WHY THE TEMPORARY PROTECTION DIRECTIVE WAS ACTIVATED: SOLIDARITY, GEOPOLITICS, AND HUMANITARIAN CONSIDERATIONS

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Abstract

The activation of the Temporary Protection Directive (TPD) in 2022 was a historic first, granting immediate protection to millions of Ukrainians fleeing Russia's invasion. The decision stands in contrast to the EU's response during the 2015 migration crisis, when the same mechanism remained unused. This article examines the reasons behind the Directive's activation and assesses how the decision was justified mainly through the language of solidarity, humanitarian considerations and political responsibility toward Ukraine rather than explicit human rights commitments. Ukraine's long-standing process of integration with the EU helped position it as part of the European political community, reinforcing the sense of EU responsibility. This finding suggests that human rights protection has a conditional nature in EU migration law. If humanitarian responses are legitimised through vague notions of solidarity and strategic interests rather than rights-based obligations, protection risks becoming dependent on political proximity and perceived belonging to the European community.

1. INTRODUCTION

The decision to activate the Temporary Protection Directive[1] in 2022 was a watershed moment in EU migration governance.[2] The Directive granted imme-

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[1] Council Directive 2001/55/EC of 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 L 212/12.

[2] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence

Europarättslig tidskrift, open access 2026-05-29

diate protection to Ukrainians fleeing Russia's invasion, yet the contrast with 2015 is notable. Despite facing comparable numbers of displaced persons during the migration crisis, the Directive was not used when refugees from the Middle East and North Africa arrived. Critics accuse the EU of double standards.[3] Others argue that this is explained by Ukraine's close relationship with the EU.[4] The decision to trigger the Directive reflects the EU's commitment to Ukraine as a partner and to the defence of the European security order following Russia's invasion. The war was framed as a direct threat to European stability, reinforced by Ukraine's geographical proximity and shared borders with the EU.[5]

This article examines how the EU legitimised its decision to activate the Directive. While existing scholarship has analysed the TPD as a dormant legal instrument, few studies have shown how the activation was influenced by the EU's close political ties to Ukraine. What do EU institutions present as legitimate grounds for activating the Directive? To what extent was the activation motivated by rights considerations compared to solidarity and security?

The article examines how the Council and the Commission framed the decision, with particular focus on how notions of 'solidarity', 'security', and 'human rights' justify their actions. Within the Area of Freedom, Security, and Justice (AFSJ), all three are central principles of EU law. In practice, they can be mobilised in different ways depending on political context. The term 'related notions' refers to concepts that echo or parallel human rights without explicitly invoking the rights themselves.[6] Such notions may act as broader, politically

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, OJ L 71/1.

3 Sergio Carrera, Meltem Ineli Ciger, Lina Vosyliute, and Leiza Brumat, The EU Grants Temporary Protection for People Fleeing War in Ukraine: Time to Rethink Unequal Solidarity in EU Asylum Policy, CEPS Policy Insights 2022; Emily Venturi and Anna Iasmi Vallianatou, Ukraine Exposes Europe's Double Standards for Refugees, Chatham House, 2022.

4 Bernd Parusel and Valeriia Varfolomieieva, The Ukrainian Refugee Situation: Lessons for EU Asylum Policy European Policy Analysis, September 2022:16epa, Swedish Institute for European Policy Studies (Sieps) p. 9; Achilles Skordas, Temporary Protection and European Racism, in Sergio Carrera and Meltem Ineli Ciger (eds.) EU Responses to the Large-scale Refugee Displacement: An Analysis on the Temporary Protection Directive and its Implications for the Future of EU Asylum Policy, CEPS Policy Insights, 2023; Joanne van Selm, Temporary Protection for Ukrainians: Learning the Lessons of the 1990s?, in Sergio Carrera and Meltem Ineli Ciger (eds.) EU Responses to the Large-scale Refugee Displacement: An Analysis on the Temporary Protection Directive and its Implications for the Future of EU Asylum Policy, CEPS Policy Insights, 2023.

5 Meltem Ineli Ciger, Reasons for the Activation of the Temporary Protection Directive in 2022: A Tale of Double Standards, in Sergio Carrera and Meltem Ineli Ciger (eds.) EU Responses to the Large-scale Refugee Displacement from Ukraine: An Analysis on the Temporary Protection Directive and Its Implications for the Future EU Asylum Policy, CEPS Policy Insights, 2023, p. 72–73; Bernd Parusel and Valeriia Varfolomieieva (2022) p. 9; Meltem Ineli Ciger (2023) p. 76.

6 The notion has been developed by WP6 of the HRJust Project (and particularly by Chiara Tea Antoniazzi and Caterina Milo) in internal memos on file with author.

Europarättslig tidskrift, open access 2026-05-29

flexible substitutes for human rights, allowing EU institutions to signal humanitarian commitment while avoiding the legal obligations that direct human rights references would entail. Through this lens, the article reveals how the EU frames its policy through values adjacent to, but distinct from, the formal human rights framework.

The analysis focuses on the Temporary Protection Directive, Council Implementing Decision 2022/382, and official EU communications to examine how the EU institutions framed the activation of the Temporary Protection Directive in 2022. It also considers relevant Ukrainian constitutional and legislative provisions to situate the Directive's activation within its broader political context. These documents illustrate how Ukraine has sought to integrate itself legally and politically within the European sphere. This article argues that while the activation addressed genuine humanitarian needs, EU institutions did not ground the decision in explicit human rights. Instead, they used the language of solidarity, security, and political responsibility to legitimise the decision.

Section 2 discusses the role of humanitarian considerations and solidarity in the activation of the TPD in 2022 to swiftly receive Ukrainians. Human rights, while implicit in the effects of the Directive – such as guaranteeing protection and access to asylum – were rarely expressed as direct motives. Humanitarian needs were emphasised by the institutions, but also solidarity with a European partner. The EU emphasised its political responsibility to Ukraine in the face of Russian aggression. Section 3 argues that the decision to activate the TPD was facilitated by Ukraine's gradual integration into the European community over the past decades. Through constitutional and legislative reforms, Ukraine has aligned its legislation with European principles and norms, culminating in visa-free access for its citizens and an expansion of economic and political cooperation in general. In this light, the activation of the TPD is a continuation of Ukraine's European trajectory. Ultimately, Ukraine's integration into the European sphere has strengthened a framework of solidarity that, in turn, underpins and reinforces the EU's broader national and collective security architecture. Section 4 delves deeper into the human rights aspects and examines the implementation of the Directive. It shows that EU institutions mainly emphasised solidarity with Ukraine rather than the rights of displaced persons from Ukraine. The result is a large room for manoeuvre for Member States in developing various reception policies.

2. THE MOTIVES BEHIND THE ACTIVATION OF THE TEMPORARY PROTECTION DIRECTIVE

While the Temporary Protection Directive is an important legal instrument for responding to situations of mass displacement, its activation in 2022 cannot be

Europarättslig tidskrift, open access 2026-05-29

explained as a purely legal response to a humanitarian emergency. The decision was based on a set of political considerations. It reflects the EU's attempt to reconcile its legal obligations with political and strategic considerations. The Directive's activation resulted from a convergence of humanitarian pragmatism and geopolitical solidarity.

2.1 Humanitarian considerations

In 2001, the EU adopted the Temporary Protection Directive, designed as a mechanism to provide swift, collective protection when the ordinary asylum system might collapse under pressure from an overwhelming number of arrivals.[7] Unlike the individualised asylum procedure, the Directive offers immediate access to protection without case-by-case assessment, dependent on a Council decision by qualified majority under Article 5 TPD that determines a 'mass influx' is taking place.[8] Crucially, the criteria for activation are indeterminate. Article 1 states that the purpose 'is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons'. The Directive leaves wide discretion for the Commission and the Council. Its use is therefore less a matter of legal necessity than of political choice.

Human rights have an ambiguous role in the EU. The Charter of Fundamental Rights binds EU institutions and Member States when implementing EU law (Art 51). It codifies rights that Member States and EU institutions must respect, yet it also leaves space for deliberation and policymaking.[9] The open-ended character of the Treaties provides flexibility to balance rights against broader EU objectives—border management and combating illegal immigration under Article 79 TFEU, for instance. This reflects the EU's pursuit of political autonomy: the ability to balance its legal obligations according to its own priorities.[10] In the context of migration law, autonomy enables the EU to adopt measures with human rights implications while framing them through related notions such as solidarity or security.

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7 Council Directive 2001/55/EC of July 2001 (Temporary Protection Directive).

8 Article 5 of the Temporary Protection Directive.

9 Eg the right to asylum (Art 18 CFR), protection in the event of removal, expulsion or extradition (Art 19 CFR), non-discrimination (Art 21 CFR), rights of the child (Art 24).

10 Violeta Moreno-Lax, 'The Axiological Emancipation of a (Non-)Principle: Autonomy, International Law and the EU Legal Order' in Inge Govaere and Sacha Garben (eds.) The Interface Between EU and International Law: Contemporary Reflections, Hart Publishing, 2019 p. 72; Damjan Kukovec, The Court of Justice of the European Union for Hedgehogs, Jean Monnet Working Paper Series, 2021 p. 1.

Europarättslig tidskrift, open access 2026-05-29

The preamble to the Temporary Protection Directive presents the instrument as contributing to the broader project of creating an area of 'freedom, security and justice open to those who forced by circumstances, legitimately seek protection in the European Union'.[11] Importantly, the Directive affirms that this regime operates in full compatibility with the 1951 Refugee Convention, thereby situating temporary protection within the established international refugee protection framework. It is explicitly characterised as an exceptional and emergency-driven scheme designed to offer immediate protection for displaced persons.

Under Article 5 TPD, the Council determines whether there is a 'mass influx' of displaced persons. This assessment falls within the Council's broad discretion and must be based on an examination of the scale of movements, the urgency of the situation, and the feasibility of providing temporary protection. In making its decision, the Council considers information from Member States, the Commission, UNHCR, and other relevant international organisations, as well as the potential for emergency assistance and action on the ground. The activation of the TPD also depends on the political will of the Member States to assume collective responsibility.

The Council's reasoning for activating the TPD is set out in Implementing Decision 2022/382.[12] It begins by noting that large parts of Ukraine had become zones of armed conflict following Russia's full-scale invasion.[13] The Council also observes that more than 650,000 Ukrainians had already entered the EU, with numbers expected to increase significantly.[14] The language of 'migratory pressure' and 'very large number of displaced persons' pervades the Decision, which suggests that ordinary procedures would not be able to cope. Because Ukrainians enjoy visa-free travel to the EU, the Council anticipated that around half of those arriving would apply for international protection, while the other half would join family members or seek employment. On this basis, the Council estimated that between 2.5 and 6.5 million Ukrainians might seek refuge in the EU.[15] Such figures, the Council argued, pointed to a 'mass influx' likely to overwhelm Member States' asylum systems if handled through the ordinary processes. The Council's designation of the situation as 'extraordinary and exceptional' served to justify the use of an emergency instrument that had remained dormant for over two decades.

The European Commission's rhetoric amplified the urgency. It declared that 'Europe is witnessing destruction and displacement on a scale not seen since the darkest days of the last century'—a sweeping historical comparison that

[11] Recital 1 of the Temporary Protection Directive.
[12] Council Implementing Decision (EU) 2022/382.
[13] Recital 2 of the Council Implementing Decision.
[14] Recital 5 of the Council Implementing Decision.
[15] Recital 6 of the Council Implementing Decision.

Europarättslig tidskrift, open access 2026-05-29

framed the crisis in existential terms.[16] References to 'humanitarian catastrophe' and 'extreme pressure on the EU border' appeared throughout the Commission's communications. The Commission cast the TPD activation as a strategic response to the risk of destabilisation. It stressed that unprecedented flows—over 100,000 per day entering Poland—could lead to humanitarian bottlenecks at EU borders and overwhelm national asylum systems. Swift action was necessary to prevent collapse of asylum systems, making the TPD the most effective instrument to relieve congestion and facilitate free movement of Ukrainians, who already enjoyed visa-free travel.[17]

Beyond the scale of displacement, geography also appears to have played a decisive role. Unlike previous crises in the Middle East or North Africa, where migration routes passed through multiple transit states, Ukraine shares a direct land border with the EU. There is no 'buffer' state or safe third country between Ukraine and the EU capable of absorbing or managing the flow of people. This geographical immediacy transformed the conflict into a direct humanitarian challenge for the EU. The absence of an external containment zone meant that large-scale arrivals were an ongoing reality at the EU's borders.[18] This factor made activation of the Directive appear both necessary and urgent.

The Commission and the Council framed the situation as a humanitarian emergency requiring exceptional measures. The scale and anticipated pressure on asylum systems made activation necessary. The Implementing Decision emphasised humanitarian need, migratory pressure, and the risk of institutional collapse, but made little reference to the right to asylum. Humanitarian considerations thus operated mainly as pragmatic justifications for emergency action rather than as the articulation of enforceable rights. While the Directive provides the legal conditions for temporary protection, its indeterminate criteria of 'mass influx' grants broad discretion to EU institutions. The legal flexibility that enabled a swift response exposes the instrument's dependency on political consensus, which was absent during earlier migration crises that might have met the same legal thresholds.

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[16] European Commission, Press Statement by President von der Leyen and US Secretary of State Blinken, Statement 22, Brussels, 4 March 2022.

[17] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Welcoming those Fleeing the War in Ukraine: Readying Europe to Meet the Needs, COM/2022/131, p. 1.

[18] See Bernd Parusel and Valeriia Varfolomieieva (2022) 9; Giselle Bosse, Values, Right and Changing Interests: The EU's Response to the War Against Ukraine and the Responsibility to Protect Europeans, Contemporary Security Policy, 2022 p. 546.

Europarättslig tidskrift, open access 2026-05-29

2.2 Solidarity

What underpinned the political consensus? The answer lies primarily in how the EU institutions framed the crisis in terms of solidarity and geopolitical alignment, rather than human rights obligations. The activation of the Temporary Protection Directive appears shaped by multiple, overlapping considerations. At its core, the measure delivers on the Directive's original purpose: to provide displaced persons with immediate access to protection while relieving pressure on national asylum systems that would otherwise be overwhelmed. Yet these practical and humanitarian considerations were wrapped in a political narrative of solidarity with Ukraine, itself underpinned by the recognition that Russia's aggression posed a threat not only to Ukraine but to European security and stability more broadly.

EU primary law establishes that solidarity should be the foundation of EU asylum law. The Preamble to the Charter of Fundamental Rights refers to solidarity as a universal value of the EU. The TFEU invokes solidarity as a value, a means, and an aim.[19] Article 2 TEU expresses solidarity as a cornerstone of European societies and Article 3.3 TEU establishes that one of the EU's aims is to promote solidarity among Member States. Yet the meaning of solidarity is contested.

Article 80 TFEU states that 'the policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle'. As a legally binding Treaty provision, Article 80 TFEU serves as a benchmark for EU asylum and migration policy. It conveys normative values capable of shaping and potentially reforming secondary legislation. Yet the provision is notably open-textured. This indeterminacy gives solidarity constitutional weight but limited doctrinal precision. The expressions 'fair sharing of responsibility' and 'appropriate measures' are evidence of this. As Thym and Tsourdi emphasise, solidarity in EU law is inherently ambiguous and lacks precision.[20] It semantically suggests more than compliance with legal obligations. It hints at an element of moral, social, or political engagement that exceeds the mere observance of binding rules.[21] This makes solidarity a legal principle and a political resource.

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[19] Bernd Parusel and Rebecca Thorburn Stern, Migration och Asyl: Hur Lite Asyl Kommer EU:s Medlemsstater Undan Med? in Björn Lundqvist, Anna Michalski and Lars Oxelheim (eds.) Sammanhållning för ett Slagkraftigt EU, Santérus Förlag, 2026 p. 204.

[20] Daniel Thym and Lillian Tsourdi, Searching for Solidarity in the EU Asylum and Border Policies: Constitutional and Operational Dimensions, Maastricht Journal of European and Comparative Law, 2017 p. 606.

[21] Ibid. p. 608.

Europarättslig tidskrift, open access 2026-05-29

Historically, solidarity was conceived as a driving force of European integration.[22] As reflected in the Schuman Declaration, integration was to be built through 'concrete achievements which first create a de facto solidarity'. In this original sense, solidarity functioned as an instrument to bind Member States together through shared projects and mutual interdependence. Article 80 TFEU refers to solidarity 'between the Member States', thus foregrounding horizontal responsibility-sharing rather than individual entitlements.[23] However, within the broader framework of the Area of Freedom, Security and Justice, solidarity must be understood alongside the requirement that EU migration policy should be fair towards third-country nationals (Article 67 TFEU).[24] Elspeth Guild argues that the requirement to treat third-country nationals fairly should be seen as an expression of solidarity, which creates greater demands for how Member States should act in relation to individuals.[25]

While solidarity is a central principle in EU law, there is no clear definition of its meaning or scope. It is multifaceted and broad. Solidarity may concern the relation between the EU and Member States, between Member States themselves, or between Member States and individuals. The first two dimensions can involve loyalty from Member States to implement EU law and different forms of cooperation.[26] Solidarity with individuals may concern redistribution of resources or rights protection.[27] Furthermore, as Gregor Noll has suggested, solidarity may be operationalised in different ways. It can take normative, financial, operational, or physical forms.[28] Article 80 TFEU does not prescribe a hierarchy among these options.

Solidarity in the EU context is not monolithic but may be better understood in the plural sense as different 'solidarities' operate across policy fields and institutional settings.[29] It means transnational solidarity in the context of EU citizenship and welfare mobility, inter-state solidarity in asylum, protections toward particular groups such as refugees, and responsibility-sharing. Relocation schemes and financial assistance show inter-state solidarity. Har-

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22 Andrea Biondi, Eglé Dagilyté, Esin Küçük (eds.) Solidarity in EU Law: Legal Principle in the Making, Elgar, 2017; Malcolm Ross and Yuri Borgmann-Prebil (eds.) Promoting Solidarity in the European Union, Oxford University Press, 2010.

23 Daniel Thym and Lillian Tsourdi (2017) p. 608.

24 Eleni Karageorgiou, The New Pact on Migration and Asylum: Why Pragmatism Cannot Engender Solidarity Nordic Journal of European Law, 2020 p. VI.

25 Elspeth Guild, What EU Solidarity in the European Neighborhood and with Whom, in Anuscheh Farahat, Marius Hildebrand and Teresa Violante (eds.) Transnational Solidarity in Crisis: How Law Shapes Critical Transformations, Nomos, 2024.

26 Valsamis Mitsilegas, Harmonising Solidarity in European Refugee Law: The Promise of Mutual Recognition, Maastricht Journal of European and Comparative Law, 2017.

27 Bernd Parusel and Rebecca Thorburn Stern (2026) p. 203.

28 Gregor Noll, Negotiating Asylum, Martinus Nijhoff, 2000.

29 Thym and Tsourdi (2017) p. 608. Peter Hilpold, Understanding Solidarity within EU Law, Yearbook of European Law 2015.

Europarättslig tidskrift, open access 2026-05-29

monisation of reception conditions reflects institutionalised forms of solidarity aimed at sustaining the functioning of the Common European Asylum System. Solidarity can also have a defensive function, preserving existing regimes that risk fragmentation under political pressure. For example, the Court of Justice has refrained from establishing precise obligations from Article 80 TFEU. As observed in the context of the Dublin system, solidarity can take many forms and does not necessarily entail suspending or derogating from existing responsibility rules.[30]

The principle of solidarity has legal effects, yet the margin of appreciation left to the EU institutions is considerable.[31] Thus its practical meaning depends on legislative concretisation. As Noll and Karageorgiou argue, invoking solidarity inevitably participates in its politics.[32] Solidarity can serve integration purposes, but may also stabilise existing institutional arrangements or legitimise contested distributions of responsibility. Its practical force therefore turns not only on legal interpretation, but on political consensus and institutional willingness to translate an abstract principle into operational responsibility-sharing mechanisms.

Notably, the Council and the Commission did not invoke the solidarity principle under Article 80 TFEU. They expressed solidarity politically and presented it as a value for external relations. Solidarity functioned as a related notion to human rights. Through the language of solidarity, they signalled political support without grounding the response in a specific legal obligation.

Temporary protection was presented as both a practical tool—easing immediate pressure on asylum systems—and a political act of solidarity. The Decision was framed as a measure to support Member States and as an expression of the EU's 'resolute support' for Ukraine, as Russia's invasion was described as a threat to 'European and global security and stability'.[33] Solidarity was thereby invoked on two levels. Internally, it reflected inter-state cooperation among Member States, designed to balance responsibilities for receiving displaced persons and to prevent national asylum systems from collapsing. Externally, it reflected EU-Ukraine partnership, symbolising unity with a neighbouring state seen as part of the European community.

The external dimension dominated the institutional discourse. The Commission stated that 'action at EU level mirrors the determination, compassion and solidarity shown by people across the EU' and that 'comprehensive and united support from the EU and the inspirational solidarity of individual Euro-

[30] See Joined Cases C-490/16 AS v Republika Slovenija ECLI:EU:C:2017:585 and C-646/16 Khadija Jafari and Zainab Jafari ECLI:EU:C:2017:586.

[31] Daniel Thym and Lillian Tsourdi (2017) p. 610.

[32] Eleni Karageorgiou and Gregor Noll, Introduction: It Is the Best of Times; It Is the Worst of Times, in Eleni Karageorgiou and Gregor Noll (eds.), The Solidarity Question in International Law, Cambridge University Press, 2024 p. 1–4.

[33] Recital 3 of the Council Implementing Decision.

Europarättslig tidskrift, open access 2026-05-29

peans is evident in support for all those fleeing the war'.[34] Commission communications emphasised the mobilisation of citizens, local authorities, NGOs, and communities across Europe in welcoming Ukrainians. Solidarity is presented as a core value of the EU, seen in the relation between Member States and individuals. Human rights were not foregrounded by the Commission, but it linked the EU's commitment to protect the rights of Ukrainians to the need to provide swift protection through temporary protection.

The Council stated that Member States have agreed not to apply Article 11 of the TPD, which holds that displaced persons should remain in the Member State where they have received temporary protection.[35] In effect, the decision departed from the 'first-state-of-entry' principle and allowed Ukrainians to move freely and choose where to settle within the EU. This showed a high level of inter-state solidarity, as governments accepted shared responsibility rather than leaving border states to manage arrivals alone. Moreover, the Implementing Decision explicitly referred to the need to 'share responsibility' and to promote 'a balance of efforts between Member States'. This illustrates the more operational form of solidarity discussed above.

The Ukrainian case reveals the complex character of solidarity. Solidarity functions as a broader political expression of compassion, unity, and responsibility. The Council and the Commission used an expansive understanding of solidarity, which is about more than the fair sharing of responsibility among Member States. Inter-state cooperation within the EU is linked to political support for Ukraine and to the moral sentiments of European societies. While humanitarian need and migratory pressure formed the central basis for activating the Directive, references to solidarity framed the response as a collective European effort and reinforced the sense of political unity surrounding the EU's support for Ukraine.

3. CONSTITUTIONAL INTEGRATION AND GEOPOLITICAL IMPLICATIONS

Understanding why the EU acted so decisively in 2022 requires examining Ukraine's long-standing integration into the European legal and political space. The TPD's activation was the culmination of decades of integration that made

[34] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Welcoming those Fleeing the War in Ukraine: Readying Europe to Meet the Needs, COM/2022/131, p. 1; Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: European solidarity with refugees and those fleeing the war in Ukraine, COM/2022/107, p. 1.

[35] Ibid. 1.

Europarättslig tidskrift, open access 2026-05-29

Ukraine appear as part of the European community. Ukraine is more than an external neighbour, and this shows in the EU's response. Activating the TPD was also a geopolitical act. The EU framed temporary protection as part of its broader foreign policy objectives.

Ukraine's gradual integration into the European legal and political community began early in its independence, through constitutional and legislative declarations affirming its participation in the 'pan-European process'. The 1990 Declaration of State Sovereignty affirmed Ukraine's participation in the 'pan-European process and European structures'.[36] The 1993 Verkhovna Rada decision declared that Ukrainian membership in the European Community was the long-term goal of its foreign policy, outlining steps toward a Partnership and Cooperation Agreement as the first step toward association and eventual membership.[37] By 2010, the Law 'On the Principles of Domestic and Foreign Policy' explicitly defined 'ensuring Ukraine's integration into the European political, economic and legal space with the aim of acquiring membership in the European Union' as a principle of foreign policy.[38] The Constitution affirms 'the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic course'.[39] These constitutional provisions and legislative acts anchor Ukraine's aspirations to become part of the European political and legal space, demonstrating Ukraine's constitutional self-identification with Europe.

The EU has confirmed Ukraine's belonging through key steps. In 2014, the EU-Ukraine Association Agreement aimed to promote gradual rapprochement based on shared values, enhanced political dialogue, regional peace, and progressive integration into the EU's internal market.[40] The Agreement stressed that respect for democratic principles, human rights, sovereignty, and territorial integrity constitute 'essential elements' of the EU-Ukraine relationship. In 2017, Ukrainian citizens were granted visa-free travel to the EU for short stays – presented as a symbol of trust and Ukraine's anchoring in the European community.[41] When the EU activated the TPD in 2022, it explicitly highlighted this visa-free regime as justification. The Implementing Decision notes that Ukrainian nationals holding biometric passports are able to enter the EU without a visa for short stays, meaning that many displaced persons could already

[36] Declaration of State Sovereignty of Ukraine, 16 July 1990, No. 55-XII.

[37] Resolution of the Verkhovna Rada of Ukraine, On the Main Directions of Ukraine's Foreign Policy, 2 July 1993.

[38] Law of Ukraine, On the Principles of Domestic and Foreign Policy, 1 July 2010, No. 2411-VI (Revision of 2010); Law of Ukraine, On National Security of Ukraine, 21 June 2018, No. 2469-VIII.

[39] Paragraph 5 of the preamble, Constitution of Ukraine, as amended by Law No. 2680-VIII of 07.02.2019.

[40] Association Agreement between the European Union and Its Member States, of the one part, and Ukraine, of the other part. Document 22014A0529(01).

[41] Regulation (EU) 2017(850 (Ukraine visa exemption).

Europarättslig tidskrift, open access 2026-05-29

travel to the Union legally.[42] Temporary protection thus continues Ukraine's gradual integration.

The Council and the Commission emphasised Ukraine's visa-free status and ties under the Association Agreement as evidence of a close partnership with the EU. They described the activation of the TPD as an act of solidarity with Ukraine as a European partner. The Association Agreement and visa liberalisation are forms of differentiated integration that connect Ukraine to the EU's political and economic framework without granting full membership.[43] Such agreements are often described as 'external governance' or 'integration without membership'.[44] Temporary protection can be seen as another step of European integration. Activating the Directive ensures effective management of displacement and signals political support for Ukraine.

Solidarity here is closely linked to questions of identity and belonging. As Ursula von der Leyen, the Commission President, expressed shortly after the invasion: 'they belong to us. They are one of us and we want them in'.[45] EU officials described Ukrainians as people who must be protected from Russia's aggression because they are 'part of us'.[46] Such civilisational discourse shows how the TPD activation reflects European self-identity. Solidarity functions less as a universal principle of human rights and more as a selective practice of inclusion, applied to those seen as belonging to the European sphere. It functions as boundary-drawing, delineating the contours of European responsibility.

Sociological research shows that empathy and solidarity are more easily extended when two groups perceive themselves as sharing similar norms and values.[47] This perspective helps explain the more positive reception of Ukrainians compared to those arriving from the Middle East and North Africa in 2015. When an 'out-group' is perceived as holding different values or norms, it can be constructed as a threat to collective identity and reinforce exclusionary policies.[48] In the Ukrainian case, decades of political and legal integration with the EU helped frame the country as part of the European community.

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42 Recital 6, 16 of the Council Implementing Decision.

43 Frank Schimmelfennig, Differentiated Integration in the European Union, European Union Politics, 2018 p. 115; Kataryna Wolczuk, Ukraine and the EU: Turning the Association Agreement into a Success Story, European Policy Centre Policy Brief, 2014.

44 Sandra Lavenex, EU External Governance in "Wider Europe", Journal of European Public Policy, 2004; Frank Schimmelfennig, Dirk Leuffen and Berthold Rittberger, Differentiated Integration: Explaining Variation in the European Union, Palgrave Macmillan, 2013; Andrew Geddes, Migration as Foreign Policy? Europe and Beyond, Report, Fundação Getúlio Vargas, 2019.

45 Méabh McMahon, Ukraine Is One of Us and We Want Them in the EU, Ursula von der Leyen Tells Euronews, Euronews, February 27, 2022.

46 Giselle Bosse (2022) p. 546.

47 David de Coninck, The Refugee Paradox during Wartime in Europe: How Ukrainian and Afghan Refugees are (not) alike), The International Migration Review, 2023 p. 582.

48 Claudia Postelnicescu, Europe's New Identity: The Refugee Crisis and the Rise of Nationalism, Europe's Journal of Psychology, 2016 p. 209; Silke Goubin, Anna Ruelens, and Ides

Europarättslig tidskrift, open access 2026-05-29

Ukraine's European integration created the foundation for exceptional solidarity, facilitating the Council's decision to activate the TPD. The activation was situated within the EU's broader foreign policy stance and illustrated how migration governance is entangled with the EU's geopolitical response to the war. By granting swift and harmonised protection, the EU reinforced political support. It was a symbolic reaffirmation of Ukraine's place in Europe. Temporary protection thus functions as a legal mechanism of belonging that operates at the intersection of humanitarian law, migration policy, and foreign policy. The TPD activation reveals how migration governance can serve as an instrument of geopolitical positioning, blurring the boundaries between humanitarian response and strategic alliance-building.

4. THE HUMAN RIGHTS ASPECTS OF ACTIVATING THE TEMPORARY PROTECTION DIRECTIVE

The activation of the TPD formally safeguards basic protections for those fleeing the war, but neither the Council nor the Commission presents the right to asylum as a reason for the decision. Notably, the Directive is premised on the category of 'displaced persons' rather than refugees or asylum seekers, thereby sidestepping the legal framework associated with asylum. Its purpose is to offer immediate protection and reduce the need to seek asylum, thereby avoiding overwhelming systems.[49] The Implementing Decision makes only a passing observation that it 'respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union'.[50] This suggests that human rights are acknowledged in formal terms but are not the central justification for the measure.

The Temporary Protection Directive grants a number of rights to displaced persons, mainly in the form of reception rights. These include the right to a temporary residence permit (Art. 8), information about their status (Art. 9), work under certain conditions (Art. 12), suitable accommodation, social welfare and means of subsistence, and medical care (Art. 13), education (Art. 14), and family reunification (Art. 15). While these provisions reflect fundamental protections, they are framed as procedural guarantees and practical entitlements rather than in broader human rights terms. The Directive's rights catalogue is internally generated, drawn from EU law rather than derived from the 1951 Refugee Convention or other international human rights instruments. The

Nicaise, Trends in Attitudes on Migration in Europe: A Comparative Analysis, HIVA – Research Institute for Work and Society, 2022.

[49] Recital 16 of the Temporary Protection Directive.

[50] Recital 24 of the Council Implementing Decision.

Europarättslig tidskrift, open access 2026-05-29

result is a self-contained regulatory regime that operates within the EU's own normative framework.

This internal framing shaped how the Council and Commission legitimated the activation. Neither institution presented the right to asylum as a reason for the decision. The Council explained that 'temporary protection should allow [Ukrainians] to enjoy harmonised rights across the Union that offer an adequate level of protection'.[51] The focus remained on practical coordination and system management rather than on enforceable rights obligations under EU or international law. The European Commission reinforced this framing in its coordination of reception efforts. It stated that the EU faces an unprecedented challenge in supporting Ukraine, arguing that 'it is through collective strength that it will respond to those who need our help, in line with our values and the European way of life'.[52] The Commission emphasised collective commitment and shared values but remained vague about the specific rights concerned. The best interests of the child is the only human right explicitly mentioned.[53] The Commission stressed that many children arriving from Ukraine have endured 'terrifying experiences' and therefore require 'particular protection, care and psychosocial support'. Children must feel safe and secure, regain stability by starting school, and be safeguarded from risks of abuse and trafficking. The Commission drew special attention to unaccompanied minors, who face heightened risk of exploitation. Europol has warned of traffickers targeting children at border crossings, prompting the Commission to call on Member States to exercise vigilance in protecting minors from trafficking and abduction.

The Commission's 10-Point Plan for welcoming people fleeing Ukraine includes a dedicated anti-trafficking framework.[54] It addresses risks and provides support for potential victims. Under Point 5, the Commission, together with the EU Asylum Agency, commits to developing standard operating procedures and uniform guidance for the reception and care of children, explicitly incorporating a gender perspective. This reflects displacement demographics. The vast majority of displaced persons from Ukraine are women and children, prompting the Commission to adopt a gender- and child-rights-based approach. Point 6 foresees a coordinated anti-trafficking initiative at EU level, reinforcing the focus on children as the central site where human rights discourse is used in the EU's response.

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[51] Recital 16 Council Implementing Decision (EU) 2022/382.

[52] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Welcoming those Fleeing the War in Ukraine: Readying Europe to Meet the Needs, COM/2022/131.

[53] Cf. Article 24 CFR on the rights of the child.

[54] European Commission, The 10-Point Plan For Stronger European Coordination on Welcoming People Fleeing the War from Ukraine, 28 March 2022.

Europarättslig tidskrift, open access 2026-05-29

Notably, the open-ended provisions of the Directive have led to considerable variation in reception conditions across Member States. Research shows that the Directive has been applied unevenly, particularly with regard to access to welfare.[55] While the Directive guarantees swift access to protection, it leaves significant discretion to the Member States in determining the scope of reception rights. This has led to a fragmented system in which the level of support Ukrainians receive depends on the Member State of arrival, with some offering only minimal standards of accommodation, healthcare, and social benefits.

The divergent approaches of Finland and Sweden illustrate this variation. In Finland, Ukrainians have from the start been issued personal identity numbers, which grant access to national banking systems, education, and language training.[56] They also receive the same healthcare as citizens. By contrast, Sweden granted Ukrainians more limited access to social benefits, healthcare, and integration measures. Only after several years were they able to register in the population register and receive personal identity numbers, which then granted fuller access to services such as healthcare.[57]

The differences reflect political choices about integration. Sweden's emphasis on temporariness restricts rights to the minimum threshold under the TPD; Finland's integration-oriented approach extends rights more broadly. Both are formally compliant. The Directive's flexibility permits this. This reveals how rights under temporary protection depend on political will rather than being grounded in enforceable obligations. Member States can interpret the TPD as a flexible administrative tool for managing displacement, adapting reception policies to their own priorities, rather than as a human rights framework imposing uniform obligations.

In conclusion, the Council and the Commission did not invoke specific rights of Ukrainians to justify the activation of the Directive, nor did they situate their response within the broader international human rights framework, such as the Refugee Convention, the ECHR, or the ICCPR. Instead, the decision relied on the TPD, which creates a distinct category of protection. The only human right explicitly considered is the 'best interests of the child' principle. Children are singled out for heightened protection and specific measures, including access to education, psychosocial support, and safeguards against trafficking and exploitation. Human rights therefore appear mainly as

[55] Bernd Parusel and Valeriia Varfolomieieva (Sieps, 2022); Lenka Dražanová and Andrew Geddes (2023).

[56] Nordic Council of Ministers, Implementation of Temporary Protection for Refugees from Ukraine: A Systematic Review of the Nordic Countries, 2022; Arseniy Svynarenko and Anastasiya Koptsyukh, The Situation of Ukrainians in Finland who Fled the War: Survey Results, Publications of the Interior 2022:34, Finnish Ministry of the Interior, 2022.

[57] Regeringens proposition 2023/24:151, Förbättrade levnadsvillkor för utlänningar med tillfälligt skydd.

Europarättslig tidskrift, open access 2026-05-29

secondary effects of temporary protection rather than as the central normative basis of the EU's response.

5. CONCLUSION

The activation of the Temporary Protection Directive in 2022 demonstrates how EU migration decisions are formed on the basis of a wide range of interests. The analysis has shown that EU institutions do not rely on human rights law to legitimise such actions. Instead, they use related but legally softer notions—solidarity, security, European values, geopolitical alignment—that carry normative weight without triggering the binding obligations of international human rights law. Temporary protection constitutes a distinct form of protection, as demonstrated by the EU institutions' justification for activating the TPD.

The Council and the Commission recognised the humanitarian emergency and the risk that national asylum systems could collapse under the scale of arrivals, which is the Directive's legal condition for activation. The activation also had a political framing. The EU institutions foregrounded solidarity, security, and political responsibility toward Ukraine. They situated the decision within a broader strategy of supporting a close partner under attack. Humanitarian necessity provided the legal trigger, while solidarity and European unity supplied the political legitimacy.

This substitution of rights language with related notions is characteristic of how the EU governs migration. By framing temporary protection through solidarity and integration rather than the right to asylum, the EU expresses commitment to shared values without accepting the justiciable obligations those rights would entail. Human rights appear mainly as secondary effects of temporary protection, with explicit references largely limited to the best interests of children. The result is that the EU governs migration through its own legal framework, on its own terms, answerable primarily to its own logic.

The Directive's activation reveals also how migration policy becomes a means of articulating European belonging. Temporary protection in this case stems from Ukraine's position as a European partner, a victim of aggression, and a state whose integration into the European sphere had been decades in the making. The entitlement to protection is, in this sense, politically constructed. It derives its force not from the Refugee Convention or the EU Charter, but from the EU's own narrative of shared values and strategic interests. It ties legal protection to questions of identity and solidarity. The challenge, then, is not to eliminate political discretion, but to ensure that the criteria guiding its exercise are expressed clearly so that future decisions about for whom temporary protection applies can be measured against consistent standards.

Europarättslig tidskrift, open access 2026-05-29