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Transposition of Directive 2001/55/EC in Polish Foreigners Law: A Legal and Political Analysis

Transpozycja dyrektywy 2001/55/WE do polskiego prawa o cudzoziemcach: analiza prawna i polityczna

Abstract: This article examines the transposition of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons into the Polish legal system under the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland. The main objective of the study is to assess the degree of compliance of the 2003 Polish Act on the Protection of Foreigners with the requirements of the Directive and to identify gaps and inconsistencies that emerged in connection with the mass influx of war refugees from Ukraine in 2022. The research hypothesis posits that despite the formal transposition of the Directive, Polish law did not – and still does not, based on this Act – ensure full harmonisation and effective protection for all foreigners. The enactment of the so-called “Ukrainian Special Act” in 2022 further marginalised the general temporary protection system in favour of a special regime dedicated exclusively to selected groups of displaced persons from Ukraine. The analysis employs comparative and dogmatic legal methods, based on purposive and systemic interpretation of legal provisions, as well as a review of relevant literature, statistical data and official documents. The discussion focuses on comparing the scope and practical application of the Directive and domestic law, with particular emphasis on the consequences of introducing Article 106(4) of the Act on the Protection of Foreigners and the 2022 Special Act. The findings highlight the need for legislative revision of the Polish regulations transposing the provisions of Directive 2001/55/EC, clarification of the criteria

for a mass influx and ensuring equal treatment for all migrant groups covered by temporary protection.

Keywords: temporary protection, Directive 2001/55/EC, Ukrainian Special Act, mass migration, transposition of EU law, protection of foreigners, migration law, legislative harmonisation

Streszczenie: Artykuł analizuje transpozycję dyrektywy 2001/55/WE w sprawie tymczasowej ochrony w przypadku masowego napływu osób przemieszczonych do polskiego porządku prawnego na gruncie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej. Głównym celem opracowania jest ocena stopnia zgodności ustawy z 2003 roku z wymogami dyrektywy oraz identyfikacja luk i niespójności, które ujawniły się w związku z masowym napływem uchodźców wojennych z Ukrainy w 2022 roku. Postawiona hipoteza badawcza zakłada, że pomimo formalnej transpozycji dyrektywy, prawo polskie – oparte na analizowanej ustawie – nie zapewniało i nadal nie zapewnia pełnej harmonizacji ani skutecznej ochrony dla wszystkich cudzoziemców. Uchwalenie tzw. „specustawy ukraińskiej” w 2022 roku dodatkowo zmarginalizowało ogólny system ochrony tymczasowej na rzecz specjalnego reżimu dedykowanego wyłącznie wybranym grupom uchodźców z Ukrainy. Analiza opiera się na metodach prawnoporównawczej i dogmatycznoprawnej, z zastosowaniem wykładni celowościowej i systemowej, a także przeglądzie literatury przedmiotu, danych statystycznych oraz dokumentów urzędowych. Dyskusja koncentruje się na porównaniu zakresu oraz praktycznego stosowania przepisów dyrektywy i prawa krajowego, ze szczególnym uwzględnieniem konsekwencji wprowadzenia art. 106 ust. 4 ustawy o ochronie cudzoziemców oraz specustawy z 2022 roku. Wnioski wskazują na potrzebę nowelizacji polskich przepisów transponujących dyrektywę 2001/55/WE, doprecyzowania kryteriów „masowego napływu” oraz zapewnienia równego traktowania wszystkich grup migrantów objętych ochroną tymczasową.

Słowa kluczowe: ochrona tymczasowa, dyrektywa 2001/55/WE, specustawa ukraińska, migracje masowe, transpozycja prawa UE, ochrona cudzoziemców, prawo migracyjne, harmonizacja ustawodawcza

Introduction

The last decade in Europe has experienced a series of migration crises requiring swift and coordinated action from EU member states – from the mass influx of refugees from the Middle East and North Africa in 2015-2016 to the exodus of millions of Ukrainians following Russia's invasion in 2022.

The scale and circumstances of contemporary mass migration to Europe – driven by armed conflict, persecution, or humanitarian disasters – present a major challenge for the legal and institutional systems of host countries. In 2001, the EU introduced 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 (hereinafter: Directive 2001/55/EC)¹. This instrument, dormant for over two decades, was activated for the first time in 2022 in response to the mass influx of Ukrainian refugees following Russia's invasion. Council Implementing Decision (EU) 2022/382 of 4 March 2022², establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and introducing temporary protection (hereinafter: Council Implementing Decision (EU) 2022/382)³, demonstrated both the significance of this mechanism and the need to evaluate its practical effectiveness. Some analysts regard this Directive as one of the EU's most controversial legal acts, emphasising the need to balance “what is

¹ 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 EU L 212 of 07.08.2001, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32001L0055> (accessed 21.05.2025).

² 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 Article 5 of Directive 2001/55/EC and introducing temporary protection, <https://eur-lex.europa.eu/legal-content/PL/ALL/?uri=CELEX:32022D0382> (accessed 21.05.2025).

³ 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 Article 5 of Directive 2001/55/EC and introducing temporary protection, <https://eur-lex.europa.eu/legal-content/PL/ALL/?uri=CELEX:32022D0382> (accessed 21.05.2025).

reasonable and feasible” in EU asylum and migration policy, particularly in light of current developments on Europe’s eastern borders⁴.

The influx of displaced persons from Ukraine after February 24, 2022, presented Polish authorities with unprecedented organisational, logistical, and legal challenges, surpassing prior experience. At a time when analysing the transposition of EU provisions into Polish law is essential – since it is not the EU regulation itself but the Polish legislative implementation that determines practical application – the legislative process and final wording of domestic provisions are critical.

This article focuses on analysing and evaluating the implementation of Directive 2001/55/EC⁵ into Polish law under the Act of June 13, 2003, on Granting Protection to Foreigners in the Territory of the Republic of Poland, hereinafter: the Act on the Protection of Foreigners or the Act on Granting Protection to Foreigners (on the Territory of the Republic of Poland)⁶. This Act defines the principles, conditions, and procedures for granting protection to foreigners in Poland, as well as the competent authorities. It serves as the primary legal framework for temporary protection, aligning with the Directive’s requirements regarding residence legalisation, rights and obligations of protected persons, and procedures for mass influx situations.

Due to the increased influx of Ukrainian nationals since 2022, Polish law was supplemented by the Act of March 12, 2022, on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine (hereinafter: the Ukrainian Special Act)⁷. However, the Ukrainian Special Act is not an implementation of the transposition of EU law into the Polish legal order, differs in its personal scope from EU regulations, and was adopted independently of the existing legal framework regarding temporary protection.

⁴ Daniela Vitiello, *The Nansen Passport and the EU Temporary Protection Directive: Reflections on Solidarity, Mobility Rights and the Future of Asylum in Europe*, *European Papers, A Journal on Law and Integration*, <https://www.europeanpapers.eu/europeanforum/nansen-passport-eu-temporary-protection-directive-solidarity-mobility-rights-future-asylum> (accessed 19.05.2025).

⁵ 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 EU L 212 of 07.08.2001, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32001L0055> (accessed 21.05.2025).

⁶ Act of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland, *Journal of Laws* 2003 No. 128, item 1176, as amended.

⁷ Act of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that State, *Journal of Laws* 2022, item 583.

For this reason, the author does not analyse the provisions of the 12 March 2022 Act on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine in this article. The 2022 Special Act does not implement the *acquis communautaire*, though it references Directive 2001/55/EC – introducing, in some areas, solutions more favourable than the EU minimum and, in others, less favourable. It established a mechanism entirely separate from the EU framework, dedicated exclusively to citizens of one specific country: Ukraine. Meanwhile, the 2003 Act on the Protection of Foreigners remains the primary transposition of EU standards, even though its role was marginalised in the context of the Ukrainian crisis.

Although the mechanism under Directive 2001/55/EC, which consists in the fact that the provisions of the Directive are activated each time only as a result of a decision taken by the Council (EU) at the request of the European Commission, was activated for the first time in response to the outbreak of full-scale war in Ukraine in 2022 (and for the same reason, Poland adopted the Ukrainian Special Act), the Directive's mechanism is general in nature, designed to be triggered regardless of the nationality or origin of displaced persons – unlike the Ukrainian Special Act.

The key aspect of this analysis is a comparison of the form and content of selected provisions transposing Directive 2001/55/EC into Polish law, particularly the 2003 Act on the Protection of Foreigners, which defines the principles, conditions, and procedures for granting protection to foreigners in Poland, as well as the competent authorities⁸. Poland, as one of the primary host countries for migrants in recent years, presents a particularly compelling case study – both due to the scale of administrative and social challenges posed by intensified migration and the evolution of domestic legal solutions in response to dynamically changing migration patterns.

The research methodology employs a comparative legal analysis of Directive 2001/55/EC and relevant provisions of the Polish Act on Foreigners, with particular attention to amendments introduced in 2023, as well as a dogmatic legal analysis focusing on purposive and systemic interpretation, internal coherence of regulations, and the relationship between domestic and EU law. The study also examines literature, existing data (including official documents, press articles, and statistics

⁸ Art. 1 of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

on temporary protection in Poland and Europe). Comparing EU and national solutions allows for an assessment of harmonisation levels and identification of potential gaps or inconsistencies in practical application.

Directive 2001/55/EC was conceived as a crisis management tool for the European Union, designed to enable a rapid and coordinated response to mass influxes of displaced persons while preventing overburdening of member states' asylum systems. However, it remained inactive for over 20 years, raising doubts about its practical efficacy. The transposition of the Directive on temporary protection for those fleeing armed conflict and persecution is reflected in the aforementioned Act on the Protection of Foreigners. For the purposes of this analysis, the author focuses on Chapter III of the Act (Articles 106–118a), which governs eligibility for protection and the rights of beneficiaries. Divergences between EU and Polish regulations, and their impact on migrants' rights and obligations, are analysed through purposive and systemic interpretation. Additionally, case studies and opinions from public institution reports are examined⁹.

The integration of migration policy at the EU level, particularly through Directive 2001/55/EC, is a cornerstone of the legal systems of member states. The Directive not only harmonises procedures but also ensures minimum protection standards across the EU. In Poland, transposing these rules into the 2003 Act required aligning domestic provisions with EU obligations while adapting to evolving migration realities and refugee needs.

Analysis of the Act's provisions reveals that despite formal transposition, certain articles – such as those on asylum procedure timelines and access to benefits – require further refinement in both theory and practice¹⁰. Reports also indicate that concerns over “welfare tourism” have influenced legislative reform debates¹¹. Effective transposition is

⁹ See also: Z. Vankova, *Circular Migration and the Rights of Migrant Workers in Central and Eastern Europe*, Springer Science and Business Media LLC, 2025, <https://core.ac.uk/download/362225375.pdf> (accessed 21.05.2025); N.O. Babych, K.V. Kutsovol, V. P. Polozhyshnyk, V. Shcherbyna, O.V. Voytysshena, *Differences in the exercise of labor rights by refugees and migrants in Europe*, Lublin 2023, <https://core.ac.uk/download/578701644.pdf> (accessed 21.05.2025); G. Silasi, O.L. Simina (eds.), *Migration, Mobility and Human Rights at the Eastern Border of the European Union - Space of Freedom and Security*, Editura Universitatii de Vest, 2008, <https://core.ac.uk/download/5082258.pdf> (accessed: 20.05.2025).

¹⁰ See also: B. Parusel, J. Schneider, *Annual Policy Report 2010*, Nürnberg 2010, https://www.ssoar.info/ssoar/bitstream/document/68278/1/ssoar-2011-parusel_et_al-Annual_Policy_Report_2010.pdf (accessed: 22.05.2025).

¹¹ See also: E. Guild, K. Eisale, S. Carrera, *Social Benefits And Migration: A Contested Relationship and Policy Challenge in the EU*. Centre for European Policy Studies (CEPS), 2013, <https://core.ac.uk/download/75778562.pdf> (accessed: 23.05.2025).

essential to uphold the legal system's structural integrity and human rights compliance in Poland.

Examining normative shifts linked to Directive 2001/55/EC in Polish law, especially the 2003 Act, aims not only to identify shortcomings in transposition but also to build credible assessments of its impact on migrants' rights. Understanding how EU implementation mechanisms shape legal practice and perceptions in Poland is critical. Legal acts, reports, and migration statistics enrich this analysis, underscoring the need for systemic revision¹².

Structure and Content of the Directive

The first part of the Directive describes the procedure for triggering assistance, indicating the necessity of a Council decision and the elements that must be included in that decision. Subsequent chapters define key concepts, specify the duration and conditions of protection, the obligations of Member States towards beneficiaries, access to asylum procedures, rules on return to the country of origin, and the termination of protection. The Directive also regulates issues of solidarity and administrative cooperation and specifies which persons are excluded from its application.

A decision adopted by the EU Council under Directive 2001/55/EC is binding on all Member States (with exceptions indicated in the Directive) and, according to recital 14 and subsequent provisions, must specify the circumstances under which the Council's decision ceases to apply (e.g., stabilization of the situation in the country of origin of the displaced persons); define obligations regarding the reception and stay of persons under temporary protection, including guarantees of security and decent living conditions¹³; regulate the rules for applying for asylum during

¹² See also: Z. Vankova, *Circular Migration and the Rights of Migrant Workers in Central and Eastern Europe*, Springer Science and Business Media LLC, 2025, <https://core.ac.uk/download/362225375.pdf> (accessed 21.05.2025); H. Hecht, J. Heine, M. Kohlmeier, Mananashvili et al., *2005 Policy Analysis Report on Migration and Asylum*, Nürnberg 2006, https://www.ssoar.info/ssoar/bitstream/handle/document/67468/ssoar-2006-kohlmeier_et_al-2005_Policy_Analysis_Report_on.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2006-kohlmeier_et_al-2005_Policy_Analysis_Report_on.pdf (accessed: 23.04.2025); N. Bosch, M. Peucker, *Ethnic discrimination and xenophobia in Germany: annual report 2006*, Universitätsbibliothek Bamberg 2012, https://www.ssoar.info/ssoar/bitstream/document/19252/1/ssoar-2007-bosch_et_al-ethnic_discrimination_and_xenophobia_in.pdf (accessed: 26.04.2025).

¹³ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/temporary-protection_en

temporary protection, with respect for international obligations and the provisions of the EU Treaties¹⁴; introduce repatriation procedures after the end of the protection period, including measures to support voluntary return or enforce the obligation to leave the EU territory¹⁵; establish a solidarity mechanism, i.e., a system for balancing burdens between states, covering both financial support for countries receiving the most displaced persons and a real division of responsibility for the relocation of persons; define the rules for information exchange between Member States under the coordination of the European Commission, including data protection standards in line with Directive 95/46/EC; indicate grounds for excluding certain persons from temporary protection (e.g., due to the commission of serious crimes or security threats); and require Member States to comply with international anti-discrimination agreements in their treatment of beneficiaries.

The Polish Act on the Protection of Foreigners versus the Obligations under Directive 2001/55/EC

The act into which, according to the logic of the Polish legal system, the provisions of Directive 2001/55/EC were implemented is the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland, adopted on 13 June 2003¹⁶, as directly indicated in footnote 1 to the Act and in Article 1, which states that this Act implements, among others, this Directive. The Act was passed on 13 June 2003 and entered into force on 1 September 2003, with the proviso that some of its provisions would be amended or repealed when Poland became a member of the European Union, which occurred on 1 May 2004. In the context of activating temporary protection, this situation concerned the provisions contained in Article 108(1)-(3). In its original version, Article 108(1)-(3) provided for a mechanism analogous to that contained in Directive 2001/55/EC,

¹⁴ D. Saracino, *The European Union's Response to the Refugee Movements from Ukraine: The End of the Solidarity Crisis?*, "Central and Eastern European Migration Review", v. 13, no. 2, 2024, <http://ceemr.uw.edu.pl/vol-13-no-2-2024/articles/european-union-s-response-refugee-movements-ukraine-end-solidarity-crisis> (accessed 20.05.2025).

¹⁵ <https://newlandchase.com/european-union-and-ukraine-eu-issues-operational-guidelines-for-temporary-protection-directive-tpd-2001-55-ec/> (accessed 20.05.2025).

¹⁶ Journal of Laws 2003 No. 128, item 1176.

but at the national level, i.e., that the decision to activate temporary protection would depend each time on the issuance of an implementing regulation by the Council of Ministers, which would determine the need to activate the provisions on temporary protection and set out the rules and possibilities for its financing, the limits of the group of recipients, the duration, the manner of providing assistance and carrying out tasks (including medical examinations and sanitary procedures), taking into account the obligations arising from international agreements binding on the Republic of Poland.

Based on Article 146(3) of the Act on Granting Protection to Foreigners, the provisions of Article 108(1)-(3)¹⁷ lost their force on the day Poland obtained membership in the European Union, i.e., on 1 May 2004, transferring decision-making in this matter to the EU level in accordance with the mechanism contained in Directive 2001/55/EC.

In the context of transposing the provisions of Directive 2001/55/EC into Polish legislation, Article 3(2) of the Directive is of particular importance, as it imposes on Member States the obligation to provide appropriate international protection.

In the Polish Act of 2003 on Granting Protection to Foreigners, both positive aspects of the transposition and certain limitations can be observed, which may affect the effectiveness of refugee rights protection. For example, Article 15(1) of the Act, which regulates issues of international protection, seems to insufficiently take into account the simplified procedure for persons arriving from conflict areas, which is related to the principle of equal treatment¹⁸. Additionally, analysts point out that

¹⁷ Art. 108, para. 1. Temporary protection in the event of the occurrences referred to in Art. 106(1) is granted on the basis and within the limits determined each time by the Council of Ministers in a regulation.

2. The regulation referred to in para. 1 specifies:

- a) detailed rules for financing temporary protection, the limit of foreigners who may be granted such protection, the period of its duration, the conditions for its termination, the manner of providing assistance referred to in Art. 112(1), as well as the manner of performing tasks undertaken under temporary protection, taking into account in particular the type of threat to which foreigners were exposed before arriving in the territory of the Republic of Poland,
- b) the possibilities of financing such protection, and the obligations arising from international agreements binding on the Republic of Poland; the scope, detailed conditions, and manner of conducting medical examinations and sanitary procedures for the body and clothing of the foreigner referred to in Art. 114(2), taking into account in particular the need to prevent the spread of infectious diseases. The Council of Ministers, by regulation, may extend the period of granting temporary protection, in accordance with Art. 106(3), taking into account the existence of obstacles to the safe return of foreigners to their previous place of residence.

¹⁸ See N.O. Babych, K.V. Kutsovol, P. Polozhyshnyk, Shcherbyna et al., *Differences in the exercise of labor rights by refugees and migrants in Europe*, Lublin 2023, <https://core.ac.uk/download/578701644.pdf> (accessed 21.05.2025).

mechanisms introduced in other EU countries provide more effective support for migrants¹⁹, which puts Poland in a more difficult position in the context of international obligations. Ultimately, adapting national regulations to the recommended EU framework should be a priority for the further development of foreigner rights protection in Poland²⁰, as the use of an extraordinary one-off solution in the form of a special-purpose act – which seems to fill some of these gaps, but is not a transposition of EU law and introduces some legislative chaos – cannot always be the solution for an incomplete and ambiguous temporary protection system.

When analysing the provisions transposed into the Polish Act on Granting Protection to Foreigners, it is crucial to understand the purpose of Directive 2001/55/EC, which focuses on the protection of refugees (displaced persons), humanitarian, medical, educational, housing, integration assistance, and support in access to the labour market. Under national law, temporary protection is granted based on Articles 106–118a of the Act to foreigners²¹ arriving en masse in Poland who have left their country of origin or a specific geographic area and meet other conditions. These conditions are set out in Article 106(1), which clearly states that temporary protection in Poland may be granted to foreigners arriving en masse in Poland who have left their country of origin or a specific geographic area due to foreign invasion, war, civil war, ethnic conflicts, or gross violations of human rights, regardless of whether their arrival was spontaneous or resulted from assistance provided by Poland or the international community.

An analysis of both documents shows that Articles 106–118a of the Polish Act contain transpositions of selected articles of Directive 2001/55/EC, but in some cases, their content does not fully correspond to the provisions of the Directive.

¹⁹ M. Kosiel-Pająk, P. Sadowski, *British and Polish Temporary Protection Schemes Addressing Displaced Persons from Ukraine*, Masaryk University, Faculty of Law 2024, last modified 20 May, 2025. DOI: <https://core.ac.uk/download/599450338.pdf> (accessed: 22.05.2025).

²⁰ See Z. Vankova, *Circular Migration and the Rights of Migrant Workers in Central and Eastern Europe*, Springer Science and Business Media LLC, 2025, <https://core.ac.uk/download/362225375.pdf> (accessed 21.05.2025).

²¹ The term “foreigner” used in Art. 106(1) is understood in accordance with Art. 2(4) of the Act on Granting Protection to Foreigners, as defined in the Act of 12 December 2013 on Foreigners.

Scope of Persons Covered and Scale of Migration Phenomenon

Directive 2001/55/EC in Article 2(c) clearly states that its scope covers third-country nationals or stateless persons who have been forced to leave their country or region of origin, or have been evacuated, and are unable to return safely and permanently due to the situation in their country. It also covers those who may fall under Article 1A of the Geneva Convention or another international or national instrument granting international protection, particularly: persons who have fled areas affected by armed conflict or ongoing violence, as well as those threatened by or victims of systematic and widespread human rights violations, defining these persons as “displaced persons.” In Article 2(d), the Directive defines mass influx as the arrival in the Community’s territory of a significant number of displaced persons from a specific country or geographical area²², regardless of whether their arrival is spontaneous or the result of aid measures, such as an evacuation programme.

The Polish Act on Granting Protection to Foreigners on the Territory of the Republic of Poland, in Article 106, refers to the mass influx of foreigners from areas affected by war, invasion, or humanitarian disaster. The Act does not specify, as the Directive does, that temporary protection also covers stateless persons or those already enjoying international protection in another country. However, Article 2(4) of the Act states that the term “foreigner” as used in the Act means a foreigner as defined in Article 3(2) of the Act of 12 December 2013 on Foreigners, i.e., anyone who does not have Polish citizenship. Thus, the scope of persons covered is broader (and therefore more favourable for displaced persons) than the provisions of the Directive. The Act also does not specify how mass influx should be understood, leaving this to a Council decision, as indicated in Article 107(1) of the Act on the protection of foreigners.

²² The mechanism contained in Directive 2001/55/EC, according to which the “mass” nature of the influx is determined each time by a Council decision on a Commission proposal, means that the Directive does not specify a particular number of migrants for which mass influx is recognized. The mass influx (and thus the activation of the mechanism in Directive 2001/55/EC) is each time determined by a Council decision. In the case of the most recent (and so far only) activation of the temporary protection mechanism in Directive 2001/55/EC, the decision was made on 4 March 2022 and concerned war refugees from Ukraine (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 Article 5 of Directive 2001/55/EC and introducing temporary protection (OJ EU L.2022.71.1).

Possibility to Extend the Scope of Protection

The Directive, which aims to provide minimum standards, gives Member States the option to extend the scope of temporary protection both in terms of subject matter and persons to additional categories of displaced persons covered by a Council decision under Article 5, if they become displaced for the same reasons and from the same country or region of origin (Article 3(5), Article 7(1) of the Directive). The Polish legislator has made use of this authorisation, making any potential extension of protection dependent, in Article 107(2), on the adoption of an additional regulation by the Council of Ministers. This regulation, under Article 107(3), is to set out the principles and possibilities for financing assistance, group size limits, duration, the manner of providing assistance and carrying out tasks (including medical examinations and sanitary procedures), taking into account obligations arising from international agreements binding on Poland (Article 107(3)(1) and (2), wording identical to the repealed Article 108(2)(1) and (2) of the Act on the protection of foreigners). However, the condition for exercising this EU legislative power is the material identity of the phenomenon described in the Directive as “the same reasons” and “if they become displaced from the same country or region of origin” (Article 7(1) of the Directive). The national provision allowing for the extension of protection refers to the content of the national provision, i.e., Article 106(1), which states that Poland may grant temporary protection to foreigners not covered by the EU Council decision, forced to leave the country or geographical area to which that decision applies, due to the events referred to in Article 106(1), i.e., foreign invasion, war, civil war, ethnic conflicts, or gross human rights violations.

A linguistic analysis may lead to certain problems and inaccuracies in the application of the Polish provision, as it refers only to the events mentioned in Article 106(1), and not to the entire content of Article 106(1), which also mentions the “mass” nature of the phenomenon. Therefore, the practical application of this provision may be difficult due to the need for appropriate interpretation – linguistic, if the aim is to extend temporary protection to other groups of displaced persons fleeing for analogous reasons but, for example, not en masse or not from the same region, or teleological, if the intention is to establish that the purpose of implementing Articles 106–118a was the transposition of Directive

2001/55/EC into Polish law, which refers only to the mass phenomenon – in which case, the reference to the content of Article 106(1) regarding “events” also includes its scope (mass) and not just the type (invasion, war).

Mechanism for Obtaining the Right to Protection

According to Article 5(3) of the Directive, the Council’s adoption of a decision in the form of an implementing act results in the introduction of temporary protection for the displaced persons to whom it applies in all Member States, in accordance with the provisions of the Directive. These assumptions are reflected in the Polish Act in Article 107(1), which states that temporary protection is granted on the basis and within the limits defined by the decision of the Council of the European Union, for the period specified in that decision each time.

Temporary protection is granted based on a general act, and Polish regulations do not require that national administrative authorities take additional actions in this regard. In practice, this means there is no need to initiate individual administrative proceedings to grant foreigners the relevant rights or even to confirm them formally. These rights are granted directly to the foreigner by virtue of the Council’s decision, which precisely defines the scope of protection provided. In other words, a foreigner benefits from temporary protection solely by being covered by the Council’s decision, without the need for further steps by Polish authorities. As a consequence, registration and the issuance of appropriate visa documents occur naturally, but no administrative proceedings are initiated solely to grant protection to the displaced person.

Duration of Protection

According to Article 4(1) of Directive 2001/55/EC, the duration of temporary protection is one year. However, if the reasons for granting protection persist and it is not terminated under Article 6(1)(b), it may be automatically extended by up to six additional monthly periods, for a total period not exceeding two years. In practice, for the current activation of

the Directive, these periods are extended annually based on the European Commission's proposal, rather than in monthly increments.

The rules for extending the duration of temporary protection were reflected in Article 106(2) and (3) of the Polish Act, but only in its original version. With Poland's accession to the European Union on May 1, 2004, these provisions were repealed. Previously, they stipulated that temporary protection was granted until foreigners could safely return to their previous place of residence (which also corresponds to the current Article 6(1)(b) of the Directive), but not for longer than one year. If, after one year, obstacles to safe return still existed, the period of temporary protection could be extended for an additional six months, but no more than twice²³.

The Polish provision, in force until Poland joined the EU, was more restrictive than the Directive. The national law allowed only two further six-month extensions after the first year (a maximum of two years), while the Directive provides for automatic extensions of six months (in practice, up to two years), and then – by Council decision – an additional year (up to three years in total). This means the Polish Act limited the maximum duration of temporary protection to two years, whereas the Directive allows for three years.

It is possible that the intention of the national legislator was to maintain greater control over the duration of temporary protection and to limit the state's long-term obligations to beneficiaries of this protection. The legislator may also have been motivated by practical considerations, assuming that crisis situations should be resolved as quickly as possible and that temporary protection should not result in prolonged stays of foreigners in Poland without other solutions (such as integration or return). This may also have resulted from a literal, rather than systemic, reading of the Directive, leading to a narrowing of foreigners' rights. Ultimately, however, these provisions were abandoned with Poland's accession to the European Union on May 1, 2004.

²³ Art. 106(2) and (3) of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

Forms of Assistance

According to Article 13(1) of the Directive, Member States are obliged to provide persons enjoying temporary protection with access to suitable accommodation and, where necessary, the means to obtain such accommodation. However, the Polish Act does not contain detailed provisions granting persons under temporary protection the right to appropriate accommodation or the means to obtain it, except for the brief Article 112(1), which states that the Head of the Office for Foreigners provides a foreigner enjoying temporary protection with medical care and assistance through accommodation and meals. If the foreigner is employed or runs a business, the Head of the Office provides, among other things, assistance in obtaining accommodation and medical care, taking into account the foreigner's income²⁴.

In practice, the Act provides detailed regulations on accommodation and material assistance only for those applying for refugee status or subsidiary protection. For persons under temporary protection, there are no more detailed regulations regarding accommodation and social benefits that would meet the requirements of the Directive.

Article 112(1) of the Polish Act effectively limits assistance to accommodation in centers and in-kind meals. There are no provisions for rental allowances, which negatively affect those unwilling to accept collective living conditions. This results in a much narrower scope of assistance than foreseen by the EU legislator, who explicitly stated in the Directive that accommodation should be "suitable" and that assistance could be financial, not just in-kind.

Additionally, this leads to unequal treatment between groups of foreigners seeking protection in Poland. Beneficiaries of temporary protection receive a narrower range of assistance than, for example, asylum seekers (e.g., no allowances), violating the principle of proportionality. In 2022, 40% of Ukrainians left centers due to a lack of privacy but did not receive alternative support. The reason for this situation may lie in the interpretation that the legislator considered temporary protection as a short-term solution, thus overlooking real long-term needs.

As a result, in response to the mass influx of refugees from Ukraine, Poland adopted a separate Special Act of 12 March 2022 on Assistance

²⁴ Art. 112(1) and (4).

to Citizens of Ukraine, which specifically regulates accommodation, meals, and other forms of support for persons enjoying temporary protection – including the introduction of cash benefits, but only for Ukrainian citizens.

Currently, it is this Special Act, not the Act on Granting Protection to Foreigners, that forms the legal basis for providing accommodation to persons under temporary protection in Poland. The “proper” Act transposing Directive 2001/55/EC does not and did not provide sufficient grounds for granting accommodation in accordance with Article 13(1) of the Directive.

Social Assistance, Financial Support, and Healthcare

According to Article 13(2)-(3), Member States were obliged to establish regulations aimed at ensuring that persons benefiting from temporary protection receive necessary social assistance and means of subsistence if they lack sufficient resources, as well as access to medical care. The necessary medical assistance must include at least emergency care and basic treatment of illnesses.

In the area of medical assistance, the Polish legislator has significantly expanded the scope of support compared to the minimum standards set out in the Directive. The medical entitlements of persons under temporary protection are not limited to the bare minimum – these individuals have access to all medical services, and it should be emphasised that this scope even exceeds the support provided to applicants for international protection²⁵, who, for example, are not entitled to spa treatment or rehabilitation.

According to Article 3(1)(2a) of the Act on Health Care Services Financed from Public Funds, beneficiaries of temporary protection are

²⁵ Art. 71(1). Medical care includes health care services to the extent that persons covered by compulsory or voluntary health insurance are entitled to benefits under the Act of 27 August 2004 on Health Care Services Financed from Public Funds (Journal of Laws 2024, items 146, 858, 1222, 1593, 1615, and 1915), excluding spa treatment or spa rehabilitation. (2) Medical care is provided on the basis of civil law contracts concluded between the Head of the Office [for Foreigners] and service providers within the meaning of the provisions of the Act referred to in paragraph 1.

treated as insured persons²⁶. This means they are entitled to the same range of health care as persons covered by compulsory or voluntary health insurance, as provided in Article 15 of that Act.

Pursuant to Article 112(2) of the Act on Granting Protection to Foreigners, the provision of medical care to a foreigner takes place on the basis of an agreement between the Head of the Office for Foreigners and a service provider under the Act of 27 August 2004 on Health Care Services Financed from Public Funds. The costs of medical care, except for those specified in the Act of 5 December 2008 on the Prevention and Control of Infections and Infectious Diseases in Humans, are financed from the state budget, from funds managed by the Minister of the Interior and administered by the Head of the Office for Foreigners. The obligation to provide medical care rests with the Head of the Office for Foreigners, who fulfils it through specialised facilities based on civil law contracts. The choice of provider is made through a public procurement process.

The costs of health benefits for beneficiaries of temporary protection are covered by the state budget, from the part managed by the Minister of the Interior, via funds at the disposal of the Head of the Office for Foreigners. The exception is expenditures on benefits specified in the Act on the Prevention and Control of Infections and Infectious Diseases in Humans, which are financed under separate rules provided for in that Act. It should be noted that the exclusion of financing for these benefits does not automatically mean that they cannot be provided by the relevant institutions, including the Head of the Office for Foreigners.

Access to the Labour Market

Directive Article 12 provides that Member States shall grant, for a period not exceeding the duration of temporary protection, permission for persons benefiting from temporary protection to engage in self-employment or paid employment, taking into account the rules applicable

²⁶ According to Article 3(1)(2a) of the Act of 27 August 2004 on Health Care Services Financed from Public Funds, insured persons are those who have obtained refugee status or subsidiary protection in the Republic of Poland or benefit from temporary protection on its territory, which means they are subject to social insurance on the same terms as persons insured on a compulsory or voluntary basis (Journal of Laws No. 210, item 2135, as amended).

to certain professions, as well as access to adult education opportunities, vocational training, and practical acquisition of professional skills. Due to specific labour market policies, Member States may give preference to European Union citizens, citizens of states party to the European Economic Area Agreement, and legally residing third-country nationals receiving unemployment benefits. General rights applicable in Member States regarding remuneration, access to social security systems for employees and the self-employed, and other conditions of work and employment apply.

The provisions of the Polish Act in Article 116 grant foreigners under temporary protection the right to work and conduct business activity without the need for a work permit²⁷. This provision is consistent with the Directive; however, in practice, procedural doubts have arisen regarding the documents entitling a person to work (including differences between a “certificate of temporary protection” and other residence documents)²⁸. For persons applying for temporary protection, according to Article 110(2), after arriving in the territory of the Republic of Poland, the Head of the Office for Foreigners grants a temporary residence permit for one year and issues a residence card (with the possibility of extension under Article 110(3)). For those under temporary protection, the labour market is open based on Article 87(1)(6) of the Act of 20 April 2004 on the Promotion of Employment and Labor Market Institutions²⁹, and from 1 June 2025, under the Act of 20 March 2025 on the Conditions for Employing Foreigners in the Republic of Poland³⁰. According to Article 3(1) of the new act, a foreigner who benefits from temporary protection in Poland (point 12) or holds a valid certificate issued under Article 35(1) of the Act of 13 June 2003 on Granting Protection to Foreigners in Poland³¹ (point 13) has free access to the labour market³². The certificate referred to in Article 35(1) can be obtained if the issuance of a certificate of temporary protection by the Head of the Office for Foreigners is delayed beyond six months through no fault of the foreigner. Such situations have often

²⁷ Art. 116 of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

²⁸ Art. 87(1) of the Act on Employment Promotion and Labour Market Institutions.

²⁹ Journal of Laws of 2024, item 475, with later amendments.

³⁰ Journal of Laws of 2025, item 621.

³¹ Journal of Laws of 2025, items 223, 389, and 619.

³² Art. 34, Art. 35 of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

been reported in individual cases regarding other forms of protection in Poland, including international protection³³.

It should be noted that taking up legal employment is possible in the case of temporary protection without the need for a work permit (which is a significant facilitation and meets the expectations of the EU legislator), but in practice, one must have an identity document and a certificate from the Office for Foreigners confirming temporary protection. Until the foreigner has at least these two documents, taking up legal employment or registering as unemployed at the labour office is not possible. Furthermore, Polish law does not specify any deadline that would actually obligate the Head of the Office for Foreigners to issue the certificate within a set timeframe, which, in the context of urgent mass migration management, is a significant procedural shortcoming. In extreme cases, this can lead to prolonged proceedings and, consequently, exclusion from the labour market while waiting for the certificate of temporary protection to be issued, with no statutory control mechanism over the issuing authority.

The Act introduces provisions aimed not only at regulating the status of persons under temporary protection, but also at supporting their integration into Polish society, at least by enabling them to work during their stay. It is also important to remember that Article 12 of the Directive requires Member States to ensure that persons under temporary protection have access to the labour market and the general rights applicable

³³ According to Article 39 of the Act on Granting Protection to Foreigners, an application for international protection is examined in an accelerated procedure if the applicant has indicated reasons for the application other than fear of persecution due to race, religion, nationality, political beliefs, or membership of a particular social group, or the risk of suffering serious harm, or has not provided any information about circumstances related to fear of persecution or risk of serious harm; has misled the examining authority by concealing information or documents or presenting false information or documents regarding their identity or citizenship, which are of significant importance for granting refugee status or subsidiary protection; has provided clearly inconsistent, contradictory, or implausible explanations to confirm the fact of persecution or risk of serious harm, which are contrary to verified information about the country of origin; has submitted the application solely to delay or disrupt the execution of a decision obliging the foreigner to return; poses a threat to state security or public order or has previously been expelled from the territory of the Republic of Poland for this reason. In such cases, in the accelerated procedure, the case concerning the granting of international protection is resolved within 30 days from the date of submission of the application for international protection, and the decision concluding the proceedings indicates that the application for international protection was considered in the accelerated procedure; an appeal against the decision concluding the proceedings must be lodged within 7 days from its delivery; in the appeal procedure, the authority adjudicates as a single-person panel. The accelerated procedure does not apply if the above circumstances are revealed after 30 days from the date of submission of the application for international protection. Thus, this is a solution providing for an accelerated and simplified procedure, and the form and content of the provisions contained in Article 39 indicate that this procedure is an attempt by the legislator to safeguard against improper and unlawful practices by foreigners by speeding up the process of handling the case.

in Member States regarding remuneration, access to social security for employees and the self-employed, and other conditions of work and employment. This means that they are also covered by employee rights and obligations under the Labour Code (if employed on a contract of employment), including the principle of non-discrimination in employment as set out in Article 11³ of the Labour Code.

Unaccompanied Minors

Article 16 of the Directive obliges Member States to ensure the necessary protection of unaccompanied minors under temporary protection, either through a guardian or, where necessary, a representative of an organisation responsible for the care and protection of minors, or another appropriate representative. EU legislators expect this protection to be activated as soon as possible, i.e., without undue delay. During the period of temporary protection, Member States are also required to organise care for minors either with adult relatives, in a foster family, in reception centers specially adapted for minors, or in other suitable places, or under the care of the person who cared for the child during their flight. Member States must take the necessary steps to enable such placements, establish agreements with the adult(s) concerned, and take into account the child's views according to their age and maturity.

Polish law, specifically Article 113 of the Act on Granting Protection to Foreigners, does introduce provisions for the care of minors, but these rely on general regulations, often resulting in lengthy court proceedings and additional administrative formalities, such as the need for the Head of the Office for Foreigners to submit an application for guardianship. This creates an extra barrier, prolonging the process and procedures.

Analysis of selected provisions in this area also reveals other aspects of differences between EU and national law, the consequences of which may negatively affect unaccompanied minors. For example, while the Directive requires the swift appointment of a guardian or appropriate representative, in Poland, the process is often delayed by court procedures and administrative requirements. Additionally, the Polish system requires a formal application for guardianship, which can lead to months-long proceedings, whereas the Directive emphasizes immediate action.

The provisions of Polish law in the discussed Act regarding the establishment of care for minors under temporary protection show systemic shortcomings in ensuring both speed and a “family-based” approach, which is contrary to the objectives of Directive 2001/55/EC. EU requirements, as set out in Article 16 of the Directive, oblige Member States to prioritise the family environment by placing minors with relatives, in foster families, or other suitable places, with a clear preference for family-based solutions. The Directive also requires that actions be taken without undue delay and that the child’s opinion be considered. Furthermore, Member States are obliged to provide a guardian or a representative of an organisation specialising in the protection of minors.

Meanwhile, Polish regulations – specifically Article 113 of the Act on Granting Protection to Foreigners and the Family and Guardianship Code – provide that, until court-appointed guardianship is established, an unaccompanied minor is placed in a care institution, which in practice favours institutional rather than family-based solutions. There is no explicit requirement for the court to prioritise relatives or foster families, and the Family and Guardianship Code is applied with the reservation of the Act’s provisions, opening the way to standard procedures that do not account for the specifics of temporary protection. Furthermore, guardianship is established only upon application by the Head of the Office for Foreigners, introducing an additional bureaucratic step and delaying the entire process.

According to Article 113(8), the court is expected to examine the case without delay, but no later than three days from the receipt of the application from the Head of the Office for Foreigners. However, in practice, guardianship cases are conducted in non-contentious proceedings after a hearing, where the candidate for guardian is heard and the minor is consulted if their development, health, and maturity allow, with their reasonable wishes considered when possible. In Polish judicial practice, hearings are often scheduled with significant delays – even in cases concerning guardianship or residence of minors.

Article 113(10) allows the court, in particularly justified cases, to limit evidence to documents and decide in a closed session if the candidate for guardian already cares for the minor and there are no doubts about the care provided. However, even this requires proper documentation, which must be collected by individuals such as social workers or guardians. This process can still take considerable time, which is not compatible with the

temporary nature of protection – typically lasting only one year. Given current court workloads, initial decisions regarding minors (including guardianship or residence) may approach or even exceed a year, making the provisions of the Polish Act inadequate for the situation.

This situation changed only with the adoption of the special Ukrainian Act, which serves as *lex specialis* to earlier provisions of the Family and Guardianship Code. For Ukrainian children in Poland without legal guardians, family courts now have a clear legal basis to appoint temporary guardians – even if the child’s parents are alive and retain parental rights but are outside Poland. Such a solution is missing from the Act on Granting Protection to Foreigners.

The Family and Guardianship Code regulates guardianship in a universal way, not taking into account the specific needs of minors under temporary protection, such as the migration context or language barriers, and does not provide for specialised training for guardians in the rights of foreigners or migration-related trauma.

Final Remarks

On 12 March 2022, the *Act on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine* was adopted, retroactively effective from 24 February 2022³⁴. On the same day, Article 106(4) was added to the Act on Granting Protection to Foreigners, stating that “[t]he provisions of this chapter [Chapter 3] shall apply only to matters not regulated by separate provisions defining categories of persons enjoying temporary protection in Poland”. This amendment, introduced via the special Ukrainian Act, fundamentally transformed Poland’s temporary protection system. It established a clear hierarchy of legal sources, prioritising the special act over the general provisions of Chapter 3 of the 2003 Act. As a result, Chapter 3 now plays a subsidiary role, applicable only where the special act does not regulate specific categories of temporary protection beneficiaries.

A systemic analysis reveals that the Polish legislator intentionally created a separate legal pathway for Ukrainian citizens fleeing the war,

³⁴ The Act was published in the Journal of Laws on 12 March 2022 and entered into force retroactively as of 24 February 2022 (Journal of Laws of 2022, item 583).

granting them automatic rights to legal residence, work, and social benefits without requiring compliance with standard procedures under the general Act. Other groups of foreigners – such as those from non-Ukrainian origins or arriving under different circumstances – must rely on the less favourable general provisions.

This legal framework has fragmented the temporary protection system, creating a dual regime where the special act takes precedence, while Chapter 3 of the 2003 Act serves as a residual mechanism. The introduction of Article 106(4) also addressed legislative conflicts, such as those with the Act on Employment Promotion, leading to further amendments in April 2022 that confirmed the supremacy of the special act in migration law.

In practice, this change has exacerbated inequalities in the treatment of foreigners and complicated coherent legal interpretation, as highlighted in academic literature and expert reports. While effective in crisis conditions, Poland's temporary protection model fails to fully align with EU law – particularly Directive 2001/55/EC – and does not guarantee equal protection to all foreigners. Ambiguities in defining mass influx, inconsistent social benefits, and unclear family reunification criteria risk arbitrary administrative decisions and violations of migrants' rights.

In summary, Article 106(4) of the Act on Granting Protection to Foreigners, introduced in 2022, has systemically marginalised the general provisions on temporary protection, establishing the special act as the primary legal regime for specific categories of foreigners. While effective in emergencies, this approach requires further legislative and organisational reforms to ensure coherence, efficacy, and fairness in Poland's temporary protection system, aligned with EU standards and human rights.

Summary, Conclusions and Recommendations

Chapter 3 of the Act of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland, in which the Polish legislator incorporated the provisions on temporary protection transposed from Directive 2001/55/EC into Polish law, has served for nearly two decades as the primary and sole mechanism regulating temporary protection in Poland. Its provisions transposed the EU Directive

2001/55/EC on temporary protection, creating a system for mass influxes of displaced persons. However, the shape and content of these provisions, as analysed in this article, did not (and still do not) ensure the realisation of the Directive's objectives – namely, to provide minimum standards of protection for large groups of displaced persons in an effective and rapid manner for a relatively short period.

An analysis of the transposition of Directive 2001/55/EC into the Polish Act on Foreigners indicates that, although the EU requirements were formally implemented in the early 2000s, practical implementation faces numerous challenges. In particular, the Polish Act implements the Directive in a general way, leaving a wide margin of discretion to the authorities, which leads to imprecision and the risk of arbitrary decisions. There are no clear criteria defining a mass influx (e.g., number of people or percentage increase in applications), and the wording regarding social rights is vague and imprecise, hindering effective protection. Additionally, the provisions on family reunification are unclear, especially regarding the definition of “close relatives”, which in practice leads to divergent interpretations.

Literature and expert reports also highlight insufficient cooperation between national and EU institutions, which negatively affects the implementation of integration policy. There is a need for a human rights-based approach and harmonisation of protection standards at the European level. It is also noted that the rapid adoption of the special act was driven by a political and social will to provide immediate assistance to refugees; however, these solutions are ad hoc and require further refinement.

The conclusions drawn from the above analysis are as follows: the Polish legislator, acting under the pressure of a humanitarian crisis, downgraded the significance of general provisions on temporary protection, which ensured swift support for Ukrainian citizens but at the same time created a system of inequality and hindered coherent legal interpretation. The current model, although effective in an emergency, does not guarantee complete and equal protection for all foreigners, and imprecise provisions may lead to violations of migrants' rights and arbitrary administrative decisions.

The recommendations include both legislative and practical changes, as well as actions at the EU level:

In terms of legislation, it is necessary to: (1) clarify the definition of “mass influx” by introducing objective, measurable criteria, such as

the percentage increase in the number of protection applications; (2) develop detailed guidelines on social benefits, clearly defining their scope, including cash benefits and other forms of support; (3) Introduce an unambiguous definition of “close relatives” in the context of family reunification to eliminate interpretative discrepancies.

In terms of practical solutions, it is recommended to: (1) organise training for officials responsible for implementing migration regulations to ensure uniform interpretation and application of the law; (2) introduce simplified administrative procedures in crisis situations to allow faster and more effective assistance; (3) increase coordination and cooperation between national institutions to improve crisis management and integration processes.

At the European Union level, the following are necessary: (1) further harmonisation of temporary protection standards and refugee reception procedures; (2) development of solidarity mechanisms among Member States to allow for an equitable distribution of responsibility; (3) implementation of common databases to facilitate information exchange and monitoring of the migration situation.

In 2022, following Russia’s invasion of Ukraine and the resulting exodus of Ukrainians to Poland, the Polish legislator was suddenly faced with the need to implement the objectives of Directive 2001/55/EC and to use the legal instruments transposed and functioning within the national legal system. Due to the gaps and ambiguities described above, as well as the enormous organizational challenges that such large-scale assistance would pose in practice for such a large group, it was decided to adopt a special, separate law containing substantive and procedural provisions. This was intended to prevent potential problems resulting from the incompleteness of the temporary protection system existing in Polish law under the Act on Granting Protection to Foreigners.

The Ukrainian Special Act of 12 March 2022 intentionally relegated Chapter 3 of the Act on Granting Protection to Foreigners to a subsidiary role, even though it could not originally serve as such in relation to an act adopted 19 years later. The 2003 Act was a transposition of EU temporary protection standards into national law. According to Article 3(4) of that Act, temporary protection was an autonomous form of assistance, independent of refugee status or asylum. However, its procedures, under the conditions of the mass influx of Ukrainians after 24 February 2022, proved impossible to implement – the judicial and administrative system

was and remains overloaded, and the deadlines provided did not match the scale of the crisis or the capacity of Polish institutions, where cases for Polish citizens are already backlogged for months or even years.

In response, the legislator, by adopting the so-called Ukrainian Special Act, simultaneously introduced Article 106(4) into the Act on Granting Protection to Foreigners, stating that Chapter 3 “applies only to matters not regulated by other provisions.” In practice, under the circumstances, this meant replacing the EU model of temporary protection with an autonomous regime for Ukrainians, based on the automatic granting of rights. This decision was largely driven by time pressure (the EU Council Implementing Decision (EU) 2022/382 of 4 March 2022 required Member States to provide temporary protection to Ukrainians immediately, which was unattainable under Chapter 3 of the Act on Granting Protection to Foreigners) and the inefficiency of the general system, which was shaped and introduced in Chapter 3 to address temporary protection. With the sudden influx of about 1.5 million people, it was simply not possible.

As a result, assistance for selected groups eligible for temporary protection was streamlined, based on the system arising from Directive 2001/55/EC (though the personal scope of the Directive and the Polish Special Act differ). However, this also disrupted the implementation pathway for EU law. The 2022 Special Act violated the principle of the hierarchy of legal acts, granting the *lex specialis* (the later act) priority over the *lex generalis* (the earlier act), even though Chapter 3 of the Act on Granting Protection to Foreigners implemented the EU directive. This led to a certain marginalisation of EU standards and the creation of systemic incoherence, whereby Ukrainian citizens covered by the Special Act gained automatic rights, while foreigners from other countries (e.g., Belarus) still had to use the less favourable procedural regime of Chapter 3, which undermines the principle of equality.

The result of these actions is also a problem with the principle of transposing directives. According to Article 288 TFEU, directives require complete and correct implementation into national law. Meanwhile, as demonstrated in the above analysis, the transposition so far is incomplete and assistance based on it – though dynamic and effective – has been suspended in practice by the adoption of the special act, which de facto excluded the application of Chapter 3 of the Act on Granting Protection to Foreigners for the vast majority of Ukrainians, leaving its jurisdiction

only for those who do not meet the statutory criteria of the special act, even though Directive 2001/55/EC does not allow for such exclusions. The new special law also did not provide a compensatory mechanism for persons outside its scope, leaving Chapter 3 as a “reserve” without real possibilities to provide assistance at a level comparable to that under the special act.

Among the practical effects of this situation is the emergence of systemic dualism – Ukrainian citizens covered by the special act received status within 24 hours (by being assigned a PESEL number), while people from other countries in some cases wait for decisions for months. In the author’s opinion, the model thus created is flawed from a legal system perspective. The legislator, seeking to avoid the inefficiency of general procedures, sacrificed implementation coherence and equality before the law. Such a “patched” construction creates a risk of conflict with the EU legal order and, in the long term, weakens the mechanisms of international protection in Poland. The fact that the special act is not a logical element of the existing system – which previously implemented EU standards – but rather a construct created “alongside” the existing system is confirmed by the explanatory memorandum to the special act itself: The proposed law is to be a special law, existing alongside the applicable legal acts in the field of migration and asylum, in particular the Act of 12 December 2013 on Foreigners and the Act of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland.

In the author’s view, instead of deconstructing the existing legal system and the provisions transposed into national law, steps should be taken to transform and reform the system operating in Poland so that the temporary protection system in Poland can actually function effectively and activate the provisions transposed into Polish law on the basis of secondary EU law. As regards the form and content of the transposed provisions, a detailed review should be carried out along with the relevant procedures from the general system behind each legal regulation aimed at implementing temporary protection provisions and they should be verified and adapted to ensure that the objectives of Directive 2001/55/EC can be achieved – by drafting them so that they are both effective and properly transposed into the Polish legal order.

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