

## Asylum Amidst Crisis

### The Evolution of Poland's Refugee Legislation in the Wake of the Ukrainian Exodus

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*Abstract:* The article examines Poland's legislative response to the sudden influx of Ukrainian refugees, caused by the Russian invasion of the country, with a focus on the Special Act as an implementative tool of the Temporary Protection Directive. Through a longitudinal analysis, it analyzes the way in which the Polish legal framework adapted to said sudden arrival of refugees, with particular attention to mechanisms such as access to employment, social support, and broader integration. The overall aim of the work, by using a doctrinal legal analysis of both national legislation and EU directives, is to evaluate the effectiveness and limitations of the dual protection established by the Polish Special Act. While this latter provided rapid solutions to the crisis, it also revealed both structural gaps in long-term integration and a systematic deservingness-based approach in the acceptance and inclusion of migrants coming into the State territory.

*Keywords:* Protection; Poland; Ukraine; Temporary Protection; Refugee Crisis.

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Table of contents: 1. Introduction. – 2. Right of Asylum in Poland. – 2.1 National Legislation on Asylum. – 2.1.1 Constitution of the Republic of Poland: Article 56. – 2.1.2 Act on Granting Protection to Foreigners Within the Territory of the Republic of Poland. – 2.1.3 Act on Foreigners. – 2.2. Impact of National Legislation According to Supranational Entities. – 3. From Crisis to Legal Reform: the Response to the Ukrainian Refugee Crisis. – 3.1. Simplified Procedures for Asylum and Temporary Protection: the Activation of the TPD. – 3.2 Poland's Legislative Response. – 3.2.1 The Polish Temporary Protection System: a Dual Approach. – 3.2.2 Reception of Ukrainians Fleeing Ukraine: the PESEL UKR Tool. – 3.2.3 Access to Employment. – 3.2.4 Access to Accommodation. – 3.2.5 Lack of Family Reunification. – 4. Conclusions.

## 1. Introduction

In 2022, the Russian invasion of Ukraine precipitated the largest refugee crisis in Europe since World War II, with over six million<sup>1</sup> people fleeing their homeland in search of safety. This unprecedented influx of refugees crossing European borders posed significant challenges across the European Union (EU), both from a humanitarian and legal perspective. In response, the EU was compelled to enhance its already existing refugee protection framework, to cope with the evolving situation<sup>2</sup>.

Poland's connection to the Ukrainian refugee crisis is particularly notable. The two countries not only share a border of over 500 kilometers, but also have deep historical, cultural, and social ties, which have fostered strong solidarity among them. As a result, Poland has become one of the primary destinations for Ukrainian refugees fleeing the conflict. By the end of February 2024, Poland had

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<sup>1</sup> U.N. High Commissioner for Refugees, *Regional Refugee Response Plan for the Ukraine Situation 2024* (Jan. 15, 2024), <https://data.unhcr.org/en/documents/details/105903> (last visited November 28, 2025).

<sup>2</sup> Ewa Karska and Łukasz D. Dąbrowski, *Qualifying for International and National Protection under the Polish Legal Order: Some Remarks in the Context of the War in Ukraine*, 4 *Stosunki Międzynarodowe – International Relations* 4 (2024), available at <https://doi.org/10.12688/stomiedintrelat.17794.1> (last visited November 11, 2025).

granted temporary protection status to 957,200 Ukrainian nationals, making it one of the largest host countries for beneficiaries under the EU's temporary protection scheme, according to Eurostat data.

Yet, Poland's response to the Ukrainian refugee crisis represents a striking paradox. On one hand, it demonstrated that large-scale, rapid refugee protection is both politically and administratively feasible: the government established streamlined registration systems, granted immediate labour market access, and mobilised unprecedented civil support, with 77% of Polish households participating in refugee assistance<sup>3</sup>. On the other hand, this response stands in stark contrast to Poland's historically restrictive asylum policies – where only 1-2% of applications were approved and just 2,771 refugees were recognized in 2020<sup>4</sup> – and its treatment of other refugee populations – most notably during the 2021 Belarus border crisis, where systematic pushbacks and a militarised exclusion zone prevented asylum seekers from entering Polish territory<sup>5</sup>. This selective generosity raises fundamental questions about the nature of refugee protection in contemporary Europe: who deserves protection, under what conditions, and through which legal mechanisms?

This article argues that Poland's legislative response to the Ukrainian crisis, while demonstrating administrative capacity for mass protection, has created a hierarchical protection regime –

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<sup>3</sup> *Ibid.*

<sup>4</sup> Franck Düvell and Iryna Lapshyna, *On war in Ukraine, double standards and the epistemological ignoring of the global east*, 60(4) *International Migration* 209 (2022), available at <https://doi.org/10.1111/imig.13038> (last visited December 10, 2025).

<sup>5</sup> Elisa Sandri and Sarian Jarosz, *A Tale of Two Borders: Double Humanitarian Standards in Refugee Reception: The Case of Poland*, Humanitarian Leadership Academy (Save the Children) and Konsorcjum Migracyjne (April 2025), available at [https://konsorcjum.org.pl/wp-content/uploads/2025/05/TALE\\_of\\_TWO\\_BORDERS\\_DEF\\_B.pdf](https://konsorcjum.org.pl/wp-content/uploads/2025/05/TALE_of_TWO_BORDERS_DEF_B.pdf) (last visited November 28, 2025).

stratified along criteria such as nationality, legal pathways, and associated rights – that reveals tensions between emergency solidarity and sustainable and equitable asylum governance. Through the implementation of the Temporary Protection Directive<sup>6</sup> (hereinafter referred to interchangeably as TPD) – activated for the first time since its adoption in 2001<sup>7</sup> – Poland constructed a dual legal framework, treating different categories of displaced persons unequally and raises fundamental questions about temporary protection as a crisis management instrument.

In this sense, three interconnected questions guide the conducted analysis: how did Poland's pre-existing asylum framework shape its capacity to respond to mass displacement? To what extent does Poland's dual protection system align with TPD requirements? What do the contradictions in Poland's response reveal about temporary protection's long-term viability?

Prior to 2022, Poland maintained one of the most restrictive asylum systems in the European Union, characterized by low refugee recognition rates, extensive detention use, and inadequate procedural safeguards. The TPD's activation in March 2022 marked an unprecedented shift, yet Poland's implementation through the "Special Act" reveals selective compliance with EU standards. The response operates through a dual system: enhanced "special" protection for Ukrainian nationals under the 2022 Act, and "general" protection under existing legislation for other TPD beneficiaries such as third-country nationals who held protection status in Ukraine. This dualism creates differential treatment and critical gaps, most notably the complete absence of family reunification provisions, which directly contravenes the Directive's requirements.

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<sup>6</sup> Directive 2001/55/EC 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, 2001 OJ L 212/12.

<sup>7</sup> The activation of the TPD has been proposed in various refugee crises before the Ukrainian one (ex. 2011 Libyan Civil War, 2015 Syrian Refugee Crisis), but the activation was formally triggered only in 2022.

To achieve its objective, this article proceeds in two sections. The first one (see §2) analyzes Poland's asylum framework prior to the Ukrainian crisis, highlighting its structural limitations and restrictive practices prior to 2022. The second one (see §3), subsequently, evaluates Poland's legislative response to the Ukrainian crisis, examining the TPD's activation, the Special Act's provisions, and specific implementation measures. Drawing on EU legislation, national legal instruments, and assessments from international organizations, this analysis demonstrates that, while Poland implemented certain aspects of temporary protection – such as, amongst others, access to employment – efficiently, its selective approach created protection hierarchies that are inconsistent with EU obligations and evolved into a semi-permanent arrangement that strains the conceptual foundations of "temporary" protection.

Poland's response serves as an example of broader European asylum governance challenges. The Ukrainian crisis demonstrated that when political will exists, Member States can mobilize rapid, large-scale protection. Yet, the selective nature of this solidarity – extended to Ukrainian nationals while denied to other displaced populations – exposes hierarchies of "deservingness" that undermine the universalist principles of refugee law.

## *2. Right of Asylum in Poland*

The foundation of the EU's refugee protection policies lies in the 1951 Geneva Convention Relating to the Status of Refugees, a landmark treaty that provides a comprehensive legal definition of who qualifies as a refugee. For the purpose of this article, particular attention is given to Article 1 of the Convention, which outlines the conditions for obtaining refugee status under international law. According to Article 1.2, a refugee is defined as a person who "owing to a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or

political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country”<sup>8</sup>.

All EU Member States are signatories to the Convention and its 1967 Protocol, which eliminated the original temporal and geographical restrictions of the Convention. As a result, Member States are bound by the Convention’s core principles, especially the *non-refoulement* principle, which prohibits the return of refugees to territories where their life or freedom would be threatened. Poland’s integration and engagement with this international framework – along with its subsequent implementation into domestic law – forms the basis of the asylum system analysed in this section.

Throughout the twentieth century, Poland was predominantly perceived as a country of emigration rather than a destination for refugees<sup>9</sup>. This perspective began to shift significantly in 1991, when Poland, in the midst of transitioning from a socialist regime to a democratic State, became integrated into said international refugee protection framework. The accession to the Geneva Convention and its 1967 Protocol – dated 1991 – marked a shifting moment in Poland’s transformation, demonstrating a broader commitment to democratic values and international legal obligations. Since then, Poland’s engagement with global refugee law has undergone a gradual evolution, creating an increasingly aligned relationship between its domestic legal system and the values and obligations set by international and European standards<sup>10</sup>.

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<sup>8</sup> United Nations, *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 137, art. 1(2) (April 22, 1954).

<sup>9</sup> Janusz Kryszak, *O historycznej i kulturowej roli współczesnej emigracji polskiej*, 1 Archiwum Emigracji: studia, szkice, dokumenty 7 (1998).

<sup>10</sup> Justyna Nakonieczna-Bartosiewicz and Dorota Heidrich, *How Do States Challenge International Regimes? The Case Study of Poland and the International Refugee Regime*, 63(4) *Problemy Polityki Społecznej* 43 (December 27, 2023), available at <https://doi.org/10.31971/paps/176256> (last visited November 28, 2025).

Poland officially became a member of the European Union in 2004<sup>11</sup>, following an extended application process that necessitated comprehensive legislative reforms. Despite these formal developments, prior to the significant influx of Ukrainian refugees precipitated by Russia's invasion, Poland's historical stance toward refugee acceptance was marked by considerable reluctance<sup>12</sup>. This hesitation placed the country among the least institutionally prepared within Europe to effectively manage large-scale migratory movements<sup>13</sup>, as documented by successive reports from international monitoring bodies throughout the 2010s.

In this sense, since its initial ratification of the Geneva Convention, Poland's national refugee legislation has undergone relatively few substantial updates, reflecting a static approach to the dynamic challenges of contemporary refugee governance.

## 2.1. National Legislation on Asylum

Poland's approach to asylum and refugee protection is shaped and governed primarily by three key legislative instruments:

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<sup>11</sup> European Union, Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, Annex XII, 2003 OJ L 236/17 (September 23, 2003).

<sup>12</sup> Jennifer Rankin, *EU Court Rules Three Countries Broke Law over Refugee Quotas*, The Guardian (April 2, 2020), available at <https://www.theguardian.com/law/2020/apr/02/eu-court-rules-three-countries-czech-republic-hungary-poland-broke-law-over-refugee-quotas> (last visited November 28, 2025).

<sup>13</sup> European Migration Network (EMN), *Annual Report on Migration and Asylum in Poland 2022* (July 2003).

- a) Article 56 of the Constitution of the Republic of Poland, which establishes the right to asylum and delineates the conditions for granting refugee status<sup>14</sup>;
- b) The Act on Granting Protection to Foreigners Within the Territory of the Republic of Poland (2003), which provides a comprehensive legal framework for refugee and subsidiary protection<sup>15</sup>;
- c) The Act on Foreigners (2013), which regulates the entry, stay, and removal of foreigners from Polish territory<sup>16</sup>.

Collectively, these legal sources form the foundation of the Polish asylum system, reflecting the interaction between constitutional guarantees and the country's international and European legal obligations.

#### 2.1.1. *Constitution of the Republic of Poland: Article 56*

On April 2, 1997, the Republic of Poland adopted a new Constitution (*Konstytucja Rzeczypospolitej Polskiej*), introducing significant legal reforms, with a particular emphasis on human rights and the protection of foreign nationals. Chapter II, titled "Freedoms, Rights, and Obligations of Man and Citizen"<sup>17</sup>, addresses the rights of non-citizens, with Article 56 serving as the constitutional basis for Poland's refugee and asylum framework. This provision integrates asylum seekers and refugees into the domestic legal order, stipulating that "foreign nationals may seek asylum in Poland under conditions specified by relevant legislation; and individuals fleeing persecution

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<sup>14</sup> *Konstytucja Rzeczypospolitej Polskiej*, art 56, Dz.U. 1997 nr 78 poz. 483.

<sup>15</sup> Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej [Act on Granting Protection to Foreigners in the Territory of the Republic of Poland of June 13, 2003], Dz.U. 2003 nr 128 poz. 1176.

<sup>16</sup> Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach [Act on Foreigners of December 12, 2013], Dz.U. 2013 poz. 1650.

<sup>17</sup> *Konstytucja Rzeczypospolitej Polskiej*, art. 56 (cited in note 14).



may be granted refugee status in accordance with binding international agreements<sup>18</sup>”.

The structure of the Article demonstrates a direct connection between national provisions and the broader regulatory frameworks of both international and regional bodies, including the European Union. This continuity between domestic law and these frameworks reflects Poland’s commitment to harmonising its legal system with universally recognised principles and values<sup>19</sup>.

The defining characteristic of Article 56 lies in its *qualified* nature. Unlike absolute constitutional rights, the right to asylum is subject to the legislative clause “according to principles specified by statute” (*w zakresie określonym w ustawie*)<sup>20</sup>. This specific nuance grants the Polish Parliament significant discretion, allowing it to define the procedural and substantive framework within which the right to asylum may be exercised<sup>21</sup>. Consequently, judicial and administrative bodies must interpret and enforce Article 56 in accordance with implementing statutes and regulations, ensuring consistency with the scope of domestic legislation.

The article further establishes a dual protection system, reflected in its two distinct paragraphs. The first paragraph recognises asylum as a sovereign prerogative, granting the Polish State discretionary authority over its conferral. Conversely, the second paragraph grounds refugee status within binding international obligations, most notably the already mentioned 1951 Geneva Convention. This duality creates two parallel but distinct legal pathways: asylum, primarily governed by national law, and refugee protection, which operates within the framework of international treaties.

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<sup>18</sup> *Ibid.*

<sup>19</sup> Leszek Garlicki and Marek Zubik, *Konstytucja Rzeczypospolitej Polskiej: Komentarz*, 2 Wydawnictwo Sejmowe (2016).

<sup>20</sup> *Konstytucja Rzeczypospolitej Polskiej*, art. 56 (cited in note 14).

<sup>21</sup> *Ibid.*

As the constitutional foundation of Poland's asylum system, Article 56 underpins the Act on Granting Protection to Foreigners<sup>22</sup>, and provides a basis for both administrative processes and judicial oversight. While affirming protection as a constitutional value, it also delegates the detailed regulation of procedures and criteria to statutory law, international agreements, and administrative rules<sup>23</sup>.

The protection afforded under Article 56 applies broadly to foreigners (*cudzoziemcy*), encompassing all non-citizens, regardless of their mode of entry<sup>24</sup>. The rights guaranteed include the ability to apply for protection, to have claims duly considered, and to remain on Polish territory during the procedure. However, it is fundamental to note that the provision of said article guarantees the right to seek protection, but it does not provide an unconditional entitlement to receive it<sup>25</sup>.

In the modern legal landscape, the interpretation and application of Article 56 must be situated within the broader context of European Union law. Therefore, it must comply with the EU asylum *acquis*, the Common European Asylum System, and jurisprudence of the Court of Justice of the European Union (CJEU)<sup>26</sup>. The result is a multi-tiered framework, in which constitutional norms provide foundational principles, EU law prescribes detailed standards, and national legislation implements both, while ensuring consistency with international obligations.

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<sup>22</sup> Act on Granting Protection to Foreigners, Dz.U. 2003 nr 128 poz. 1176 (cited in note 15).

<sup>23</sup> Garlicki and Zubik, *Konstytucja Rzeczypospolitej Polskiej: Komentarz* (cited in note 19).

<sup>24</sup> Aleksandra Grzymała-Kazłowska and Renata Stefańska, *Cudzoziemcy korzystający z ochrony w Polsce* [Foreigners under Protection in Poland], 4(40) *Studia Bas* 197, 206-209 (2014).

<sup>25</sup> Barbara Kowalczyk, *Polski System Azylowy*, 52 e-Monografie (University of Wrocław), 250-251 (2014).

<sup>26</sup> See, for example, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 OJ L180/60.

### 2.1.2. Act on Granting Protection to Foreigners Within the Territory of the Republic of Poland

The Act on Granting Protection to Foreigners Within the Territory of the Republic of Poland<sup>27</sup> of June 13, 2003 (*Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*) marks the culmination of decades of incremental reforms in Polish migration law. Poland's initial legislative framework – based on the 1963 *Aliens Act*<sup>28</sup> – quickly proved inadequate in addressing the growing complexities of modern migratory challenges. As mentioned above, a critical turning point is represented by the State's accession to the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 New York Protocol, which introduced the legal concept of refugee status and the formal establishment of provisions granting asylum<sup>29</sup>. Over the following decade, Poland's refugee protection framework gradually developed, ultimately resulting in the enactment of the 2003 Act.

Rooted in the principles of the aforementioned Refugee Convention and New York Protocol<sup>30</sup>, the Act of June 13, 2003<sup>31</sup> defines the conditions, procedures, and institutional competencies related to granting protection to foreign nationals within Poland's jurisdiction. The foundational provisions (Articles 1–2) introduce key definitions, including:

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<sup>27</sup> Act on Foreigners, Dz.U. 2003 no. 128, item 1175.

<sup>28</sup> Aliens Act 1963, Dz.U. 1963 no. 15, item 77.

<sup>29</sup> Grzegorz Tutak, Legal and Institutional System of Refugee Protection and Support in Poland After 1989, 16(1) *Teka Komisji Prawniczej PAN Oddział w Lublinie* 301, 302-206 (2023), available at <https://doi.org/10.32084/tkp.5588> (last visited November 28, 2025).

<sup>30</sup> United Nations, Convention Relating to the Status of Refugees, 189 U.N.T.S. (cited in note 8); United Nations, Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267.

<sup>31</sup> Act on Granting Protection to Foreigners (cited in note 15).

- a) Safe country of origin: a state that establishes robust legal protection against persecution;
- b) Safe third country: a country providing effective protection, including access to refugee status determination procedures;
- c) Alien: any individual who is not a citizen of Poland<sup>32</sup>.

At its core, the Act outlines a detailed range of protection mechanisms, including refugee status, subsidiary protection and temporary protection. Article 13(1) directly incorporates the Geneva Convention's criteria for refugee recognition, stipulating that refugee status may be granted to any foreigner who meets the Convention's definitional requirements<sup>33</sup>. The legislation governs the entire protection process – from initial application to final status determination – with a strong emphasis on procedural practices and their adaptability to evolving protection needs.

From a structural perspective, the Act establishes a hierarchical system of protection, regulating several distinct forms of protection – each governed by different eligibility criteria and legal effects. The primary categories of protection include refugee status, subsidiary protection, asylum, and temporary protection – each serving a unique purpose within the broader framework<sup>34</sup>.

Refugee status requires a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. These grounds are strictly defined by the Act, drawing on both international jurisprudence and domestic legal interpretation. Subsidiary protection applies to individuals facing serious threats such as torture, the death penalty, or dangers arising

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<sup>32</sup> *Id.*, arts. 1-2.

<sup>33</sup> *Id.*, art. 13(1).

<sup>34</sup> Aleksandra Grzymała-Kazłowska and Renata Stefańska, *Cudzoziemcy korzystający z ochrony w Polsce [Foreigners under Protection in Poland]*, 4(40) *Studia Bas* 197, 209-212 (2014) (cited in note 24).

from armed conflict<sup>35</sup>. The additional statuses of asylum – granted on humanitarian or state-interest grounds – and of temporary protection – characterised by time-limited and collective mechanisms – extend the Act's scope, establishing the previously mentioned differential rights and procedural guarantees.

Procedural regulations are outlined in Chapter II. Article 24(1) designates the Head of the Office for Foreigners as the competent authority for processing applications<sup>36</sup>, while Article 89(p) entrusts the Refugee Board's with appellate jurisdiction<sup>37</sup>. The Act sets out procedural timeframes for status determination, with standard procedures requiring resolution within six months, allowing extensions in complex cases. It also establishes evidentiary standards, including both documentary and testimonial evidence, with detailed criteria for assessing credibility. Key procedural safeguards include the right to fair hearings, mandatory interpretation services, confidentiality guarantees, and gender-sensitive interview protocols<sup>38</sup>.

The Act further delineates the administrative competencies of relevant institutions. The Head of the Office for Foreigners is vested with extensive investigatory powers, including document verification, background checks and information requests from other state bodies. The Refugee Board holds jurisdiction for both factual and legal reviews, with the power to amend decisions or remand cases for re-evaluation.

Provisions concerning reception conditions and access to social rights reflect the Act's comprehensive approach. Applicants for international protection are entitled to accommodation in reception centres, financial assistance determined by statutory criteria, and

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<sup>35</sup> *Id.*, art. 15.

<sup>36</sup> *Id.*, art. 24(1).

<sup>37</sup> *Id.*, art. 89 (p).

<sup>38</sup> *Id.*, Chapter II.

access to healthcare services, as regulated by separate legislation<sup>39</sup>. Additionally, the Act outlines eligibility requirements for legal aid mechanisms, ensuring access to free legal assistance and related support services.

### 2.1.3. *Act on Foreigners (2013)*

The Act on Foreigners (*Ustawa o cudzoziemcach*) of December 12, 2013<sup>40</sup> establishes a comprehensive legal framework governing the entry, stay, and departure of foreign nationals within the Polish territory. As outlined in Article 1, the scope of the Act does not include diplomatic personnel, European Union citizens and their family members, with both categories being subject to separate legal regulations<sup>41</sup>. By integrating key European Union directives on migration, family reunification<sup>42</sup> and the return of third-country nationals<sup>43</sup>, the Act ensures compliance with EU standards and contributes to the harmonisation of national law within the broader context of European migration policy.

Articles 23 to 26 set the requirements for crossing Polish borders<sup>44</sup>. Foreign nationals must possess a valid travel document and an appropriate visa, unless exemptions apply under bilateral agreements or EU regulations<sup>45</sup>. Additionally, entry is contingent upon proof of health insurance and sufficient financial means to

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<sup>39</sup> *Id.*, arts. 70–75 and related implementing legislation.

<sup>40</sup> Act on Foreigners, Dz.U. 2013 poz. 1650 (cited in note 16).

<sup>41</sup> *Id.*, art 1.

<sup>42</sup> See, for example, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, 2003 OJ L 251/12.

<sup>43</sup> See, for example, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 2008 OJ L348/98.

<sup>44</sup> Act on Foreigners (n 1), arts. 23–26 (cited in note 16)

<sup>45</sup> See, for example, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 2016 OJ L77/1.

support one's living and return expenses. The Act, moreover, grants border control authorities discretionary power to refuse entry for reasons such as inadequate documentation, potential threats to public security, or public health concerns. These provisions, therefore, reflect a legislative balance between national security considerations and the facilitation of lawful mobility.

The Act delineates three primary categories of residence permits:

- a) Temporary residence permits, issued for specific purposes such as employment, education, family reunification, or humanitarian reasons;
- b) Permanent residence permits, available to long-term residents with established ties to Poland;
- c) Long-term residence permits, granted to individuals who have legally and continuously resided in Poland for a minimum period and meet additional integration requirements<sup>46</sup>.

The regulatory framework for temporary residence permits is particularly complex, as it categorizes permits based on distinct migration drivers. Employment-based permits, for instance, are designed to meet labour market demands, addressing professional needs while protecting domestic employment interests. Educational permits, on the other hand, prioritize academic integrity by mandating verification of academic intentions of the individual, through proof of institutional affiliation and enrollment<sup>47</sup>. Similarly, family reunification provisions, governed by Articles 159 to 165 and harmonised with EU Directive 2003/86/EC, allow the admission of spouses, minor children, and dependent relatives, subject to stringent

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<sup>46</sup> Act on Foreigners (n 1) arts 35–44, 195–211 (cited in note 16).

<sup>47</sup> Kowalczyk, *Polski System Azylowy* (cited in note 25).

verification of the familial relationship and compliance with residency conditions<sup>48</sup>.

From a policy perspective, the Act provides for rigorous border control measures and administrative requirements. While these mechanisms aim to regulate and manage migratory flows effectively, they may also function as significant barriers to entry, potentially limiting the influx of economic migrants and asylum seekers unable to meet the prescribed conditions<sup>49</sup>.

## *2.2. Impact of National Legislation According to Supranational Entities*

Since 2013, the Asylum Information Database (AIDA), managed by the European Council on Refugees and Exiles (ECRE), has published country reports on Poland, with the objective of monitoring and assessing the national asylum framework<sup>50</sup>. AIDA aims to provide up-to-date and comprehensive data on asylum procedures, reception conditions and detention practices across European States, promoting the implementation of high standards of protection in line with EU and international human rights obligations.

The inaugural 2013 report revealed a policy environment characterised by a restrictive and security-driven approach to migration governance, often prioritising state control at the expense of individual rights<sup>51</sup>. Among the identified measures were the extensive and systematic use of detention, intensified border surveillance and stringent entry limitations, particularly targeting applicants from conflict-affected regions<sup>52</sup>. The report, moreover, noted considerable deficiencies in implementation practices, resource

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<sup>48</sup> Council Directive 2003/86/EC (n 3) (cited in note 42); Act on Foreigners (n 1), arts. 159–165 (cited in note 16).

<sup>49</sup> Act on Foreigners arts 159–165 (cited in note 16).

<sup>50</sup> ECRE and AIDA, *Country Report: Poland* (2013–2023).

<sup>51</sup> AIDA, *Poland: Country Report 2013*, 7–12.

<sup>52</sup> *Ibid.*



allocation, and procedural fairness – all contributing to systemic vulnerabilities<sup>53</sup>. Of critical concern was the extensive use of detention for asylum seekers, which contravenes both Polish and EU legislative standards designating detention as a measure that should be employed only as a last resort<sup>54</sup>. In practice, however, data reveal that detention is frequently applied as a default measure, rather than an exception<sup>55</sup>.

The United Nations High Commissioner for Refugees (UNHCR) and Polish authorities cooperated in an effort to improve asylum procedures<sup>56</sup>. In 2009, the Office for Foreigners established an internal quality audit mechanism to enhance refugee status determination (RSD). This initiative was further strengthened by a 2011 Cooperation Agreement between UNHCR and the Office for Foreigners, which introduced regular joint audits of RSD interviews, case files, and decisions, with findings exchanged on a monthly basis<sup>57</sup>. Despite these measures, more recent assessments by ECRE, the Belgian Refugee Council and the Transnational Dublin Project have highlighted persistent weaknesses in decision-making standards, pointing to inconsistent quality and inadequate reasoning in asylum determinations, raising concerns about decision-making standards<sup>58</sup>.

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<sup>53</sup> *Ibid.*

<sup>54</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, 2013 OJ L180/96, art. 8.

<sup>55</sup> ECRE and AIDA, *Country Report: Poland (2013–2023)* (cited in note 50).

<sup>56</sup> UNHCR, *Further Developing Asylum Quality in the EU (FDQ): Summary Project Report* (2011), <https://www.refworld.org/docid/4e85b41f2.html>. (last visited November 28, 2025).

<sup>57</sup> *Ibid.*

<sup>58</sup> European Council on Refugees and Exiles (ECRE), *Asylum Systems in Flux: Assessing Quality* (2018); Belgian Refugee Council, *Country Practices: Poland* (2019); Transnational Dublin Project, *Final Report* (2014).

Legal assistance for asylum seekers was particularly deemed as a critical issue, as, over time, access to legal aid in Poland has seen little improvement<sup>59</sup>. While free legal aid is formally available, it is neither state-sponsored nor guaranteed by law<sup>60</sup>. The majority of legal assistance has historically been provided by non-governmental organisations (NGOs), often reliant on external funding, notably the European Refugee Fund (ERF)<sup>61</sup>. By 2019, the situation had further deteriorated due to funding gaps following the suspension of the Asylum, Migration and Integration Fund (AMIF). Although calls for proposals resumed in 2019, many NGOs had reduced capacity or ceased operations altogether. In contrast, countries such as Germany and the Netherlands provide more robust state-funded legal aid systems, ensuring broader and more consistent access to professional representation, thus revealing significant disparities in regional asylum systems<sup>62</sup>.

Geographical and logistical barriers worsen the issue. Reception centers are often located in remote areas, whereas most NGOs offices are based in main urban centers within the voivodeships of Mazowieckie, Małopolskie, Podlaskie, and Lubelskie – such as Warsaw and Białystok – thus impeding asylum seekers' access to legal counsel<sup>63</sup>.

Regarding vulnerable asylum seekers, Polish law mandates a mechanism for the identification of vulnerable individuals requiring special procedural safeguards, due to experienced violence, disability or trauma<sup>64</sup>. Such identification mechanism depends on self-reporting, with the burden placed on asylum applicants to disclose experiences warranting special protection. Once a claim is made, the

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<sup>59</sup> AIDA, *Country Report: Poland 2019*, 45–47.

<sup>60</sup> *Ibid.*

<sup>61</sup> European Commission, *Ex-post Evaluation of the European Refugee Fund 2011-2013* (2018), available at <https://doi.org/10.2837/888592> (last visited November 28, 2025).

<sup>62</sup> Kowalczyk, *Polski system azylowy* (cited in note 25).

<sup>63</sup> ECRE and AIDA, *Country Report: Poland (2013–2023)* (cited in note 50).

<sup>64</sup> Act on Granting Protection to Foreigners, art. 68.

Head of the Office for Foreigners is responsible for arranging medical or psychological assessments to determine necessary procedural adjustments, including the provision of interpreters of a specific gender, or the presence of mental health professionals during interviews<sup>65</sup>. Despite these legal provisions, the absence of a proactive and systematic screening process leaves the majority of vulnerable applicants under-identified<sup>66</sup>.

Criticism from UNHCR and NGOs has pointed out the limited reach of these safeguards, and the lack of institutionalised mechanisms for early detection<sup>67</sup>. Although the relevant legal provisions are in place, the current identification methods are proven to be insufficient. As a response, Poland has joined the UNHCR Regional Representation for Central Europe project – called “Responding to Vulnerability in Asylum” and launched in 2012<sup>68</sup>. The aim of the project is to gather data on vulnerable applicants across the EU, ensuring effective and proper identification, as well as the development for timely and appropriate support. Despite this engagement, the domestic legal framework remains limited in scope<sup>69</sup>. Indeed, certain categories of vulnerability – such as victims of rape, trafficking, and sexual violence – are not explicitly addressed in existing legislation<sup>70</sup>. The absence of actively tailored safeguards may hinder the fair evaluation of claims and may result in erroneous

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<sup>65</sup> *Ibid.*

<sup>66</sup> ECRE and AIDA, *Country Report: Poland* (2013–2023) (cited in note 50).

<sup>67</sup> European Union Agency for Asylum, *Guidance on Vulnerability in Asylum and Reception: Operational Standards and Indicators* (May 2024), <https://euaa.europa.eu/publications/guidance-vulnerability-operational-standards-and-indicators> (last visited November 27, 2025).

<sup>68</sup> Chrystalla Katsapaou, *Response to Vulnerability in Asylum - Project Report*, UN High Commissioner for Refugees (2013), <https://www.refworld.org/reference/research/unhcr/2013/en/108986> (last visited November 27, 2025).

<sup>69</sup> *Ibid.*

<sup>70</sup> ECRE and AIDA, *Country Report: Poland* (2013–2023) (cited in note 50).

rejections, refoulement or prolonged uncertainty for affected individuals.

Furthermore, national legislation foresees provisions for accelerated procedures for asylum applicants originating from designated safe countries of origin<sup>71</sup>. This provision, however, results in being inapplicable in practice. The European Commission proposed the establishment of a common EU-wide list of safe countries in 2015, as part of efforts to harmonise asylum policies. Yet, due to persistent divergences among Member States, no consensus was reached, leaving the designation of safe countries to the discretion of national authorities<sup>72</sup>.

### *3. From Crisis to Legal Reform: the Response to the Ukrainian Refugee Crisis*

#### *3.1. Simplified Procedures for Asylum and Temporary Protection: the Activation of the TPD*

Adopted on July 20, 2001, Council Directive 2001/55/EC – commonly referred to as the Temporary Protection Directive, or TPD – was introduced as a legislative response to the need for a harmonised and coordinated EU approach to sudden and large-scale arrivals of displaced persons. It aims at the establishment of a set of minimum standards of temporary protection in the event of a so-called *mass influx*, and to promote solidarity and burden-sharing among EU Member States<sup>73</sup>.

The TPD was the first legislative measure in the area of international protection within the European Union, following the entry into force of the Amsterdam Treaty in 1999. It emerged as a direct response to the refugee crises caused by the Yugoslav Wars of the 1990s, which exposed the EU's lack of coordinated mechanisms

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<sup>71</sup> *Ibid.*

<sup>72</sup> European Commission, *Proposal for an EU Common List of Safe Countries* (COM(2015) 452 final).

<sup>73</sup> Council Directive 2001/55/EC (cited in note 6).

on the matter. In this sense, the Directive represented a significant shift in EU asylum governance, establishing a framework that balanced the newfound competencies in Justice and Home Affairs with Member States' traditional sovereignty over immigration matters<sup>74</sup>.

Notwithstanding its early adoption, the TPD was never actually activated as a response to other major crises – such as those arising from the Arab Spring in 2011, the Syrian refugee crisis in 2015, or the 2021 evacuation of Afghans following the Taliban's return to power<sup>75</sup>. During the 2015-2016 Syrian refugee crisis, for instance, despite calls from scholars and human rights organisations for TPD activation, member states pursued fragmented national responses and externalisation strategies, most notably through the controversial EU-Turkey deal<sup>76</sup>. This selective non-implementation – which results to be mostly political in nature – stemmed from multiple factors, such as concerns about creating migration “pull factors”, disagreements over fair distribution of protection seekers, and, according to many scholars, the political ascendance of anti-immigration sentiments across the whole continent<sup>77</sup>.

Russia's invasion of Ukraine on February 24, 2022, triggered one of the largest refugee movements in Europe since the Second

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<sup>74</sup> Christian Kaunert and Sarah Léonard, *The Development of the EU Asylum Policy: Venue-Shopping in Perspective*, 19(9) *Journal of European Public Policy* 1396, (2012).

<sup>75</sup> Meltem Ineli Ciger, *Time to Activate the Temporary Protection Directive: Why the Directive Can Play a Key Role in Solving the Migration Crisis in Europe*, 18(1) *European Journal of Migration and Law* 1 (2016).

<sup>76</sup> Elspeth Guild, Cathryn Costello, Madeline Garlick and Violeta Moreno-Lax, *The 2015 Refugee Crisis in the European Union*, 332 CEPS Policy Brief (2015) (intended to curb irregular migration to Europe through Turkey, the Deal has been widely criticised for potentially breaching both the prohibition of collective expulsions and the non-refoulment principle).

<sup>77</sup> Hanne Beirens, Sheila Maas, Salvatore Petronella, Maurice van der Velden, *Study on the Temporary Protection Directive: Final Report*, European Commission, Directorate-General for Migration and Home Affairs (2016).

World War<sup>78</sup>. The scale and timing of this displacement crisis were unprecedented in modern European history, with over one million refugees crossing external borders within the first week alone and many following in the subsequent months<sup>79</sup>. As of February 2025, the UNHCR has documented approximately 6.9 million Ukrainian refugees globally, with an additional 3.7 million people internally displaced within Ukraine's territories<sup>80</sup>.

The unprecedented influx of refugees precipitated a strong institutional response from the European Union – demonstrating a remarkable political consensus, rarely witnessed in EU migration governance<sup>81</sup>. On February 27, 2022 – just three days after Russia's invasion – the Justice and Home Affairs Council convened an emergency meeting, which resulted in the unanimous endorsement of the Commission's intent to propose the activation of the TPD, bypassing a typically protracted consultative process<sup>82</sup>. The Commission formally presented its proposal on March 2, 2022, invoking Article 5 of the Directive, which requires the establishment of "the existence of a mass influx of displaced persons" through a detailed assessment against predefined threshold criteria<sup>83</sup>. Within 48 hours, the Council achieved unanimous approval, leading to the

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<sup>78</sup> UNHCR, *Ukraine Refugee Situation: Operational Data Portal*, United Nations High Commissioner for Refugees (2025).

<sup>79</sup> International Organization for Migration, *Ukraine Internal Displacement Report: General Population Survey Round 12* (2023).

<sup>80</sup> European Commission, *Temporary Protection for Persons Fleeing Ukraine: Three Years Report*, Directorate-General for Migration and Home Affairs (2024).

<sup>81</sup> Steve Peers, *Temporary means temporary? The Commission proposes the extension – and the phase-out – of temporary protection*, EU Law Analysis (June 4, 2025), available at <https://eulawanalysis.blogspot.com/2025/06/temporary-means-temporary-commission.html> (last visited December 12, 2025).

<sup>82</sup> Council of the European Union, Press Release 6916/22: *Outcome of the Justice and Home Affairs Council*, (February 27, 2022).

<sup>83</sup> European Commission, Proposal for a Council Implementing Decision Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 5 of Council Directive 2001/55/EC (COM(2022) 91 final) (2022).

Adoption of Council Implementing Decision (EU) 2022/382 on March 4, 2022<sup>84</sup>.

The rapid activation process of the TPD goes against the Directive's built-in safeguards, which usually require a qualified majority voting, prior consultation with UNHCR, and extensive gathering of evidence to establish the factual existence of mass influx conditions<sup>85</sup>. Nonetheless, the urgency of the Ukrainian crisis generated political will sufficient to override procedural caution.

The Temporary Protection Directive was originally grounded in Article 63(2)(a) and (b) of the EC Treaty, which authorised the adoption of minimum standards in asylum matters. Following the Lisbon Treaty's institutional reforms, however, the Directive must now be interpreted within the legal framework of Articles 78(1) and 78(2)(c) and (g) TFEU, which call for a common asylum policy and for the establishment of a uniform protection system, with expanded competences for EU institutions<sup>86</sup>. This evolving treaty foundation required significant interpretive adaptation, as the Commission had to reconcile pre-Lisbon terminology with post-Lisbon institutional arrangements – a legal exercise that was accomplished through the implementation of supplementary guidelines issued on March 21, 2022<sup>87</sup>.

Despite its partially outdated foundation and structure, the Temporary Protection Directive proved nonetheless to be adaptable

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<sup>84</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine, 2022 OJ L71/1.

<sup>85</sup> Meltem Ineli-Ciger, *5 Reasons Why: Understanding the Reasons behind the Activation of the Temporary Protection Directive in 2022*, EU Immigration and Asylum Law and Policy Blog, Odysseus Network, 2022

<sup>86</sup> Consolidated Version of the Treaty on the Functioning of the European Union, 2012 OJ C326/47, arts. 78(1) and 78(2)(c) and (g).

<sup>87</sup> European Commission, *Communication from the Commission on Operational Guidelines for the Implementation of Council Implementing Decision 2022/382 (COM(2022) 631 final) (2022)*.

to modern migratory issues and emergencies, constituting – together with the Council Implementing Decision and subsequent operational guidelines – the fundamental framework for the response to the Ukrainian displacement crisis.

### *3.2. Poland's Legislative Response*

As of December 31, 2024, Poland hosted 998,070 Ukrainian refugees – constituting the sixth largest refugee population globally, according to the United Nations High Commissioner for Refugees (UNHCR)<sup>88</sup>. Such a quota is key in understanding the central position that Poland has had – and still, to this day, has – in the Ukrainian refugee crisis.

Poland's position as the epicentre of the 2022 refugee crisis – which stems from its direct border with Ukraine and the deep cultural, economic and historical ties shared between the two countries – not only transformed the policy landscape, but also the demographic composition and societal dynamics of the country. Indeed, especially in the first phase of the conflict, Poland became the main recipient of displaced persons coming from Ukraine, welcoming approximately 1.5 million refugees – the equivalent of 3.9% of the total Polish population<sup>89</sup>.

What makes this response quite interesting is the historical context. As stated in the first section of this article, prior to 2022, Poland had among the lowest refugee recognition rates in the European Union and had demonstrated a particularly restrictive approach to migration. A key example in this regard is the Polish response to the 2021 Belarus-EU border crisis, made primarily of controversial pushback policies against asylum seekers attempting to

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<sup>88</sup> UNHCR, *Refugee Data Finder: Poland Country Profile*, United Nations High Commissioner for Refugees Global Statistics Database (2025).

<sup>89</sup> UNHCR, *Ukraine Refugee Situation: Poland*, United Nations High Commissioner for Refugees Operational Data Portal (2023).



cross the border<sup>90</sup> – an approach that was totally in line with the anti-immigration policies of the Law and Justice Party, which was in rule at that time. As a matter of fact, the initial policy of the Polish government at the time was mainly centred on physical and legal fortification of the eastern border. In September 2021, Polish authorities declared a state of emergency in the concerned area, establishing a so-called exclusion zone, that significantly restricted access for humanitarian organisations, independent observers and media representatives<sup>91</sup>. A further response was the deployment of approximately 12,000 military personnel and border guards with the aim of preventing unauthorised crossing<sup>92</sup>. Concerning the aforementioned systematic pushbacks, in October 2021 the Polish legislative body formalised the forced return into Belarusian territory of individuals who had crossed the border irregularly, without individual assessment of their protection claims<sup>93</sup> – framing the migratory movements as a “hybrid attack” orchestrated by the Belarusian government with Russian support, rather than a refugee crisis.

The Polish public’s response to the Ukrainian exodus was also remarkable. According to data provided by the Journal of Immigrant and Refugee Studies, around 77% of Polish households participated

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<sup>90</sup> Grażyna Baranowska, *A Tale of Two Borders: Poland’s continued illegal actions at its border with Belarus*, Verfassungsblog (2022), available at <https://verfassungsblog.de/a-tale-of-two-borders/> (last visited November 28, 2025).

<sup>91</sup> Helsinki Foundation for Human Rights, *Humanitarian Crisis at the Polish-Belarusian Border: Background, Current Situation and Recommendations* (2022).

<sup>92</sup> Polish Ministry of Defense, *Annual Report on Border Security Operations 2021–2022*, MOD Publications (2022).

<sup>93</sup> Katarzyna Czarnota and Marta Górczyńska, *The Lawless Zone: Polish-Belarusian Border Monitoring* (Helsinki Foundation for Human Rights (June 2022), <https://hfhr.pl/upload/2023/09/the-lawless-zone.pdf> (last visited November 28, 2025).

in at least some form of refugee assistance during the first months of the crisis<sup>94</sup>.

Housing proved to be one of the greatest challenges in the reception of asylum seekers. Poland, unlike many other European countries, had no pre-existing accommodation infrastructure. Also, in this case, a remarkable display of private solidarity was the key in finding a solution: approximately 600,000 Polish households took Ukrainian refugees into their homes during the first phase of the crisis<sup>95</sup>.

### 3.2.1. *The Polish Temporary Protection System: a Dual Approach*

Within the broader European Union Framework on temporary protection, Poland enacted the Act of March 12, 2022 on Assistance to Ukrainian Nationals<sup>96</sup>. This Act – generally referred to as Special Act – serves as the domestic implementation mechanism for the Council Implementing Decision (EU) 2022/382<sup>97</sup>. Just as for the Temporary Protection Directive, the primary aim of the Special Act is to establish rapid procedural ways for conferring temporary protection status upon individuals who have been displaced by the conflict in Ukraine, thereby facilitating their access not only to their legal recognition within Polish territory, but also their access to essential services and social benefits.

While the Special Act constitutes Poland's implementation of the Temporary Protection Directive, it must be noted that there are significant disparities in the respective scopes of application. The Special Act does not extend temporary protection to all categories of

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<sup>94</sup> Karolina Sobczak-Szelc et al., *From Reception to Integration of Asylum Seekers and Refugees in Poland*, Routledge (2023), available at <https://doi.org/10.4324/9781003196327> (last visited November 28, 2025).

<sup>95</sup> Nils Bloch & Zbigniew Szmyt, *Beyond refugee camps: housing solutions for war refugees from Ukraine in Poland*, 83(1) *Crime, Law & Social Change* 59 (2025) at 4 – 6, available at <https://doi.org/10.1007/s10611-025-10239-0> (last visited December 11, 2025).

<sup>96</sup> Act on Assistance to Ukrainian Nationals, Dz.U. 2022 poz. 583.

<sup>97</sup> Council Implementing Decision (EU) 2022/382 (cited in note 84).

individuals described in Article 2 of Council Implementing Decision (EU) 2022/382<sup>98</sup>. Whereas the Council Implementing Decision encompasses all Ukrainian nationals residing in Ukraine before February 24, 2022, Poland adopts – yet again – a more restrictive approach to eligibility criteria regarding stateless persons, nationals of third countries who enjoyed international protection in Ukraine prior to that date, and their family members.

The Special Act, in Article 1, circumscribes temporary protection to three specific groups<sup>99</sup>:

1. Ukrainian citizens who entered Polish territory directly from Ukraine on or after February 24, 2022, and who formally declare their intention to remain within the territory,
2. Non-Ukrainian spouses of the aforementioned Ukrainian citizens, provided they arrived within Polish territory accompanied by their Ukrainian spouse;
3. Children and dependent family members under guardianship, irrespective of citizenship, who resided with Ukrainian citizens and within the Ukrainian territory before February 24, 2022.

Individuals excluded from the scope of the Special Act, yet deemed as possible beneficiaries under the Temporary Protection Directive, fall within the jurisdiction of the Polish pre-existing framework, especially under the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland of 2003 (hereinafter, Protection Act)<sup>100</sup>. This Act – analysed in the first section

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<sup>98</sup> Maja Lysienia, *Following the EU Response to the Russian Invasion of Ukraine? The Implementation of the Temporary Protection Directive in Poland*, 12(1) Central and Eastern European Migration Review 180 (2023).

<sup>99</sup> Act on Assistance to Ukrainian Nationals, art. 1(1–3) (cited in note 96).

<sup>100</sup> Act on Granting Protection to Foreigners, Dz.U. 2003 nr 128 poz. 1176 (cited in note 15).

of this article – provides for what may be defined, within the Polish legislative framework, as “general” temporary protection.

In this sense, the Polish response to the Ukrainian displacement crisis is employed through a dual system comprising two distinct legal mechanisms:

1. the “special” protection regime, established under the Act on Assistance to Ukrainian Nationals, and tailored specifically for Ukrainian nationals and immediate family members;
2. the “general” protection regime, governed by the 2003 Protection Act, applying to beneficiaries of international protection in Ukraine, their family members, and holders of permanent residence permits in Ukraine<sup>101</sup>.

Both laws are meant to transpose the provisions of the Temporary Protection Directive and of Council Implementing Decision (EU) 2022/382 within Poland’s national legal framework, although through different procedural and substantive approaches.

While the 2003 Protection Act was immediately invoked following the Russian invasion of Ukraine, it was deemed necessary, by the Polish legislator, to provide enhanced protection measures and more effective and rapid administrative procedures, specifically for Ukrainian nationals entering Polish territory<sup>102</sup>.

Paradoxically, despite the restrictive scope of the 2022 Special Act, this latter transcends the minimum standards prescribed by the Directive in terms of both substantive and procedural provisions, therefore reflecting Poland’s specific policy approach toward

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<sup>101</sup> Nils Bloch and Zbigniew Szmyt, *Beyond refugee camps: housing solutions for war refugees from Ukraine in Poland*, 83(1) *Crime, Law & Social Change* 59, 4-6 (2025), available at <https://doi.org/10.1007/s10611-025-10239-0> (last visited December 11, 2025).

<sup>102</sup> Explanatory Memorandum to the *Act of 12 March 2022 on Assistance to Ukrainian Nationals in Connection with the Armed Conflict on the Territory of Ukraine*, Parliamentary Print No. 2147, Sejm of the Republic of Poland, IX Term.

Ukrainian displacement<sup>103</sup>. This asymmetric implementation creates what scholars have defined as “hierarchical protection regime”, whereby Ukrainian nationals have received and still receive comparatively enhanced protection measures in relation to other categories fleeing very similar conflict circumstances, as previously seen<sup>104</sup>.

The coexistence of two distinct legal frameworks for temporary protection inevitably gives rise to significant administrative complexities and coordination challenges. Such dualism may potentially compromise the coherent application of protection standards, thereby going to undermine the harmonised implementation of EU asylum acquis within the national context. Moreover, the differentiated treatment between categories of displaced persons may infringe the Directive’s underlying objective of promoting a balanced distribution of protection responsibilities among Member States through uniform implementation standards.<sup>105</sup>

### 3.2.2. Reception of Ukrainians Fleeing Ukraine: the PESEL UKR Tool

A fundamental aspect of the 2022 Special Act is the establishment of a specialised adaptation of Poland’s Universal

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<sup>103</sup> Lucie Macková et al., *Temporary Protection for Ukrainian Refugees in the Czech Republic and Poland*, Nationalities Papers, First View (2024), available at <https://doi.org/10.1017/nps.2024.61> (last visited December 11, 2025).

<sup>104</sup> Diego Caballero-Vélez, *Contesting Migration Crises in Central Eastern Europe: A Political Economy Approach to Poland’s Responses Towards Refugee Protection Provision* at 91-97 (Palgrave Macmillan, Cham, 2023), available at [https://doi.org/10.1007/978-3-031-44037-3\\_5](https://doi.org/10.1007/978-3-031-44037-3_5) (last visited December 11, 2025).

<sup>105</sup> European Union Agency for Fundamental Rights, *Legal Pathways to Protection in the EU: Comparative Analysis of Implementation of Temporary Protection Following the Ukrainian Displacement Crisis*, Publications Office of the European Union, 45-47 (2023).

Electronic System for Registration of the Population<sup>106</sup> – known as PESEL UKR and specifically designated to Ukrainian refugees – which functions as the primary administrative tool through which Ukrainian beneficiaries can access the rights and benefits provided by the protective framework<sup>107</sup>. Article 4 of the Special Act delineates the structure of this element, establishing that eligible individuals may submit applications at any municipal office (*gmina*) within Polish territory, irrespective of their actual place of residence<sup>108</sup>. This flexible registration procedure is meant to accommodate the spread settlement patterns of displaced Ukrainians and to mitigate administrative restrictions in border regions and metropolitan centres experiencing major concentration of arrivals<sup>109</sup>.

The PESEL UKR registration process includes biometric data collection, requiring the applicant to provide fingerprints (with the exclusion of children under twelve and individuals with physical impediments) and standardised photographic identification<sup>110</sup>. Additionally, applicants must provide comprehensive personal data – including full legal name, date and country of birth, citizenship status, and gender identification – alongside a declaration of residential address, if available. The registration automatically generates a so-called “trusted profile” (*profil zaufany*), a digital

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<sup>106</sup> Initially designed by the Communist government of the Polish People’s Republic, it is the Polish national identification number, mandatory for all permanent Polish residents.

<sup>107</sup> Act on Assistance to Ukrainian Nationals, art. 4(1-19) (cited in note 96).

<sup>108</sup> Regulation of the Minister of Digitization of 21 March 2022 on the Specific Procedure for Submission and Processing of Applications for a PESEL Number by Ukrainian Citizens, Dz. U. 2022, item 653.

<sup>109</sup> Agata Górny, Paweł Kaczmarczyk, and Monika Szulecka, *Administrative Innovation in Emergency Context: Analysis of the PESEL UKR System*, Centre of Migration Research, University of Warsaw, CMR Working Papers 136/194, 14–22 (2023).

<sup>110</sup> Office of the Commissioner for Human Rights, *Implementation of the Act on Assistance to Ukrainian Nationals in the Context of Biometric Data Collection*, Report 11/2023, 31–37 (2023).

authentication that enables secure electronic access to Polish public administration platforms and e-government services<sup>111</sup>. In this way, beneficiaries are allowed to access remotely social welfare services, thus reducing administrative burdens on birth beneficiaries and institutions<sup>112</sup>.

The establishment of the PESEL UKR registration system constitutes Poland's implementation of specific documentation obligations mandated by the Temporary Protection Directive. Article 8(1) of the Directive explicitly requires Member States to issue "residence permits for the entire duration of the protection" to beneficiaries of temporary protection<sup>113</sup>. This obligation entails the provision of physical documentation attesting to the individual's protected legal status and corresponding right to stay within the territory of the receiving state.

Furthermore, Article 9 of the Directive imposes a procedural transparency obligation, requiring Member States to provide beneficiaries with documentation "in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out"<sup>114</sup>. The PESEL UKR system addresses this requirement through its integration with the *profil zaufany* digital interface, which provides Ukrainian-language access to comprehensive information regarding

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<sup>111</sup> Ministry of Digital Affairs, *Digital Integration of Temporary Protection Beneficiaries: Technical Documentation for the PESEL UKR System*, Technical Report MCA/TPD/2022/4, 8–17 (2022).

<sup>112</sup> Marta Jaroszewicz and Jan Grzyski, *Technocracy Revisited: The Polish Security Dispositif and Ukrainian Migration to Poland*, 17(2) *Journal of Contemporary European Research* 258–280 (2021).

<sup>113</sup> Council Directive 2001/55/EC, art. 8(1) (cited in note 6).

<sup>114</sup> *Id.*, art. 9.

entitled benefits, administrative procedures and institutional contact information<sup>115</sup>.

The European Commission's assessment of Member State's implementation measures has acknowledged that, while the PESEL UKR system deviates from conventional documentation approaches envisioned in the 2001 Directive, it nevertheless satisfies the substantive requirements of Articles 8 and 9 through its provision of secure digital verification of protected status and multilingual information access<sup>116</sup>.

### 3.2.3. Access to Employment

Regarding employment access, the Polish Special Act of 2022 establishes a notably liberal labour market access regime that partly deviates from the discretionary framework outlined in the Temporary Protection Directive<sup>117</sup>. Article 22 of the Act grants beneficiaries an unconditional right to engage in employment or self-employment without requiring prior work permits, subject only to a post-commencement notification requirement whereby employers must inform the relevant district Labour Office (*Powiatowy Urząd Pracy*) within seven days<sup>118</sup>. This legislative approach contrasts with Article 12(1) of the TPD, which merely permits – rather than mandating – Member States to authorise such access<sup>119</sup>.

The discretionary nature of the Temporary Protection Directive framework is evident in its provision that Member States “shall provide beneficiaries [...] the opportunity to engage in employed or

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<sup>115</sup> Polish Ministry of Digital Affairs, *Multilingual Information Access for Beneficiaries of Temporary Protection: Implementation Report*, Technical Implementation Report MCA/TPD/2022/7, 12–18 (2022).

<sup>116</sup> European Commission, Report on the Implementation of the Temporary Protection Directive in Member States: Innovation in Documentation and Information Provision, COM(2023) 319 final, 28–32 (May 17, 2023).

<sup>117</sup> Act on Assistance to Ukrainian Nationals, (cited in note 96).

<sup>118</sup> *Id.*, art 22.

<sup>119</sup> Council Directive 2001/55/EC, art. 12(1) (cited in note 6).



self-employed activities”, while explicitly retaining discretion to impose restrictive measures including work permit requirements, EU citizens prioritisation mechanisms, or sectoral limitations<sup>120</sup>. Conversely, Article 22 of the Polish Special Act establishes immediate and unrestricted access to the Polish labour market for all eligible Ukrainian nationals, eliminating both prior work permit requirements and labour market tests<sup>121</sup>.

From a procedural perspective, this provision substantially reduces bureaucratic barriers and establishes a state of quasi-parity between Ukrainian beneficiaries and Polish nationals regarding labour market access. The notification mechanism operates through an online platform ([praca.gov.pl](http://praca.gov.pl)) and requires submission of essential employment details – including work type, hours, and remuneration – within seven days of employment commencement<sup>122</sup>. This system ensures basic regulatory oversight, while also avoiding prohibitive administrative delays. Significantly, the employment relationship attains legal validity retroactively from the first working day, contingent upon timely notification compliance<sup>123</sup>.

The Act allocates administrative responsibility exclusively to employers, thus shielding Ukrainian nationals from sanctions arising from procedural non-compliance<sup>124</sup>. This protective system aims to safeguard vulnerable workers from potential exploitation or penalisation resulting from employer negligence. Moreover, the legislation mandates adherence to Polish minimum wage standards

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<sup>120</sup> *Ibid.*

<sup>121</sup> Polish Special Act (March 12, 2022), art.1 art. 22(1)-(2).

<sup>122</sup> *Id.*, art 22(3).

<sup>123</sup> *Id.*, art 22(4).

<sup>124</sup> *Id.*, art 22(5); see also *Ukrainian Citizens May Not Be Punished for Employers' Mistakes*, Stowarzyszenie Interwencji Prawnej (April 8, 2024), available at <https://interwencjaprawna.pl/en/ukrainian-citizens-may-not-be-punished-for-employers-mistakes/> (last visited December 12, 2025).

and prohibits any derogation in remuneration or working conditions, thus ensuring an equitable treatment<sup>125</sup>.

This employment framework deviates from the standard procedures that are still applied to other third-country nationals staying and seeking work within the Polish territory, who still remain subject to other work permit regimes or “declaration on entrusting work” (*oświadczenie o powierzeniu pracy*) procedures – both requiring prior authorisation and involving processing delays<sup>126</sup>. The conventional mechanisms additionally impose temporal and sectoral restrictions that are absent from the framework dedicated to Ukrainian refugees.

#### 3.2.4. Access to Accommodation

The Temporary Protection Directive establishes obligations regarding accommodation for temporary protection beneficiaries, requiring Member States, under Article 13(1), to provide “suitable accommodation” or, alternatively, the necessary means to secure independent housing<sup>127</sup>. Article 13(3) allows Member States to adjust support levels according to beneficiaries’ capacity to meet their own accommodation needs, especially in cases in which said individuals have secured employment or established self-employment<sup>128</sup>.

While Poland extends accommodation access to both categories of temporary protection beneficiaries, the implementation framework exhibits significant deviations from the Directive’s mandatory standards. Under the initial framework – preceding amendments made in January 2023 – Article 12(7) of the Ukrainian Assistance Act imposed a statutory obligation upon regional governments (*województwa*) to provide accommodation for a minimum two-month

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<sup>125</sup> Polish Special Act, (n 1) art. 22(6) (cited in note 121).

<sup>126</sup> Polska, Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, Dz. U. 2004, no. 99, item 1001, as amended.

<sup>127</sup> Council Directive 2001/55/EC, art. 13(1) (cited in note 6).

<sup>128</sup> *Id.*, art 13(3).

period from beneficiaries' initial entry into Polish territory, albeit subject to public fund availability<sup>129</sup>. Parallel provisions were incorporated into the Protection of Foreigners Act through article 111(1a)<sup>130</sup>. These provisions effectively allowed domestic authorities to limit accommodation duration based on budgetary limitations – a conditional approach that is incompatible with the non-discretionary obligations established under the TPD.

Moreover, the revised Articles 12(17-17f) of the Special Act conferred extensive discretionary powers upon Polish authorities on accommodation provisions for special temporary protection beneficiaries<sup>131</sup>. This revision eliminated the previously guaranteed statutory obligation to provide housing, thus also repealing the earlier two-month minimum guarantee. Under the current framework, accommodation may be provided without charge for a maximum of 120 days, after which beneficiaries are required to financially contribute to accommodation costs<sup>132</sup> – with limited exceptions for vulnerable persons and individuals experiencing particularly challenging personal circumstances.

### *3.2.5. Lack of Family Reunification*

An important gap in Poland's implementation of the Temporary Protection Directive concerns the right to family reunification. While Article 15 of the Temporary Protection Directive establishes mandatory provisions for family reunification, requiring

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<sup>129</sup> Act on Assistance to Ukrainian Nationals, art. 12(17) (cited in note 96).

<sup>130</sup> Act on Granting Protection to Foreigners, art. 111(1a) (cited in note 15).

<sup>131</sup> Act on Assistance to Ukrainian Nationals, art. 12(17–17f) (as amended) (cited in note 96).

<sup>132</sup> *Id.*, art 12(17b).

Member States to facilitate the reunification process<sup>133</sup>, the 2022 Special Act contains no provisions addressing such a right<sup>134</sup>.

Unlike beneficiaries under conventional temporary protection, Ukrainian nationals cannot invoke statutory rights to reunite with family members residing either in other EU Member States or in Ukraine itself (Act of 12 March 2022 (n 2)). Furthermore, the Act provides no appellate systems to challenge decisions on family separation, thus actively denying procedural safeguards that typically accompany fundamental rights.

In contrast, the Protection of Foreigners Act establishes explicit family reunification provisions for beneficiaries of “general” temporary protection. Article 117 of the Act mandates that the Head of the Office for Foreigners shall act towards the reunification between individuals residing in Polish territory and their spouses or children located outside Poland<sup>135</sup>. Those provisions apply in particular to close relatives who, prior to displacement, lived together as a single-family unit and had either partial or complete dependency relations with the temporary protection beneficiary<sup>136</sup>. That being said, the Protection Act is characterized by implementation deficiencies. Indeed, Article 117 fails to specify the concrete measures that the Head of the Office for Foreigners must undertake to act on family reunification.

#### 4. *Conclusions*

As the Ukrainian war enters its fourth year, with no resolution in sight, Poland’s legislative response to the crisis has revealed a fundamental paradox at the heart of European refugee protection: the capacity for swift, large-scale humanitarian action exists, yet its activation remains selective, conditional, and increasingly

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<sup>133</sup> Council Directive 2001/55/EC, art. 15 (cited in note 6).

<sup>134</sup> Act on Assistance to Ukrainian Nationals (cited in note 96).

<sup>135</sup> Act on Granting Protection to Foreigners, art. 117(1) (cited in note 15).

<sup>136</sup> *Id.*, art 117(2).

unsustainable. What began as an unprecedented solidarity momentum has evolved into a complex case study that exposes the fragility of crisis-driven policymaking and the enduring inequalities embedded within both Polish and EU asylum systems.

The contradictions within Poland's migration framework are particularly revealing. The swift activation of the TPD in March 2022 (used for the first time since its adoption in 2001) and the enactment of the Special Act demonstrated that Member States can implement comprehensive protection mechanisms when political will aligns with public sentiment. Ukrainian nationals and their families gained immediate access to residence, healthcare, employment, and social benefits through measures that stood in stark contrast with Poland's historically restrictive approach and the legal and administrative barriers that asylum seekers had previously encountered under existing legislation. Yet, this very contrast raises uncomfortable questions about implicit hierarchies of "deservingness" among refugee groups fleeing into Polish territory. The differential treatment of those seeking protection reveals that the willingness to provide comprehensive support is not universal, but rather contingent upon factors that extend beyond the humanitarian imperatives enshrined in international protection frameworks.

The evolution of temporary protection from a transitional instrument into what has effectively become a semi-permanent settlement mechanism underscores deeper structural weaknesses. The repeated prolongation of both the TPD and the Special Act – measures originally designed as short-term responses – points to the absence of viable pathways for long-term integration or return. This development inevitably raises critical questions about the sustainability of it all: temporary protection, when indefinitely extended, becomes neither temporary nor a comprehensive solution, but rather an intermediate status that risks creating prolonged legal and social precarity for those it ostensibly protects.

Beyond Poland's borders, this case serves as a demonstration of broader dynamics within the European Union's approach to refugee reception. The Ukrainian crisis has demonstrated that large-scale protection is indeed possible when Member States commit to solidarity, yet it has simultaneously exposed the selective nature of policy implementation in the field. The activation of the TPD can be interpreted both as a landmark moment in the European asylum framework and as a warning about the reluctance of Member States to implement shared mechanisms without carrying out differential treatment of refugee groups. Poland's response thus reflects the broader EU conduct, highlighting how solidarity remains fragile and conditional, rather than constituting a stable foundation for a common asylum system.

The matter of temporary protection and its practical application has been understudied by legal doctrine. This article does not aim to fill the gap that has been unavoidably perpetuated over the decades. It may rather be seen as a starting point for further inquiry and more in-depth research on the possible implications of mechanisms such as temporary protection, and on the necessary pathways for their development. The Polish case, therefore, suggests that future research must address not only the technical implementation of protection instruments, but also the underlying political and social factors that determine their selective activation.

Addressing these tensions will be crucial not only for the further development of migration governance in Poland, but also for the integrity of refugee protection in Europe as a whole. The Ukrainian refugee crisis has laid bare the distance between the EU's stated commitments to universal protection principles, and the reality of its selective, crisis-reactive implementation. Moving forward requires confronting these contradictions directly: developing sustainable alternatives to indefinitely prolonged temporary protection, establishing more equitable criteria for protection that transcend hierarchies of deservingness, and building solidarity

mechanisms that function as consistent policy, rather than exceptional responses. Only through such reforms can the lessons of Poland's response to the Ukrainian crisis contribute to a more coherent and just European asylum system.