forward contingency measures.

(4) The Union has shown and will continue to show its resolute support to Ukraine and its citizens, faced with an unprecedented act of aggression by the Russian Federation.

[3] OJ L 212, 7.8.2001, p.12.

This proposal forms part of the Union's response to the migratory pressure resulting from the Russian military invasion into Ukraine.

(5) The conflict has already implications for the Union, including the likelihood of high migratory pressure on its Eastern borders as the conflict unfolds. As of 1 March, more than 650 000 displaced persons had arrived in the European Union through Poland, Slovakia, Hungary and Romania. These numbers are expected to increase even more.

(6) Ukraine is listed in Annex II of Regulation (EU) 2018/1806[4] and nationals of Ukraine are exempt from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period. Based on the experience in the aftermath of the 2014 Russian illegal annexation of the Autonomous Republic of *Crimea* and the city of Sevastopol and war in the eastern Ukraine, the expectation is that half of the Ukrainians coming to the Union, benefitting from visa-free travel for short-stays, will join family members or seek employment in the Union, whilst the other half will request international protection. Depending on how the conflict evolves, based on current estimations, the Union is likely to be faced with a very large number of displaced persons, potentially between 2.5 million and 6.5 million as a consequence of the armed conflict, of which it is anticipated that between 1.2 and 3.2 million would be persons seeking international protection. The United Nations High Commissioner for Refugees estimates under the worst-case scenario that up to 4 million people may potentially flee Ukraine.

(7) Those figures show that the Union is likely to face a situation characterised by a mass influx of displaced persons from Ukraine who are unable to return to their country or region of origin because of the Russian military aggression, and that the scale of the influx would be such that there is also a clear risk that the Members States' asylum systems will be unable to process the arrivals without adverse effects for their efficient operation, the interests of the persons concerned and of other persons requesting protection.

(8) The UN has launched a UN Humanitarian Flash Appeal for protection and assistance needs in Ukraine and the Regional Refugee Response Plan for Ukraine providing details on the numbers of people in need and those to be targeted by assistance.

(9) The United Nations High Commissioner for Refugees welcomed the support expressed by many Member States to activate Directive 2001/55/EC as enabling immediate and temporary refuge in the Union and facilitating the sharing of responsibility for people fleeing Ukraine among European States.

(10) To respond to this situation, the existence of a mass influx of displaced persons within the meaning of Directive 2001/55/EC should be established with the effect of introducing temporary protection for the displaced persons concerned.

(11) The objective of this implementing Decision is to introduce temporary protection for Ukrainian nationals residing in Ukraine who have been displaced as of 24 February 2022 following the military invasion by Russian armed forces on that date. To respect

[4] 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 (OJ L 303, 28.11.2018, p. 39).

the spirit of Directive 2001/55/EC, temporary protection should also be introduced for third-country nationals legally residing in Ukraine who have been displaced as of 24 February 2022 and who are unable to return to their country or region of origin in safe and durable conditions because of the situation prevailing in that country. This could include persons enjoying refugee status or equivalent protection, or who were asylum seekers in Ukraine at the time of the events leading to the mass influx. Furthermore, for non-Ukrainian third-country nationals who have been long-term residents in Ukraine, the condition of not being able to return to their country or region of origin should not apply and they should therefore enjoy temporary protection as well. It is also important to preserve the unity of families and avoid different members of the same family enjoying different statuses. Therefore, it is necessary to introduce temporary protection for family members, where families already existed in Ukraine at the time of the circumstances surrounding the mass influx, regardless of whether the family member could return to his or her country of origin in safe and durable conditions.

(12) However, non-Ukrainian third country nationals or stateless persons who are able to return to their country or region of origin in safe and durable conditions and who cannot be considered as long-term residents in Ukraine or family members of a person enjoying temporary protection should not fall under the scope of this Decision. Such persons could include third-country nationals who were studying or working in Ukraine on a short-term basis at the time of the events leading to the mass influx and who can safely return to their country of origin. Such persons should nonetheless be admitted into the Union on humanitarian grounds without requiring, in particular, possession of a valid visa or sufficient means of subsistence or valid travel document, to ensure safe passage with a view to returning to their country or region of origin.

(13) In line with Directive 2001/55/EC, Member States may extend temporary protection to additional categories of displaced persons over and above those to whom this Council Decision provided for, where they are displaced for the same reasons and from the same country or region of origin. In that case, they should notify the Council and the Commission immediately. In this context, Member States should be encouraged to consider extending temporary protection to those persons who fled Ukraine soon before 24 February 2022 as tensions increased or who found themselves on the territory of the Union (e.g. on holidays or for work reasons) just before that date and as a result of the armed conflict cannot return to Ukraine.

(14) Temporary protection is the most appropriate instrument in the current situation. Given the extraordinary and exceptional nature of the military invasion of Ukraine by the Russian Federation, and the scale of the mass influx, temporary protection should allow displaced persons to enjoy harmonised rights across the Union that offer an adequate level of protection. Introducing temporary protection would also benefit the Member States as the rights accompanying temporary protection limit the need for displaced persons to immediately seek international protection and thus the risk of overwhelming the asylum systems of the Member States, as they reduce formalities to a minimum because of the urgency of the situation. Furthermore, Ukrainian nationals, as visa-free travellers, have the right to move freely within the Union after being admitted into the territory for a 90-day period. On this basis, they are able to choose the Member State in which they want to enjoy the rights attached to temporary protection and to join their family and friends across the significant diasporas networks that currently exist across the Union. This will in practice facilitate a balance

of efforts between the Member States thereby reducing the pressure on national reception systems. Once a Member State has provided a residence permit in accordance with Directive 2001/55/EC, the person enjoying temporary protection, while having the right to travel within the Union for 90 days within a 180-day period, should only be able to avail of the rights derived from temporary protection in the Member State that granted the residence permit. This should be without prejudice to the possibility for a Member State to decide to issue at any time a residence permit to persons enjoying temporary protection under this implementing Decision.

(15) This Decision would be compatible with and can be applied in complementarity with national temporary protection schemes, which can be considered as implementing the Directive. If the Member State has a national scheme that is more favourable than the Directive, the Member State should be able to continue applying it as, in line with Directive 2001/55/EC, Member States may adopt or retain more favourable conditions for persons covered by temporary protection. However, should the national scheme be less favourable, the Member State should provide for the additional rights foreseen in the Directive.

(16) Directive 2001/55/EC takes duly into account the responsibilities incumbent on Member States with regard to the maintenance of law and order and the safeguarding of internal security, as it allows Member States to exclude a displaced person from temporary protection where there are serious reasons for considering that the person has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection; or he or she has been guilty of acts contrary to the purposes and principles of the United Nations. The Directive also allows Member States to exclude a displaced person from temporary protection where there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or a danger to the community of the host Member State.

(17) When providing temporary protection, Member States should ensure that the processing of personal data of the persons enjoying temporary protection respects the requirements laid down in the European Unions' data protection *acquis*, in particular the Regulation (EU) 2016/679 of the European Parliament and the Council[5].

(18) This implementing Decision should allow the Union to coordinate and closely monitor the reception capacity in Member States so as to take action and provide additional support as needed. Directive 2001/55/EC requires the Member States in liaison with the Commission to cooperate and exchange information to facilitate the implementation of temporary protection. This should be done through a 'Solidarity Platform' whereby Member States exchange information regarding their reception capacities and number of persons enjoying temporary protection in their territories. So far, based on the information reported by a few Member States in the context of the Migration Preparedness and Crisis Management Network, reception capacities, over and above the absorption capacity of the diaspora residing in the Union, is as at

[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 11, 4.5.2016, p.1).

minimum over 310 000 places. For the purpose of this exchange of information, the Commission should take up a coordinating role. Furthermore, in recent years, different platforms have been established with the aim of ensuring cooperation between Member States. Amongst those platforms, the Migration Preparedness and Crisis Management Network (in accordance with Commission Recommendation (EU) 2020/1366) is the most appropriate for the administrative cooperation provided for in Directive 2001/55/EC. Member States should also be encouraged to contribute to a Union common situational awareness through sharing of relevant information through the integrated political crisis response (IPCR). The European External Action Service should be consulted where relevant. In this context, Member States should also work closely with the United Nations High Commissioner for Refugees.

(19) In accordance with Directive 2001/55/EC, the duration of temporary protection should be for an initial period of one year. Unless terminated under the terms of Article 6(1)(b) of the Directive, that period should be extended automatically by six monthly periods for a maximum of one year. The Commission will keep the situation under constant monitoring and review. At any time, it may propose to the Council to end the temporary protection, based on the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection or to extend the temporary protection by up to one year.

(20) For the purpose of Article 24 of Council Directive 2001/55/EC, the reference to the European Refugee Fund set up by Decision 2000/596/EC should be read as a reference to the Asylum, Migration and Integration Fund set up by Regulation (EU) 2021/1147. All the efforts of Member States to comply with the obligations deriving from this implementing Decision will be supported financially by the Union Funds. Emergency and flexibility mechanisms within the Multiannual Financial Framework 2021-2027 may also mobilise funds to address specific emergency needs within Member States. Furthermore, the Union Civil Protection Mechanism has been activated[6]. Through that Mechanism, Member States can request items crucial to attend the needs of the displaced persons from Ukraine present in their territory and benefit from co-financing for delivering such assistance.

(21) Since the adoption of Directive 2001/55/EC, several Union agencies have been established or their mandates strengthened. In that context, the Commission should cooperate with the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency and the European Union Agency for Law Enforcement Cooperation (Europol) with a view to keeping the situation under constant monitoring and review. In addition, the European Border and Coast Guard Agency (Frontex), the European Asylum Agency (EUAA) and Europol should provide operational support to the Member States who requested their assistance to help them cope with the situation including for the purposes of applying this implementing Decision.

(22) This implementing Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.

(23) In accordance with Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European

[6] As of 28 February 2022 by Slovakia.

Union, Ireland has notified, by letter of 11 April 2003, its wish to take part in the adoption and application of Directive 2001/55/EC. Ireland is therefore bound by this Council implementing Decision.

(24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this implementing Decision and is not bound by it or subject to its application.

(25) In view of the urgency of the situation, this implementing Decision should enter into force on the day of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

The existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict is established.

Article 2

The persons to whom the temporary protection applies

1. This Decision applies to the following categories of persons displaced as of 24 February 2022 following the military invasion by Russian armed forces on that date:

   (a) Ukrainian nationals residing in Ukraine;

   (b) Third-country nationals or stateless persons residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin;

   The requirement of inability to return in safe and durable conditions to their country or region of origin shall not apply to third-country nationals or stateless persons who have been legally residing on a long-term basis in Ukraine.

   (c) family members of the persons referred to in points (a) and (b), regardless of whether the family member could return in safe and durable conditions to his or her country or region of origin.

2. For the purposes of paragraph 1, point (c), the following persons shall be considered to be part of a family, in so far as the family already existed in Ukraine at the time of the circumstances surrounding the mass influx:

   (a) the spouse of a person referred to in points (a) or (b) of paragraph 1 or their unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;

(b) the minor unmarried children of a person referred to in points (a) or (b) of paragraph 1 or of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted;

(c) other close relatives who lived together as part of the family unit at the time of the circumstances surrounding the mass influx, and who were wholly or mainly dependent on a person referred to in points (a) or (b) of paragraph 1 at the time.

Article 3

Cooperation and monitoring

1. For the purposes of Article 27 of Directive 2001/55/EC, the Member States shall use the Migration Preparedness and Crisis Management Network in accordance with Recommendation (EU) 2020/1366. Member States should also contribute to a Union common situational awareness through sharing of relevant information through the Integrated Political Crisis Response.

2. The Commission shall coordinate cooperation and exchange of information among Member States, in particular in relation to monitoring the reception capacities in each Member State and identifying any need for additional support.

   For that purpose, the Commission, in cooperation with the Member States, the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency and the European Union Agency for Law Enforcement Cooperation (Europol) shall keep the situation under constant monitoring and review while using the Migration Preparedness and Crisis Management Network referred to in paragraph 1 above.

   In addition, the European Border and Coast Guard Agency (Frontex), the European Asylum Agency (EUAA) and Europol shall provide operational support to the Member States who requested their assistance to help them cope with the situation including for the purposes of applying this implementing Decision.

Article 4

This Decision shall enter into force on the same day of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President