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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection

COUNCIL IMPLEMENTING DECISION (EU) 2022/...

of ...

**establishing the existence of a mass influx
of displaced persons from Ukraine within the meaning
of Article 5 of Directive 2001/55/EC, 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 thereof¹, and in particular Article 5 thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 212, 7.8.2001, p. 12.

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 from non-government-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 or are fleeing.
- (3) Following the invasion, which seeks to undermine European and global security and stability, 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 United Nations Charter. 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, which is 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 further 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 for Ukraine and its citizens, faced with an unprecedented act of aggression by the Russian Federation. This Decision forms part of the Union's response to the migratory pressure resulting from the Russian military invasion of Ukraine.
- (5) The conflict already has implications for the Union, including the likelihood of high migratory pressure on its Eastern borders as the conflict unfolds. As of 1 March 2022, more than 650 000 displaced persons had arrived in the Union from Ukraine through Poland, Slovakia, Hungary and Romania. Those numbers are expected to increase.

- (6) Ukraine is listed in Annex II to Regulation (EU) 2018/1806¹, and nationals of Ukraine are exempt from the requirement to be in possession of a visa when crossing the external borders of Member States for stays of no more than 90 days in any 180-day period. Based on the experience gained from the aftermath of the 2014 Russian illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol, and from war in the east of 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 whom it is anticipated that between 1,2 and 3,2 million would be persons seeking international protection. The United Nations (UN) High Commissioner for Refugees estimates that, under the worst-case scenario, up to 4 million people may potentially flee Ukraine.

¹ 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).

- (7) Those figures show that the Union is likely to be faced with a situation that is characterised by a mass influx of displaced persons from Ukraine who are unable to return to their country or region of origin because of Russian military aggression. The scale of the influx would likely be such that there is also a clear risk that the Member States' asylum systems will be unable to process the arrivals without adverse effects on their efficient operation and on the interests of the persons concerned and on those of other persons requesting protection.
- (8) The UN has launched a Humanitarian Flash Appeal for protection and assistance needs in Ukraine, and a Regional Refugee Response Plan for Ukraine providing details on the numbers of people in need and those to be targeted by assistance.
- (9) The UN High Commissioner for Refugees welcomed the support expressed by many Member States for activating the temporary protection provided for by Directive 2001/55/EC in order to enable immediate and temporary refuge in the Union, and for facilitating the sharing of responsibility for people fleeing Ukraine among Member States.
- (10) To respond to this situation, it should be established that there is a mass influx of displaced persons within the meaning of Directive 2001/55/EC, in order to provide temporary protection for them.

- (11) The object of this Decision is to introduce temporary protection for Ukrainian nationals residing in Ukraine who have been displaced on or after 24 February 2022 as a result of the military invasion by Russian armed forces that began on that date. Temporary protection should also be introduced for nationals of third countries other than Ukraine, who have been displaced from Ukraine on or after 24 February 2022, and who were benefiting in Ukraine from refugee status or equivalent protection before 24 February 2022. In addition, it is important to preserve the unity of families and to avoid diverging statuses among members of the same family. Therefore, it is necessary to also introduce temporary protection for family members of those persons, where their families were already in, and residing in, Ukraine at the time of the circumstances surrounding the mass influx of displaced persons.
- (12) It is also appropriate to provide for the protection of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin. This protection should take the form of either applying this Decision to them, or of other adequate protection under national law, to be decided upon by each Member State. Those seeking to benefit from the protection should be able to prove that they fulfil these eligibility criteria by presenting the relevant documents to the competent authorities in the Member State concerned. If they are unable to present the relevant documents, Member States should redirect them to the appropriate procedure.

- (13) In accordance with Directive 2001/55/EC, Member States may extend temporary protection to all other stateless persons or nationals of third countries other than Ukraine residing legally in Ukraine who are unable to return in safe and durable conditions to their country or region of origin. 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 of displaced persons. Such persons should in any event 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 documents, to ensure safe passage with a view to returning to their country or region of origin.

- (14) Member States may also extend temporary protection to additional categories of displaced persons above and beyond those to whom this Decision applies, where those persons are displaced for the same reasons and from the same country or region of origin as referred to in this Decision. In that case, the Member States 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 not long before 24 February 2022 as tensions increased or who found themselves in the territory of the Union (e.g. on holidays or for work reasons) just before that date and who, as a result of the armed conflict, cannot return to Ukraine.
- (15) It is noted that Member States have agreed in a statement that they will not apply Article 11 of Directive 2001/55/EC.

- (16) Temporary protection is the most appropriate instrument in the current situation. Given the extraordinary and exceptional situation, including the military invasion of Ukraine by the Russian Federation and the scale of the mass influx of displaced persons, temporary protection should allow them to enjoy harmonised rights across the Union that offer an adequate level of protection. Introducing temporary protection is also expected to 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 their asylum systems, 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 diaspora networks that currently exist across the Union. This will in practice facilitate a balance of efforts between Member States, thereby reducing the pressure on national reception systems. Once a Member State has issued a residence permit in accordance with Directive 2001/55/EC, the person enjoying temporary protection, whilst having the right to travel within the Union for 90 days within a 180-day period, should be able to avail of the rights derived from temporary protection only in the Member State that issued 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 Decision.

- (17) This Decision is compatible with, and can be applied in complementarity with, national temporary protection schemes, which can be considered as implementing Directive 2001/55/EC. If the Member State has a national scheme that is more favourable than the arrangements set out in Directive 2001/55/EC, the Member State should be able to continue applying it, since that Directive provides that 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 ensure the additional rights provided for in Directive 2001/55/EC.
- (18) 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; has committed a serious non-political crime outside the Member State of reception prior to admission to that Member State as a person enjoying temporary protection; or has been found guilty of acts contrary to the purposes and principles of the UN. The Directive also allows Member States to exclude a displaced person from temporary protection where there are reasonable grounds for regarding that person as a danger to the security of the host Member State or a danger to the community of the host Member State.

- (19) 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 data protection *acquis* of the Union, in particular in Regulation (EU) 2016/679 of the European Parliament and the Council¹.

¹ 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 119, 4.5.2016, p. 1).

(20) This 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 Member States, in liaison with the Commission, to cooperate and exchange information to facilitate the implementation of temporary protection. That 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 EU Migration Preparedness and Crisis Management Network, reception capacities, over and above the absorption capacity of the Ukrainian diaspora residing in the Union, exceed 310 000 places. For the purpose of that exchange of information, the Commission should take up a coordinating role. Furthermore, in recent years, various platforms have been established with the aim of ensuring cooperation between Member States, of which the EU Migration Preparedness and Crisis Management Network (in accordance with Commission Recommendation (EU) 2020/1366¹) is the most appropriate network for the administrative cooperation provided for in Directive 2001/55/EC. Member States should also contribute to a Union common situational awareness through sharing of relevant information through the integrated political crisis response (IPCR) arrangements². The European External Action Service should be consulted where relevant. In this context, Member States should also work closely with the UN High Commissioner for Refugees.

¹ Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (OJ L 317, 1.10.2020, p. 26).

² Council Implementing Decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements (OJ L 320, 17.12.2018, p. 28).

- (21) 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), point (b), of that 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 propose that the Council extend the temporary protection by up to one year.

(22) For the purpose of Article 24 of Directive 2001/55/EC, the reference to the European Refugee Fund set up by Council Decision 2000/596/EC¹ should be read as a reference to the Asylum, Migration and Integration Fund set up by Regulation (EU) 2021/1147 of the European Parliament and of the Council². All the efforts of Member States to comply with the obligations deriving from this 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 Mechanism³ has been activated⁴. Through that Mechanism, Member States can request items crucial for attending to the needs of the displaced persons from Ukraine present in their territory and can benefit from co-financing for delivering such assistance.

¹ Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund (OJ L 252, 6.10.2000, p. 12).

² Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

³ Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (OJ L 185, 26.5.2021, p. 1).

⁴ As of 28 February 2022 by Slovakia.

- (23) Since the adoption of Directive 2001/55/EC, several Union agencies have been established, or the mandates of those established before then have been 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, Frontex, the European Asylum Agency (EUAA) and Europol should provide operational support to Member States that have requested assistance to help them cope with the situation, including for the purposes of applying this Decision.
- (24) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (25) Ireland is bound by Directive 2001/55/EC and is therefore taking part in the adoption of this Decision.
- (26) 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 Decision and is not bound by it or subject to its application.
- (27) In view of the urgency of the situation, this 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 hereby established.

Article 2
The persons to whom the temporary protection applies

1. This Decision applies to the following categories of persons displaced from Ukraine on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date:
 - (a) Ukrainian nationals residing in Ukraine before 24 February 2022;
 - (b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and,
 - (c) family members of the persons referred to in points (a) and (b).

2. Member States shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.
3. In accordance with Article 7 of Directive 2001/55/EC, Member States may also apply this Decision to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.
4. 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 was already present and residing in Ukraine before 24 February 2022:
 - (a) the spouse of a person referred to in paragraph 1, point (a) or (b), or the 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 national law relating to aliens;
 - (b) the minor unmarried children of a person referred to in paragraph 1, point (a) or (b), 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 of displaced persons, and who were wholly or mainly dependent on a person referred to in paragraph 1, point (a) or (b) at the time.

Article 3

Cooperation and monitoring

1. For the purposes of Article 27 of Directive 2001/55/EC, Member States shall use the EU Migration Preparedness and Crisis Management Network, in accordance with Recommendation (EU) 2020/1366. Member States should also contribute to a Union common situational awareness by sharing relevant information through the integrated political crisis response (IPCR) arrangements.
2. The Commission shall coordinate the cooperation and the 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 Member States, the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency (EUAA) and the European Union Agency for Law Enforcement Cooperation (Europol) shall keep the situation under constant monitoring and review, while making use of the EU Migration Preparedness and Crisis Management Network.

In addition, Frontex, the EUAA and Europol shall provide operational support to Member States requesting their assistance in coping with the situation, including for the purposes of applying this Decision.

Article 4

Entry into force

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

Done at ...,

For the Council

The President
