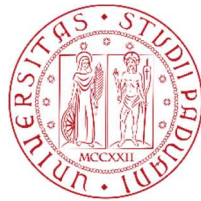


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**Master's degree in
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INFLUENCE OF THE EU ON MIGRATION AND ASYLUM
POLICIES OF MEMBER STATES:
CASE STUDY OF TEMPORARY PROTECTION DIRECTIVE
IN CZECH REPUBLIC AND SLOVAKIA

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Abstract

The thesis discusses the influence of European Union on migration and asylum policies of Member States through the case study on activation of Temporary Protection Directive in Czech Republic and Slovakia. After Russian full-scale invasion of Ukraine in February 2022, tens of thousands of refugees fled from Ukraine to the territory of European Union. Soon after, European Council agreed on activation of the Temporary Protection Directive, for the first time since its adoption in 2001. The triggering of the Directive was an unprecedented step, that helped the Member States to deal with the sudden mass influx of refugees. However, the implementation process was in many cases difficult. The thesis discusses the implementation of the Temporary Protection Directive in Czech Republic and Slovakia and defines the main challenges of the implementation. Furthermore, the thesis focuses on the implications of the activation of this Directive on the migration and asylum policies in Czech Republic and Slovakia. Specifically, work analyses the possible impact of the Temporary Protection Directive on the Europeanization of migration and asylum policies in chosen Member States.

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List of abbreviations:

AMIF – Asylum, Migration and Integration Fund

CEAS – Common European Asylum System

EC – European Communities

ECJ – European Court of Justice

ECHR – European Court of Human Rights

EU – European Union

MENA – Middle East and North Africa

RAMM – Regulation on Asylum and Migration Management

TFEU – Treaty on the Functioning of the European Union

TPD – Temporary Protection Directive

UNHCR – United Nations High Commissioner for Refugees

1. Introduction

The work discusses the influence of European Union on migration policies of its Member States. The chosen case study of this work was the activation of the Temporary Protection Directive, and its impact on two Member States – Czech Republic and Slovakia.

After the beginning of the full-scale Russian invasion of Ukraine, European Council has decided to activate the Temporary Protection Directive as a response to mass-influx of refugees fleeing from war to EU territory. This was an unprecedented step, as the Directive has not been triggered for more than twenty years of its existence. Many of the Member States had to face sudden influx of refugees, especially the states that did not have previous experience with receiving such a large number of persons. Through theoretical framework of Europeanization, the work studies the influence of EU on the migration policies of Czech Republic and Slovakia, with focus on the possible impact of activation of the Temporary Protection Directive. In the thesis I discuss the implementation of the Temporary Protection Directive in chosen Member States, highlighting the biggest challenges that appeared during the process and the impact of the arrival of Ukrainian refugees on the migration policies of Czech Republic and Slovakia. This is done through analysis of both primary and secondary sources, and of the interviews with experts and politicians that were conducted during the research. The arrival of Ukrainian refugees significantly changed the perception of migration in Slovakia and Czech Republic, which had rather pragmatic approach towards migration and European common solutions to the migration since the refugee crisis in 2015. Both Member States accepted large number of refugees and immediately took measures to provide them with temporary protection. In my thesis I discuss the reasons behind this shift in approach, and the possible implications this could have on the perception of migration and on the future development of migration policies of both states. I believe the chosen topic is very relevant, because there is not a lot of research done on the implementation of Temporary Protection Directive in Czech Republic and Slovakia yet, especially in relation to the EU influence on this policy field. Therefore, in my thesis I aim to assess the influence of EU on migration policies of both Member States, with focus on the implications of the mass-influx of Ukrainian refugees and the activation of the Temporary Protection Directive. Additionally, because the mass-influx of refugees in both Member States is a recent event, I have decided to define the main obstacles and

challenges during the implementation of temporary protection and the integration of Ukrainian refugees.

In the second chapter, I first provide overview of the current state of the art on the topic of Europeanization and of the main points of debate on the Temporary Protection Directive. In the second part I explain the methodology of my work and the research design.

The third chapter explains the research design of my work, and fourth discusses the methodology that was used.

The fifth chapter provides overview of development of European migration and asylum policy, framed by the work of Andrew Geddes who defined four periods of development of European migration and asylum policy. This chapter discusses the main pieces of legislation of the EU on migration and asylum: the Dublin system, the Common European and Asylum System and EU Pact on Migration and Asylum. The most important directives and their reforms are discussed.

In the sixth chapter I focus on the policy analysis of the Temporary Protection Directive. The first part analyses the Directive, while the second discusses the activation of the Directive in March 2022, the reasons behind this activation, the process of implementation of the Directive across the EU and the prospects of the triggering of the Directive.

Chapters seven and eight provide a detailed analysis of the migration policies of Czech Republic (chapter 7) and Slovakia (chapter 8), the Europeanization of this policy field and the analysis of implementation of Temporary Protection Directive in both states. In both chapters first part focuses on Europeanization of migration policies, second on the current migration policies and the priorities in the field of migration and third discusses the Temporary Protection Directive (in Slovakia and Czech Republic known as *lex Ukraine*) and its implementation in selected states.

The following chapter discusses the main findings of my work and provides answers for the research questions. This chapter is divided in three main parts: the main challenges in implementation of Temporary Protection Directive in Slovakia and Czech Republic, the influence of the EU on migration and asylum policies of these states, and the impact of the activation of Temporary Protection Directive (on both European and national level).

2. Literature review

2.1. Europeanization

Europeanization is a commonly used concept in research on the influence of European Union to its Member States. The beginnings of the Europeanization can be traced to the 1990s, when the main catalyst was the increase in the political integration of the EU with the adoption of Maastricht Treaty. Further integration of EU created incentives for new approaches in studying the influence of the EU on Member States. While the studies of European Union were present also before, they were more geared towards studying and understanding the development of EU institutions and policies on supranational level. As noted by Ette and Faist (2007), the first stage of European integration theory was dominated by bottom-up approach and focused on the role played by the Member States in the process of European Integration. The shift of focus came in the 1990s with concept of Europeanization. (Ette and Faist 2007) The roots of Europeanization can be found in the studies of European integration and in the theoretical underpinnings on supranationalism, multilevel governance, and new institutionalism. (Exadaktylos and Graziano 2022) The starting point of Europeanization studies was the change induced at domestic level, with central focus on the implementation of EU policies and the way Member States were transposing EU directives, instead on what role was played by the Member States on the EU level. (Exadaktylos and Graziano 2022) As briefly defined by Ette and Faist (2007): The term ‘Europeanization’ characterises the second wave of scholarship which reverses this perspective and has looked top down. Focus was put especially on policies of the areas of common policymaking at the EU level that influenced the Member States directly, for instance economic and social cohesion, or environment. (Exadaktylos and Graziano 2022)

Because there are several definitions of the Europeanization, the following section provides some of the definitions that were essential for the formalisation of the concept, and that are important for the purpose of this work. It is important to note that Europeanization is perceived as a two-way process, so not only if and how the EU influences the national policy arenas of Member States, but also what influence have Member States on the European Union policy arena. Keeping this in mind, Radaelli

(2003) offers us appropriate conceptual definition, that is commonly used among scholars of Europeanization:

Europeanization refers to: processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.

This definition allows us to understand the Europeanization as a two-way interaction, rather than only top-down process of EU coercion of Member States. As noted by Börzel, in the case of Europeanisation both top-down and bottom-up processes are interconnected, on one hand the Member States must implement the EU legislative decisions and policies, but on the other they have the power to influence the policymaking at EU level to achieve their interests. (Börzel and Risse n.d.) Radaelli's definition is broad enough to cover all the important aspects necessary for policy scientists, like political structure, public policy, identities, and the cognitive dimension of politics. Important is also the inclusion of term EU public policy, as it provides a wider scope not targeting only laws or decisions but also other modes of governance, such as the open method of coordination. (Radaelli 2003) When defining Europeanization, it is important to note that this concept is frequently consolidated with ideas of convergence and harmonisation. These processes take place within Europeanization, but that does not mean they are necessarily consequences of it. (Exadaktylos and Graziano 2022)

2.1.1. Goodness of fit

Studies of Europeanization in public policy research often use the 'goodness of fit model'. This model, or mechanism, considers degree of compatibility between domestic institutions and European policy. According to this classic model, the Europeanization only matters if there is divergence, incompatibility, or 'misfit' between European-level institutional process, politics, and policies and the domestic level. (Radaelli 2003)'Goodness of fit' defines two extremes depending on the scale of the adaptational pressure from the European Union. The first occurs, when the adaptational pressure is

low, because the content of studied policy is already present in a Member State, and therefore there is no need for significant change, as there already is 'fit' between the national and European policy. On the other hand, there can be also situation when there is significant 'misfit' between the national and European policy. Because of this it is too difficult to adopt and implement the European policy, which causes passivity at domestic level. Therefore, the biggest change can occur when the adaptational pressure is between these two extremes. (Duina 1997; Radaelli 2003) The 'goodness of fit model' is often used to study the effect of Europeanization on policy domains where already is highly communitized approach (cohesion policy or economic policy). In these cases, findings highlight strong adaptational pressures in the case of policy misfit in the context of binding EU policies and the impact of compliance to regulations and directives. However, Europeanization can be found also in the policy domains with uncontested national sovereignty (foreign policy) and can be a product of soft policies (like recommendations). All these cases are consistent with the goodness of fit model. (Exadaktylos and Graziano 2022) The goodness of fit model is very popular among the Europeanization scholars, but there also has been criticism. Mastenbroek and Kaeding (2006) argue that there is no empirical evidence on the link between the goodness of fit and ease of adaption and note that it would be better to model the domestic politics of compliance in a more direct way, by focusing on the domestic actors and their preferences and beliefs. This would, according to Mastenbroek and Kaeding (2006) lead to more parsimonious framework. In Domestic actors and Europeanization: why fit still matters, Duina (2007) rejects this criticism, and argues that there is number of empirical evidence establishing link between the fit and the outcomes. Consequently, he points out that actors are indeed important component, as they shape both the status quo and the implementation. Therefore, Duina (2007) concludes that in reality both actors and fit are very important.

For the purpose of this work, it is important to discuss the four possible outcomes of Europeanization offered by Radaelli (2003). These outcomes cover the magnitude of change and its discretion. The first is inertia, which is a situation of lack of change. It can occur in forms of lags, delays in transposition of directives, or even resistance to EU-induced change. It can occur when a country decides that EU policies are too different than domestic practice. (Radaelli 2003) However, as notes Olsen (1996) in the long term

this may be impossible to sustain, as it can produce crisis and abrupt change. Second outcome is absorption. This occurs when the states absorb certain non-fundamental changes but maintain their core. Therefore, as Héritier (2001) explains, it is accommodation of policy requirements without real modification of the essential structures and changes in the 'logic' of political behaviour. On the other hand, in the case third outcome - transformation, occurs when the fundamental logic of political behaviour changes. In this case, the Europeanization is the most visible and 'strongest'. The last outcome defined by Radaelli is retrenchment, which characterises situations when the national policy becomes even less European than it was before. (Radaelli 2003)

Consequently, Radaelli defines two types of Europeanization mechanisms: vertical and horizontal mechanism. While the vertical mechanisms are based on adaptational pressure from the EU level to the nation state, in the case of horizontal Europeanization the change is not indicated by conforming to EU policy that 'descends' into domestic policy arena. As Radaelli (2003) notes: 'Horizontal Europeanization is a process of change triggered by the market and the choice of the consumer or by the diffusion of ideas and discourses about the notion of good policy and best practice.'

Similarly, Ette and Faist (2007) define two modes of Europeanization that differ along the degree of coercive pressure that EU can exert on a state to change its policies: prescriptive and discursive Europeanization. Prescriptive Europeanization is a mode of legally binding European legislation, that leaves minimum discretion to the state, in other words, it is a form of coercive governance and EU exerts high coercive pressure on a Member State. On the other hand, discursive Europeanization operates without pressure. Discursive models offer nonbinding suggestions for national policymakers. In this case the EU serves as an arena for exchange of political ideas, rather than supranational institution that pressures Member States to put certain policies in practice. (Ette and Faist 2007) In their publication, Ette and Faist show that there is reciprocal relationship between the mode and the extent of Europeanization. The Europeanization extent is in this case classified according to Radaelli's classification of four possible outcomes (explained in the previous section). According to the Ette's and Faist's findings, the discursive modes of interaction lead to greater national policy change in the case of traditional Member States. On the other hand, prescriptive modes result in greater Europeanization in the case of new Member States. (ibid.) This finding is especially for

this work, as it looks at the Europeanization of migration policies of Czech Republic and Slovakia, both being considered a new Member States (during the research of Ette and Faist). The relation of this study to both Member States is explained in more detail in the methodology section.

Lastly, I would like to discuss the role of intervening variables and of policy discourse, as proposed by Radaelli (2003). According to Radaelli, there are specific intervening variables that play role in the Europeanization and their presence constraints the institutional capability to produce change. As key intervening variables he defines institutional capacity to produce change (veto players in the political system, scope and type of executive leadership), timing of European policies, policy structure and advocacy coalitions (technocratic capture potential, adoption-implementation balance, presence of legitimating policy discourse, and impact of EU policy on domestic advocacy coalitions). Veto players can be formal (for instance politicians or bureaucrats), but also informal veto players have important role (for example pressure groups).

2.1.2. Europeanization of migration

Because the work focuses on the Europeanization of the field of migration and asylum policies, it is necessary to introduce a work of scholars on the issue of Europeanization of migration policies. Therefore, the following section provides insight in some of the main concepts and ideas on Europeanization of migration policies.

Immigration is traditionally a policy area that is under sovereign discretion of Member State. That makes Europeanization of migration and asylum policies particularly interesting field for studying. As Scholten and Penninx (2016) point, the voluntary transfer of competencies over regulation of international migration to the EU is only a recent exception to this rule. According to Ette and Faist (2007) the European harmonisation of immigration policy literally defines the 'finality of Europe', its outer borders and how they are controlled.

Compared to other policy areas, the Europeanization of migration policy is relatively new area of focus. Nevertheless, there is a number of publications dedicated to this area. For instance, Eiko Thielemann (2002) argues that 'European integration must be regarded as a crucial catalyst' for the far-reaching changes in national asylum systems introduced

during the early 1990s across Europe (in Ette and Faist 2007). Other scholars see a weak links between European and domestic policies. Vink (2002) argues that even though there is several proactive efforts to bring about a common European policy, it does mean there will be subsequent Europeanization of these policies. (Ette and Faist 2007).

During research on Europeanization of migration policies, is important to distinguish between the intra-European migration and policies on immigration from outside the EU. As stated by Scholten and Penninx (2016) the principle of free movement of citizens, i.e. one of the core principles of European integration process since its inception, applies only to intra-EU migration. Free movement of persons is a key supranational element of Europeanization of immigration policies, and it has a clear binding effect on all Member States. On the other hand, Europeanization of policies on immigration from outside the EU has occurred more incrementally. (Scholten and Penninx 2016)

Scholten and Penninx (2016) and Geddes (2014) offer interesting insight on the Europeanization of migration policies in relation to multilevel governance. According to their study, rather than a single pattern of Europeanization, there are various patterns of interaction and relations taking place simultaneously between national and EU institutions. While some competencies indeed have been transferred, many of these transfers came from the initiative of the national governments and strengthened the control over migration flows of the Member States. Therefore, there occurs balancing between nations and EU institutions, instead of clear dominance of the centralist or localist pattern.

Geddes and Scholten (2014) define three patterns of Europeanization of immigration policies, closely corresponding to the different types of government relations. The first pattern states that Europeanization involves loss of control for nation states, due to the supremacy and direct effect of EU directives. A second pattern is described as described by Geddes and Scholten (2014) as the “escape to Europe thesis”. According to this pattern, countries can seek cooperation with their neighbours to fortify their control of international migration. Another option is to seek cooperation at the EU level, which might allow governments to find ways around political and legal constraints on national level in their policy arena. The third pattern stresses a transgovernmentalist form of

Europeanization. According to Geddes and Scholten (2014), in this pattern governments seek cooperation in European setting to gain further grip on immigration. As Scholten and Penninx (2016) point, this provides explanation of strong involvement of Member States in development of some important EU directives in the field of asylum and migration (for instance the Family Reunification Directive). In addition to these three patterns identified by Geddes and Scholten, Scholten and Penninx (2016) argue that there is also a fourth one - “decoupling” in multilevel settings and absence of coordination. This pattern considers the notion that policy interests are not always aligned and there are conflicts in the multilevel settings, both between the nation states and EU institutions and between subnational governments and national and EU institutions. To sum up, Scholten and Penninx (2016) observe that most of the migration policies have been developed in a strongly intergovernmental way, and the Member States did not lose control. Instead, they cooperated with EU institutions and institutionalised this cooperation. Lastly, this observation relates only to the restrictive policies and the migration control, while the proposals of Commission for more comprehensive and proactive immigration policies did not have success. (Scholten and Penninx 2016) In accordance to this is also notion of Laubenthal, that explains: ‘A central characteristic of the common migration policy is, however, that much policy-making in this area has overwhelmingly focused on migration control policies and on restricting migration to Europe’. (Scholten and Penninx 2016)

2.2.Literature review on Temporary Protection Directive

The case study of this work is the activation of Temporary Protection Directive, its implementation, and the possible impact that the activation can have on migration policies of Member States. Because of focus on the TPD, it is important to explain main points of the debate on this Directive, as well as to sum up definitions of some terms that are strongly related to the Directive. Therefore, the following section discusses the work of scholars on the temporary protection and then the work focused specifically on the TPD.

In international refugee law, temporary protection has been important concept for a long time. (Edwards 2012) Temporary protection has been provided throughout the history in various versions, for instance to Spanish refugees in France and Great Britain during Spanish civil war, in the 1990s for refugees fleeing the former Yugoslavia, or to the

Syrians refugees in Turkey in 2015. (Fitzpatrick 2000) The most recent example of the large-scale refugee protection is the case of Ukrainian refugees that have fled to European Union. The EU has decided to activate the Temporary Protection Directive for the first since its adoption in 2001. In this work, I discuss the process of implementation of the Directive in European Union, more specifically through a case study of two Member States - Slovakia and Czech Republic. However, to understand properly the reasons for activation of the Directive, its use and implementation, it is essential to understand the key terms related to the Directive: temporary protection and mass influx.

According to Edwards, the term temporary protection, while it has a long history of use, lacks well defined meaning and legal basis. One of the reasons is that the temporary protection is, with the expedition of EU, instrument used usually on national level. This means that it has acquired multiple and varied meanings depending on the context of the situation and the country. (Edwards 2012) Similar point notes also Fitzpatrick, according to whom the term 'temporary protection' defines a wide range of practices. (Fitzpatrick 2000) Helen in her article notes that: "Because it (temporary protection/refuge) has developed from general practice accepted as law, the exact contours and content of temporary refuge have never been entirely clear as some countries confine beneficiaries of temporary refuge to camps, whereas other countries offer far more, even in some cases refugee status or a status akin to it." (Helen 2017) The term 'temporary protection' has emerged in the 1990s - that this concept has been used often also before under the name temporary refuge. Edward points out that this language shift appears to coincide with the transition in meaning of international protection that also happened during the nineties. (Edwards 2012)

According to the UNHCR most recent Guideline on Temporary Protection or Stay Arrangements, the temporary protection is 'an appropriate multilateral protection response to humanitarian crisis, including large-scale influxes, and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate'. Consequently, it must be built on the international refugee protection regime and complimentary to this regime, and be used to fill the gaps in that regime. The UNHCR notes this form of protection provides immediate protection from refoulement and provides basic minimum standards, which are to be improved if the stay is prolonged.

(UNHCR 2014) Edwards considers the temporary protection as a concept that is commonly used to describe a short-term emergency response to a mass influx of asylum seekers. This definition is clear; however it is quite wide. More specific definition, based on the previous definitions by UNHCR, Edward, International Law Association and others, is offered by Türközü: the concept of temporary protection can be defined as a practical concept that is activated for a limited time span and, at least until their safe return is possible, as a response to emergency situations of mass influx of individuals. It ensures basic human rights and protection from non-refoulement in accordance with international obligations of states. Its protection claims are assessed pursuant to a group-based determination mechanism due to the impracticality or impossibility of rendering an individual status determination as a result of the large numbers of applications for international protection within the group. (Türközü 2017)

The temporary protection is, in most of the cases, used in the case of mass influx of refugees. This is particularly case of the EU Temporary Protection Directive, which can be triggered only when the Council agrees on the existence of mass influx of refugees. Because of this, it is important to discuss the definitions of the term 'mass influx'. As noted by Edward, mass influx is generally understood as 'considerable numbers of persons arriving over an international border'. There is no specific or minimum number set to establish mass influx, however, it should be so large that the absorption capacities in the host states and their asylum system are incapable to deal with acceptance of such large number of refugees. (Edwards 2012) Because the absorption capacities of states can't be generally established, it is impossible to define how large or sudden the influx of refugees must be. This is an important aspect in the debate on the EU's TPD. Because the Directive does not include any specific indications on where the influx of refugees is a 'mass influx', it is extremely difficult to achieve agreement of all the Member State on the existence of such influx and activate the Directive. The definition of this term in the Directive states, that 'mass influx means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme.' (Temporary Protection Directive 2001) While according to the TPD the mass influx is the only reason to activate the temporary protection mechanism, Edward

points out it might not be the only cause. In her article, she stated that in relation to obligations under the 1951 Refugee Convention, the decisive criterion is not the size and scale of movement on the borders, but if the mass influx presents a threat to national security within specific context. (Edwards 2012)

Temporary Protection Directive is one of the main components of European asylum and migration policy. Even though it has not been activated for decades after its adoption, it was still a subject to discussions. The following part discusses the debate on the TPD, dividing them in three parts according to the period and the main focuses of the debate. The first one is the period between its adoption in 2001 until the beginning of the migratory crisis in Europe in 2015. Here, the focus is put mostly on the aspects of TPD, and if this instrument is useful at all. The second part summarizes the debate around the lack of will to activate the Directive during the migratory crisis in 2015, and lastly the third part discusses the opinions on the Directive after its activation in 2022 as a part of EU's response to Russian full-scale invasion of Ukraine. The main reason behind distinguishing these periods is that each period has different perception of the Directive and focuses on different aspects. The main focus in the first period is mostly on the general aspects of Directive and the usefulness of temporary protection mechanism as a whole, while in the literature in the second period also provides information on its applicability to the specific case of Syrian refugees and focuses more on the aspect of activation of the Directive. On the other hand, the discussion after its activation debates the reasons for activation of the Directive and its implementation.

The adoption of the TPD was indeed a significant step in building Common European Asylum System. Nonetheless, many authors also highlighted weaknesses of the Directive. Gilbert sees the TPD as a mean by which the refugee status could be denied. He points out that the temporary protection does not accord the rights that are usually attached to a refugee status and can be revoked anytime the state decides. (Gilbert n.d.) This statement is based on the article 6 of the Directive, however it is important to note that according to this article, a Council Decision adopted by qualified majority is necessary end the Directive. Otherwise, the temporary protection ends when the maximum duration has been reached (in case of TPD this duration is set to three years). (Temporary Protection

Directive 2001) Furthermore, while Gilbert highlights that it provides swift response to a mass influx, he also points out the lack of incentive of EU Member States to push persons with temporary protection status through the refugee status determination process. (Gilbert n.d.) Cooper provides the assessment of the TPD in relation to a protection gap generated by disaster-induced displacement. He notes the missing inclusion of people fleeing from environmental disaster. (Cooper 2012) This point was brought up by the Economic and Social Committee during the policy formulation. In its report the Committee recommended to include also people displaced due to natural disasters, and not only armed conflicts or political persecution. (Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive 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' 2001) This proposal was debated but then rejected in the Council. It is important to note that the ongoing increase of natural disasters induced by climate change will have significant impact on migration flows to Europe, and therefore the protection of persons displaced by natural catastrophes should be considered in the policymaking process of the EU.

Significant number of authors focus on the relation between the migratory crisis in Europe in 2015 and 2016 and the lack of will to activate the TPD as a response measure during this period.

In 2015 the mass arrival of refugees to EU territory was acknowledged as the largest humanitarian and migration crisis for decades, and the majority of migrants arriving to Europe was considered as refugees from war and prosecution by the UNHCR. As noted by Koo, the numbers in 2015 by far exceeded the number of refugees arriving to Member States in the 1990s, and therefore there is a need to explore the decision of Commission and the Member States to not trigger the Directive. The issue here could be the lack of clarity around the definition of 'mass influx'. Indeed, some scholars have suggested that the complicated procedure of activation of the Directive was the main 'roadblock' in triggering the Directive in 2015. However, Koo notes that the activation process is not as complicated, and it does not even require the consent of European Parliament. Consequently, Koo points out that the blocks would have been overcome if there would

be political will, which is the key point behind the nondecision about triggering the Directive. With this point agree many scholars and experts in the area of migration and asylum (see Ciger 2022, Küçük 2022) the recent activation only supported this notion: when there was strong political will, there was no problem to overcome the constraints in the activation procedure of the Directive.

After the triggering of the Directive in March 2022, a lot of focus have been put on the reasons for activation of the Directive. Ciger in her article distinguishes five main reasons why the TPD was activated (these reasons and more are in detail discussed in chapter Policy analysis of the TPD). (Ciger, 2022)

3. Research design

The main goal of this work is to determine how is the influence of European policies on migration and asylum policies of Czech Republic and Slovakia. This will be demonstrated on the example of implementation of Temporary Protection Directive in both states and by assessing its possible impact on future development of asylum and migration policies.

The Czech Republic and Slovakia were chosen for this case study for several reasons. First, they are countries with almost identical historical development in the recent history. With the exception of Second World War, Czech Republic and Slovakia formed one state for 75 years. Because of this, they share the experience with migration in the second half of 20th century, which is important for studying the current situation. In relation to this, the forty years of communist regime in the countries have influenced and keeps on influencing the policy arena in every policy field, migration policies included. Due to the specificities of migration in post-communist states, Europeanization of these policies had different outcomes than in other Member States. Other reason for choosing these two Member States was the shift in approach towards migration after the beginning of the full-scale Russian invasion of Ukraine and arrival of Ukrainian refugees to EU territory. Despite their rather reluctant approach towards migration, both Czech Republic and Slovakia have accepted unprecedented number of refugees from Ukraine, among the highest across the European Union. Both states immediately started with their own forms of temporary protection, and after the activation of the TPD, they started to implement the necessary measures stated in the Directive. Additionally, I believe that because of their

lack of experience with immigration, it is important to follow the implementation process of the TPD as it helps define the main challenges and gaps in the national migration and asylum policies.

The analytical framework chosen for this research is Europeanization. I have decided to use Europeanization not only because it is a common concept for studying the impact of European Union on policies of Member States, but also because there are gaps in the literature on Europeanization of migration and asylum policies of Czech Republic and Slovakia.

In my work I argue that there were two main shifts in the Europeanization of migration and asylum policy in Slovakia and Czech Republic. The first one was during the pre-accession period, when both countries as official candidate states had to make significant changes in their legislation on migration, to access the EU. The conditionality of the EU for candidate states induced transformation (as defined by Radaelli, 2003) of migration policies in both states. Strong Europeanisation of migration policy field followed as both states joined the EU in 2004, and later in 2007 when they joined the Schengen system. The shift came in 2015, when during the European refugee crisis migration became suddenly highly politicised topic. In this period both Slovakia and Czech Republic rejected the proposals for mandatory redistribution and resettlement of refugees, therefore the outcome of Europeanization after 2015 can be classified as inertia or absorption instead. Significant change was induced after the Russian full-scale invasion of Ukraine. With the arrival of Ukrainian refugees, there was a shift of approach towards both immigration and the common European solutions on immigration issues. This shift could act as a catalyst for stronger Europeanization of migration policies in both Member States. However, it is not clear whether this could induce long term changes in migration policy arena, or if it is only a short-term reaction to an exceptional situation. Therefore, in my work I aim to answer following research questions:

- *How European policies influence Slovak and Czech migration policies?*
- *Will the activation of Temporary Protection Directive influence Czech and Slovak migration policies in the future?*

- *What were the main challenges during the implementation of Temporary Protection Directive in Czech Republic and Slovakia?*

My hypothesis is that the shift of approach towards Ukrainian refugees could act as a catalyst for further Europeanization of migration policies of Czech Republic and Slovakia in long term perspective.

4. Methodology

Because I aim to explain political phenomena without need for statistical or numerical data, I used qualitative analysis in my research. I have chosen the Temporary Protection Directive as a case study because this piece of legislation is unique. Even though the Directive was adopted two decades ago, it was activated for the first time only last year, just shortly before its planned repeal with the adoption of New Pact on Asylum and Migration. Therefore, its activation was unprecedented, and it is important to understand the reasons behind its activation as well as follow its implementation. As already explained, I have chosen to focus on Czech Republic and Slovakia for several reasons: shared historical experience, similar development of migration policies and similar experience with the arrival of Ukrainian refugees in 2022. Lastly, this policy area and its relation to Europeanization is not studied in much detail, therefore I hope to bring new insights on this topic. I have decided to use two main methods in my research: policy analysis and semi-structured interviews.

To properly understand relevance, content, and impact of the Temporary Protection Directive, I have used policy analysis of this Directive to provide relevant information. Consequently, I analyse the past impact of European Union on migration and asylum policies in the selected Member States, as well as current state of their migration policies. The analysis of migration policies and the TPD is based mostly on the official documents provided by European Union of the Member States (for example the Directive or policy strategies), on the reports provided by international organisations and NGOs, and on academic literature written about this topic.

For the analysis of Europeanization of both studied countries, I relied mostly on available literature, while the present state of their migration policies is based on the analysis of official documents provided by the states' governments.

Other method are the semi-structured interviews, that provide further information on the relevance of TPD, the main issues during implementation of the TPD in Czech Republic and Slovakia, and on the possible impact of activation of the Directive on future development of the migration and asylum policies in chosen Member States. The interviews were chosen due to lack of information in available literature. Because the activation of TPD is very recent, and its impact on the migration and asylum policies is only being studies, there was not enough relevant sources to answer the research questions. Overall, eleven interviews were conducted in the time frame of four months. The respondents were chosen by snowball sampling, and are divided in three groups according to the content of the questions: Slovak Republic, Czech Republic, and European Union perspective. In the cases of Czech and Slovak Republic, different actors were interviewed - politicians and experts.

Regarding Slovak Republic, two members of parliament were interviewed: Vladimíra Marcinková and Martin Klus. Both have the expertise to answer the questions; Marcinková is Chairwoman of the European Affairs Committee, and Klus is member of the Foreign Affairs Committee and focuses on the EU-related topics. Another respondent was Elena Gallová Kriglerová, Director and Senior Researcher at Centre for the research of ethnicity and culture that focuses. Kriglerová focuses in her work on integration policies development and provided deep insight on the process of implementation of TPD in Slovakia as well as on the main challenges of Slovak migration and asylum policy in general. Last respondent from the 'Slovak group' was an Employee of European Commission. While this respondent could be categorised in the European Union group, because we discussed mainly the case of Slovakia and partially of Czech Republic, they are considered as respondent for Slovak Republic.

To keep the research balanced, same number of respondents was chosen in Czech Republic. Two members of parliament Ondřej Benešík and Martin Exner were interviewed, both of them are members of Subcommittee on Migration and Asylum Policy. Expert perspective provided PhDr. Marie Jelínková, PhD from Charles University, an expert on integration of migrants in Czech Republic. Lastly, a Ukrainian

refugee who currently resides in Czech Republic and conducted interviews with Ukrainian temporary protection beneficiaries for an international organisation was interviewed. While this person cannot be categorised as expert, the interview was beneficial for the research as it provided insights on temporary protection measures in Czech Republic directly from the perspective of Temporary Protection beneficiaries. Because this respondent chooses to stay anonymous, in the citations and bibliography is cited as: Respondent 1.

To gain more information on the impact and relevance of the TPD in the context of EU migration policies, two interviews with experts were conducted. One with Anastasia Karatzas, a Junior Policy Analyst in the European Migration and Diversity Programme in the European Policy Centre. Second with Constanza Vera Larrucea, who is a research coordinator at the Migration Studies Delegation, an independent committee that initiates studies and supplies research results as a basis for future migration policy decisions and to contribute to public debate.

5. Development of European migration and asylum policy

This chapter provides an overview of the development of common European migration and asylum policy framework. The first part describes the four periods of development based on the work of Andrew Geddes. The rest of the chapter focuses on the most important pieces of legislation and policies adopted since the beginnings of the process of communitarization of migration policies in Europe, until the activation of the Temporary Protection Directive in March 2022.

5.1. Four periods of development of European migration and asylum policy

According to Andrew Geddes, the development of European migration and asylum policy can be divided in four periods: policies strictly in national competencies, informal intergovernmentalism, formal intergovernmental cooperation, and communitarization. (Geddes 2003)

First period, from 1957 to 1986, is defined by policies that were strictly in national competences. In the second half of 20th century, the European integration process was just starting, and a common migration policy was not a priority for Community Member States. Cooperation was only on informal level, therefore the policy involvement in this period was minimal. However, there was still certain progress in cooperation in migration and asylum issues. In 1976 TREVI group was established - an intergovernmental network consisting of member states' justice and home affairs ministers. The main reason for creation of TREVI group was the necessity to create an effective body that would coordinate counterterrorism responses. However, its competences were extended to other issues such as refugees and migration, as the TREVI group coordinated the trans-border police cooperation. (Police cooperation, European Parliament 2023) Another informal group dealing with the topic was the Pompidou group. Although these groups worked on informal terms, they are the basis of a common European migration and asylum system. They enhanced closer cooperation between Member States, provided context for the exchange of know-how and most importantly, when common migration and refugee policy started to form in second half of 1980s, the institutions and Member States could rely on already existing frameworks these groups created. (Ette 2017)

The 1980s was a decade of more significant changes in perception of common migration and asylum policy. The number of intergovernmental bodies dealing with the issue started to grow. The institutions had a role in this period, but very limited. For example, Commission participated as an observer at majority of the intergovernmental forums (TREVI Group, Pompidou Group). National preferences remained the biggest obstacle on the way towards integration. Especially in the first half of 1980s the Member States kept declining Commissions' proposals, preferring to keep migration issues in their competence. (Ette 2017)

On the other hand, the ongoing process of European integration (new members joining the Community and creation of European Single Market) pushed towards gradual integration of migration policies. In 1985, the White Paper on the Completion of European Single Market showed that there is a need for visa regulations and other issues related to asylum and migration. (Vatta 2017) Still, majority of the proposals concerning refugees and migration was rejected by the Member States. It was significant progress in the cooperation at institutional level on migration and asylum issues, especially because

this document demonstrated the existing connection between economic cooperation within the single market, and the need for common refugee and migration policies. (Ette 2017) While most of the Conventions proposed during this period was not ratified, their content provided basis for European migration and asylum policies in the following years.

The second period according to Geddes is a period of informal intergovernmentalism, and it dates from 1986 to 1993. Common migration and asylum policies started to gain importance throughout the second half of 1980s, especially with the commitment to create European Single Market and with the signature of Schengen Agreement. (Geddes 2003) Another important factor was the geopolitical context of the region, which became significant especially in 1989 with the fall of Berlin wall, the collapse of socialist regimes in Central and Eastern Europe and the following war in Yugoslavia during the 1990s. (Lott 2023) This unprecedented increase of the number of refugees and migrants coming from eastern countries to the Member States, especially Germany, changed the situation in the region. (Ette 2017)

Majority of the Member States was still rather reluctant to cooperate on the issue of immigration and asylum. At the same time, there was an increasing pressure from Commission on European institutions to communitarize the migration policy. However, there were obstacles - mainly different policies in Member States and differences in national preferences. The cooperation stagnated on intergovernmental level and the Commission kept observer status. Furthermore, the complicated process of ratification caused problems with adoption of conventions about migration and asylum. For example, Dublin convention was ratified seven years after its adoption, External Frontiers Convention was never ratified because of disagreement between two member states (Spain and UK about Gibraltar). (Van Wolleghem 2019) During this period, the signature of Schengen agreement was undoubtedly one of the most important steps of the process. Because of the growing commitment of states to create an area without internal border controls, the need to increase cooperation in migration and asylum area became clear.

In 1990, with the adoption of Schengen Implementation Agreement, the internal border controls were officially aborted. Schengen Agreement was signed on 14 of June 1985, initially by Germany, France and Benelux. The states agreed on gradual abolition of

controls on the common borders. Later joined by all remaining member states except UK and Ireland, Schengen became an example of successful practical cooperation even in sensitive areas like justice or home affairs. Schengen Agreement was created and signed outside the institutional framework of the EU and it was officially included in the treaties years later, with the Treaty of Amsterdam. (Hailbronner 1998) However, it had to be compensated by common security measures, for instance controls on the external borders of EU and occasional control within the area of EU. (Ette 2017) In 1986 was also created an Ad hoc Working Group on Immigration that focused on issues related to visas, asylum and control of borders. This group was another form of intergovernmental cooperation with participation of the Commission (Van Wolleghem 2019)

While the differences between individual Member States' policies were still relevant, the efforts mentioned above helped to make states' individual legislations on migration and asylum more coherent, which was a crucial step towards further integration of these policies.

The third period, from 1993 to 1999, is the period of formal intergovernmental cooperation. (Geddes 2003) The progress in migration and asylum area during this period was shaped by the Treaty of Maastricht. The Treaty introduced the pillarisation of European Communities' institutional structure. The three pillars were presented as a solution to problems related to the future of European integration process. The first pillar dealt with integrated issues. The other two pillars, Justice and Home Affairs Pillar and the Common Foreign Policy and Security Pillar, worked on intergovernmental basis and were focused on less integrated topics. Migration and asylum issues were dealt within the third pillar. While it was significant progress, the cooperation still remained on intergovernmental level and no new structures of cooperation were created. (Ette 2017) The key drivers for refugee and migration policies were still national governments, with the state holding the presidency of Council usually as key driver. Within the third pillar, only one task force was created to focus on migration and asylum issues. Therefore, not a lot proposals was made during this period. Most of the policies dealing with migration issue were related to the implementation of the Dublin convention. Because Member States were still rather reluctant towards common policies on the matter, they regularly

opposed the resolutions with binding force. For this reason the Council's resolutions from this (and previous) period were without any binding force. (Hailbronner 1998)

The role of the EU institutions was on a similar level as during the second period, only the Commission's role was upgraded from only observer to right to initiate proposals. While the Council kept formal role, it gained a few new legal instruments. Thanks to this the Council was able to adopt a new soft-law measures, adopt number of decisions on both illegal and legal migration and broaden a policy agenda by including refugee and migration policies. The soft-law measures were therefore seen as a compromise between EC proposals and the Member States' preferences. One of the main problems remained unresolved - the decisions still had to be taken by unanimity, which caused setbacks with adoption of policies concerning migration and refugees, as some Member States still preferred to keep this issue only on the national level. (Hailbronner, 1998)

The adoption of Treaty of Amsterdam marked the beginning of the fourth period - communitarization. (Geddes 2003) This treaty was the biggest turning point and marks a birth of common Community migration policy. This was a result of several factors. The member states became very interdependent with the creation of the single market and one big open economy space. Therefore, the need for higher integration of migration and asylum policies increased. As a consequence, one of the main goals was to reduce externalities in national laws regarding migration, so there would be more balanced number of migrants in the Member States. (Van Wolleghem 2019) Another reason was general discontent with the work of the third pillar and with the intergovernmental procedures within this pillar. Many Member States and EU institutions saw the need to create a better institutional framework that would reach balance between the security and migration control and the human rights and freedoms protection. It was also a result of gradual development during the previous twenty years of European integration process. Treaty of Amsterdam constituted a combination of intergovernmental and supranational instruments. One of the main changes were the incorporation of Schengen acquis from outside general Community framework into institutional framework of EC and the transfer of some areas from Title IV EU to new Title IV in EC Treaty. In other words, Treaty of Amsterdam changed the previous institutional framework by moving the policies concerning the migration and refugee issues in the first pillar under Title IV of

EC Treaty, which was a meaningful step for further institutionalization of this area. (Ette 2017) This newly added Title was specifically about visas, asylum, immigration, and other policies related to the free movement of persons. While it was initially planned to include these matters in the Title IV directly, the opposition from some Member States during the negotiations on Treaty of Amsterdam led to decision to postpone it by including a transition period. Netherlands, Spain, Belgium and Italy supported further integration of migration policy, other states (which had a stronger position in the Schengen area) like Germany and France were not interested. There was also strong oppositions from Denmark, Ireland and UK, with the latter two countries opting out from the Title IV altogether. (Van Wolleghem 2019) The inclusion of the third pillar into the first one meant significant change in the dynamics of policymaking regarding asylum and migration. While in the third pillar the Member States were the main actor, in the first pillar main actor was the whole Community - intergovernmental framework based on the Member States was reinstated by supranational legislation led by Community action. During the transitional period, which lasted five years, the Member States shared with the Commission the right of initiative. After the end of transitional period the initiative became exclusive right for the Commission - the Member States could make only requests to Commission that would submit it to Council, but only after examination of these requests. Thus, the Title IV was unique also respecting competences that some institutions had within its framework, which was another step towards communitarization. However, while Title IV meant big progress in the communitarization of the European migration and asylum policies, it did not gave the Community unlimited power over the issue and the matters transferred into the first pillar were only specified parts of the issues concerning migration and asylum. Significant parts related to this area were excluded, such as measures on expulsion and deportation, issue of transnational enforcement, measures for prevention of migration movements. (Hailbronner, 1998)

Another important change provided by the Treaty of Amsterdam was the incorporation of Schengen Agreement into the legislative framework of the European Union. Schengen turned out to be one of the most successful projects of European integration, even though achieved without participation of EU institutions and was created completely out of the framework of the EU. The unanimity condition established by the Maastricht Treaty was

replaced by the introduction of flexibility clauses in the Amsterdam Treaty, which provided space for integration of many other policy areas into the EU legislative framework. (Van Wolleghem 2019)

The Treaty of Amsterdam marked the beginning of the last period defined by Geddes - communitarization. (Geddes 2003) It was one of the most important milestones in the development of common migration and refugee policy in EU. After adoption of this Treaty there was further progress in the integration of this area of policies. The most important legislative instruments related to the matter of migration, asylum and refugees are discussed in following part of the chapter.

5.2.Dublin system

The Dublin system is a term used to describe a set of legislation concerning asylum seekers in the EU and the determination of the Member State which will be responsible for the examination of applications of the asylum seekers. The core part of the Dublin system are the Dublin regulations and a legislation about a database of fingerprints (EURODAC). Dublin Convention was first introduced in 1990 and since then was two times recast by two regulations, in 2003 by Dublin II and 2013 by Dublin III.

The Dublin Convention was the first binding agreement between the Community Member States on asylum and migration in history. It was signed by eleven members on 15.6.1990, with twelfth state, Denmark, signing one year later. (Dublin Convention 1997) As already mentioned, it was ratified only seven years after, because of the national preferences and disputes between some of the Member States. (Lott 2023) Until this day, the Dublin Convention forms a core of the allocation system within the European Union. The Dublin Convention was drafted by a subgroup of Ad hoc group on immigration, which was created in 1986 as Member States' solution to increasing calls on stronger cooperation in the area of migration and asylum policies in the 1980s. One of the main characteristics of the 1980s migration and asylum policies in most of the Member States was implementation of restrictive measures on national levels. Policies of deterrence and preemption induced diversion of refugee flows from one Member State to other. Most of the Member States were trying to keep the numbers of refugees arriving as low as possible, even though during this period asylum seekers caused problem on national level

only in Western Germany and partially in Denmark. Because only West Germany was country significantly affected by influxes of refugees coming especially from collapsing Soviet bloc, the Dublin Convention was not influenced by the larger geopolitical context. So, the events of 1989 did not change the agenda of Dublin negotiations at all. (Lott 2023) The Convention was created as a measure to complement the gradual evolvement of single market and free movement of persons within the territory of European Community. The main goal was to determine the states that will be responsible for the examination of applications for asylum by establishing a hierarchy of criteria that identify responsible Member State. Through this system the states would ensure that all the applications of all the asylum seekers would be examined. (Dublin Convention 1997) The introduction of Schengen area meant, that asylum seekers could apply for visa in more than one Member State. Thus, it was necessary to create a method determining which Member State is responsible for the examination of the application. Without it, in some cases no Member State could claim responsibility, which would cause asylum seekers would be 'left in orbit' (i.e. when no Member State accepts responsibility for an application, delaying access to protection). (DG Migration and Home Affairs 2015) Another reason was to avoid abusing and overflowing the asylum and refugee system by applying for visa or residence permits in more Member States at one. (Dublin II Regulation 2003)

The core of the Convention is based on the responsibility principle and the principle of first entry. The responsibility principle gives the responsibility of examination of asylum seeker's application. The Member States should be assigned with the responsibility, if it plays the biggest part in the entrance of the asylum seeker. For example if its the country of first entry. The part that state plays can be either voluntary or involuntary. (Lott 2023) In the voluntary case, the applicant has either valid residence permit or valid visa from one of the Member States. In this case, according the principle of authorisation, the state that has issued the residence permit or visa has the responsibility of examination of the application. In the case of involuntary part, the asylum applicant has entered the territory of Member States through irregular crossing of the border, the Member State applicant enters is responsible for examination, because it is that Member State that is responsible for controlling borders of the territory, as stated in Articles 6 and 7. (Dublin Convention 1997) The Dublin Convention was signed in the same period as Schengen Agreement,

and most of their content related to outside immigration and refugees was very similar. Schengen was created outside of the European Community framework, yet it was significant success both in terms of European integration and of economic cooperation. Because of this, the inclusion in Schengen was used to put pressure on certain Member States with less restrictive immigration and asylum policies, especially Mediterranean states. Agreeing on terms in Dublin Convention was perceived as a facilitator of their inclusion in Schengen area. In general, the responsibility principle in the Dublin Convention was perceived by many as a mean to shift the responsibility on the border states and to push them towards implementation of more restrictive policies.

The reasons behind this was mostly fear of member states with strong welfare systems for asylum seekers and refugees, who were afraid the system will be overflowed. On the other hand, this principle created basis for the problems with redistribution, which became crucial problem in the following decades. (Lott 2023) Since the beginning, there was a criticism of the principle of first entry, and even evaluations by European Commission found several shortcomings in the implementation of Dublin Convention in practice. Regardless, the Council stated there is not a lot of viable alternatives for the core of Dublin system - the responsibility principle. The Dublin Convention was in 2003 replaced by the Dublin Regulation (also known as Dublin II), which was created with the aim to improve the Dublin Convention. With Eurodac it was part of the first five legislations adopted as a part of the Common European Asylum System (CEAS). (Dublin II Regulation 2003)

In 2013 the Dublin II was replaced by Dublin III Regulation. While the core of the regulation stayed the same as set by the Dublin Convention in 1990, i.e. the principle of responsibility, there were still several important changes. For example, it gave the asylum seeker right to appeal the decision of Dublin process, it includes wider definition of a family in case of accompanying minor (includes also other family members than just parents), or it contains for the first time rule about detention before the transfer (people should be detained only when there is a significant risk of absconding) and setting a strict limit to the time of detention. (Dublin III Regulation 2013)

However also Dublin III Regulation faced criticism and several shortcomings were found. One of the main problems was, that Dublin III couldn't deal with the cases of mass influx. Because the Dublin process is in its core quite complicated and takes a lot of time, during

the cases of mass influx of refugees in EU it proved as highly ineffective. For example during the migration crisis in 2015, some of the Member States stopped applying properly the Dublin rules, as it was impossible with such a high number of refugees. Another problem that emerged during this period was the fact, that Dublin Regulations were not designed to address the disproportionate distribution of applicants. Some states therefore had to deal with a number of applications that is significantly higher than in other Member States, and in some cases the number of applicants overreached their capacities. This is especially the case of states with external borders or states with strong welfare systems for refugees. (DG Migration and Home Affairs 2015)

5.3. Common European Asylum System

A Common European Asylum System (CEAS) was established in 1999. Its beginnings can be found in Maastricht Treaty and in Tampere Programme, a document created during Finnish presidency of the Council. Tampere Programme set a number of milestones and marked the start of the new phase for EU. It was based on the common values of human rights, democracy, rule of law and freedom. Tampere Programme was, along other topics, focused significantly on migration and refugee matters. It urged the establishment of CEAS based on a full and inclusive application of Geneva Convention to ensure nobody would be sent back to their home country if they are in danger of persecution. It also called for a system with clear and workable determination of the state responsible for examination of visa applications, urged the Council to step up efforts in reaching agreement about temporary protection for different persons and included suggestions for creating a budget reserve for a case of mass influx of refugees applying for temporary protection. (European Council Tampere 1999)

Agreement on commitments under Tampere Programme led to series of legislative texts based on international asylum law with the aim of improving standards for asylum and migration issues and the creation of the CEAS system. The main function of CEAS is setting a common standards to provide a safe and fair treatment of refugees and asylum seekers. The so called first phase of CEAS comprises of different legislations related to the issue and is governed by five legislative instruments and one agency: The Asylum

Procedures Directive, the Reception Conditions Directive, The Qualification Directive, the Dublin Regulation, EUODAC regulation. (Common European Asylum System n.d.)

5.3.1. The first phase

The Asylum Procedures Directive (EC/2005/85) was adopted in December 2005 and the deadline for its transposition into national laws for Member states was set for December 2007. The Directive sets rules for proper and efficient examination of asylum applications and the decision making process and establishes standards for granting or withdrawing the refugee status. It sets rules for registering and lodging application, a time period during which the application has to be examined, it allows border procedure and the training of the decision makers. It also provides support of asylum seekers that are in need of it (because of disability, illness, etc.) and grants all asylum seekers with a right to appeal to court or tribunal. (Asylum Procedures Directive 2005) The Proposal for the Directive was criticized by several civil organizations, UNHCR and European Parliament but their remarks were not taken into account by the Commission. Main points of criticism were the facts that the Directive did not manage to reflect minimum fundamental human rights as they are guaranteed under international law, or the overcomplicated process appointed by the Directive, which was in contrast with its main purpose: harmonization of the examination of asylum application. Another concern was that the Directive provided a large space for permissible derogations from the standards. (Information note on the Council Directive 2005/85/EC 2006) In 2013 the Directive was recast by a new Directive (2013/32/EU on Common procedures for granting and withdrawing international protection) with the aim to further improve international protection procedures. (Directive 2013/32/EU 2013) In 2016 Commission published proposal for a new Asylum Procedure Regulation, but it was declined by the co-legislators. Commission then decided to create a new proposal in 2020 within the New Pact on Migration and Asylum. (Asylum procedures n.d.)

The Reception Conditions Directive was adopted in 2003 and it sets guideline for Member States for reception of refugees and asylum seekers. All Member States were required to transpose the Directive by February 2005, with the exception of Denmark and Ireland that decided to opt out. (ECRE: The EC Directive on the Reception of Asylum Seekers 2005)

The Directive covers all third country nationals as well as stateless persons applying for asylum. It sets the minimum standards for asylum seekers during the duration of asylum procedure, such as health care, access to work market, housing, financial allowances and more. The main aim of this directive is to secure minimal living standards and respect of all rights of the asylum seekers. Through this it aims to secure prevention of movement of asylum seeker from one Member State to another during the examination procedure and grant asylum seekers specific provisions for dignified and comparable conditions in all Member States. While the Directive sets the minimal requirements of conditions for receptions in accordance with Geneva Convention, Member States can opt to apply more favorable conditions if they decide. However, the migration crisis in 2015 has showed significant gaps of consistency between the Member States, as the Directive still left a large margin of discretion to Member States. This led the Commission to propose revision of the Reception Condition Directive in 2016. (Reception Conditions Directive 2013)

Another piece of legislation introduced in this period is the Qualification Directive (Council Directive 2004/83/EC) adopted on 29 April 2004. The Directive sets down minimum standards for granting status of refugee or subsidiary protection status to third country nationals or stateless persons. It also provides standards for the scope and content of protection that would be granted to them. It contains specific rules for obtaining refugee status (i.e. situations of severe violations of human rights, persecution based on race, religion, nationality, membership in particular social group or political opinions, etc.), rules for subsidiary protection status (i.e. when applicants for international protection can't return to their country of origin due to risk of suffering harm), the rights that are granted within refugee or subsidiary protection status, and qualification for international protection. The qualification for international protection sets down matters Member States have to take into account when assessing the applications for refugee status or subsidiary protection. (Qualification Directive 2004) The Directive was set to be transposed in national laws by October 2006 and was revised and replaced in 2011 to ensure coherence with case-law of the Court of Justice and European Court of Human Rights.

The Dublin II Regulation was adopted in February 2003 to replace the Dublin Convention. The main modification was the change of responsibility principle. The Regulation contained several points for criticism, for instance increased use of detention by some member states to enforce transfer, separation of children and families, lack of opportunities for applicants to appeal against decision for transfer, etc. All this eventually led to the adoption of Dublin III Regulation in 2013. (Lott 2023) In addition, Eurodac system was adopted as a facilitator of the application of Dublin II Regulation. The Regulation (No 603/2013) establishing this system entered into force in December 2000. The main function of the system is comparing fingerprints, through which member states can determine if the applicant has previously applied for asylum in another EU member state or if the applicant entered EU unlawfully. It consists of computerised database for comparing fingerprints and system for data transmission between the member states. The transmitted data are kept for ten years and currently they include not only fingerprints but also sex of the applicant, the EU country of origin, reference number, date on which the fingerprints were taken and on which the data were transmitted and the place and date of the asylum application. The Recast of Eurodac 2000 was introduced in 2013 as a part of wider reform of CEAS. Among others, the recast Regulation introduced access to the database by law enforcement authorities. (Eurodac Regulation 2013)

5.3.2. The second phase

Continuing presence of significant variations between Member States' policies even after adoption of first package of CEAS legislation led the Commission introduced Policy Plan on Asylum to complete the second phase of the creation of CEAS.

During the second phase of CEAS, the most important milestones were the extension of Dublin and Eurodac to Denmark, agreement on application of Dublin II Regulation with Switzerland, and reforms of the core CEAS legislations from the first phase. (EASO asylum report 2021) In addition to these legislations, in 2008 European Asylum Support Office (EASO) was created to boost cooperation between Member States. Later it was replaced by European Union Agency for Asylum. It is a decentralized EU agency which main function is to support member states with implementation of the CEAS. (Common European Asylum System n.d.)

The second phase of CEAS, from 2006 to 2013, led to series of reforms of the legislations after period of evaluation of the first asylum and refugee policies. The deadline for completing the second phase was set to year 2010, later postponed for 2012. However most of the reforms of legislations adopted in the first phase took place in 2013. The objectives of the second phase were established in the Hague Programme. This multi-annual programme built on the Tampere programme was approved by the European Council in November 2004. Its main objectives were to improve common capability of EU and its Member States to guarantee fundamental rights as well as to provide protection of both Member States and all persons in need of asylum and protection in accordance with the Geneva convention. This was to be achieved by the further development of CEAS and improvement of cooperation and common policies. After 2001 and 2004 terrorist attacks, the Hague Programme also focused on the prevention and suppression of terrorism, and on the establishment of common anti-terrorist approach in the member states to ensure safety of the EU as a whole. (Peers 2013)

In regard to asylum and migration, it called for further cooperation and strengthening of development of common policies as well as for reinforcing the collection and exchange of data and information between member states. The Hague programme established the aims of the second phase of the CEAS: 'establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection'. One of the main problems the second phase aimed to improve was the differences in Member States' recognition rates. According the Commission, this created more secondary movements and therefore the provision of equal access to protection across the EU was not complied. Another problem was the status of subsidiary protection, which Member States determined to asylum applicants more often. The subsidiary protection, while granting almost the same rights as refugee, it still neglects some rights, such as social welfare or family reunions. (Peers 2013) In addition, the CEAS still was not able to deal with irregular flows of migrants, which became a key issue during the sudden mass influx of refugees in 2015.

5.3.3. Reforms of the first phase legislation package

The first directive to recast in the second phase was the Qualification Directive, which was approved in 2011. One of the main changes were the added amendments to the rules

on qualification for refugee or subsidiary protection status, and amendments that made it easier to obtain the refugee status. It also improved standards for subsidiary protection, however, subsidiary protection status holders were still discriminated against refugee status holders.

The new Reception Conditions Directive shortened wait for access to employment and extended the definition of family members. It also specifies the rules for detention of asylum seekers and provides them with the right to be informed about the reasons and access to legal aid to challenge the accusations. (Qualification Directive 2011)

As mentioned, the Dublin Regulation did not bring fundamental changes to the Dublin system. While there were some modifications for enhancement of efficiency, the standards for asylum seekers were not significantly raised.

One of the most important changes in the Eurodac Regulation in the second phase is the extent of the access to the data of asylum applicants to other agencies at both national and European level. The reformed Regulation provides access to the database to national law enforcement agencies and Europol. This decision was seen controversial by number of organizations and by civil society, as it may cause increase of stigmatizing certain categories of citizens, both refugees and subsidiary protection status holders. (Eurodac Regulation 2013)

The reformed Asylum Procedures Directive provides higher standards for asylum seeker. For instance, it improves standards during the decision-making process of application assessment and in special procedures, and it reduces the complexity of the system set down by the first regulation. Nevertheless, the Member States still maintained large scope for flexibility when it comes to certain measures, so they may still be able to set rather low standards, especially in some cases of special procedures. (Peers 2013)

While the second phase of CEAS provided improvements on the migration and asylum policies, during the big migratory crisis in 2015 it became clear they were still insufficient in many aspects, especially dealing with irregular flows of migration. In 2015 Commission launched the new EU Agenda on Migration 2015 - 2020 and a year later proposed two packages for a full reform of the CEAS legislation.

5.3.4. European Agenda on Migration 2015 - 2020

2015 was unprecedented year for the EU in terms of migration. The war in Syria and conflicts in Iraq, Yemen, and sub-Saharan Africa caused enormous global displacement of people and caused humanitarian crisis in Europe. According to Eurostat, the number of asylum and refugee applications increased from 600,000 in 2014 to 1.3 million in 2015. (DG Migration and Home Affairs 2015) Hundreds of thousands of people were displaced and fled across Mediterranean to seek refuge in Europe and hundreds of them drowned while trying to get to safety in Europe.

The response of Member States varied significantly: for example, while Germany decided to not return Syrian refugees under the Dublin Regulation, Hungary declared the decision to build 175 km long fence on their borders. Many of the Member States tightened their legislation and imposed more restrictions to the asylum seekers. (Protection in Europe: Safe and Legal Access Channels 2017) Chaotic border controls, insufficient capacities of the Member States to process the applications, differences in approach in individual Member States, unwillingness of Member States to cooperate, deaths in Mediterranean Sea, and the general tendency to close-up the borders from the refugees - all of this revealed many flaws and gaps in migration and asylum policy of EU. As a response the Commission publish European Agenda on Migration 2015 - 2020, that was supposed to solve the main issues of EU migration and asylum system as well as provide short term solutions to the migration crisis.

On April 20th a 10 point plan for immediate actions to be taken as a response to a crisis in Mediterranean was presented by the Joint and Home Affairs Council. This plan was one of the basis for the European Agenda on Migration presented the same year in May. The 10 point plan consisted of series of proposals to address the migratory crisis, for instance: reinforcement of Triton and Poseidon operations, efforts to decrease number of smuggler operations by capturing vessels and adhering and sharing information within main EU agencies dealing with migration and asylum (Europol, Frontex, EASO, Eurojust), establishment of new return programme of rapid return of irregular migrants, consider options for emergency relocation mechanism, cooperation with countries surrounding Libya, etc. (New Pact on Migration and Asylum 2020)

The Agenda on Migration outlined the short-term, immediate measures that needed to be taken as a response to a crisis in Mediterranean as well as long-term steps to better migration management in future. The Agenda involved not only EU institutions and Member States but all actors - international organizations, civil society, local authorities and third countries.

The immediate action steps, based on the ten point plan, included significant reinforcement of Frontex operations Triton and Poseidon. More specifically, the capacities and assets were tripled, with new total budget of 89 million EUR. Also, activation of the emergency mechanism to help Member States that were confronted with sudden influx of migrants was proposed for the first time. Commission also planned proposals for temporary distribution mechanism and permanent EU system for relocation in emergency situations of mass influxes. The temporary distribution was the emergency scheme stated under Article 78(3) TFEU. It aimed to ensure balanced participation of all Member States based on a redistribution key based on criteria as GDP, population, past number of asylum seekers or refugees etc. The redistribution scheme was a short-term solution to the crisis, and the Commission stated in the Agenda a following legislative proposal that would provide mandatory relocation system. Another important point was the resettlement mechanism, which would provided a way to define people who can't stay safely in their countries and gave them legal and safe ways to reach European territory. In the document Commission pointed out differences in approaches within member states (some being more active in receiving and accepting asylum seekers than others). The resettlement mechanism was supposed to solve this problem, as it was covering all the Member States and the redistribution criteria were set. Commission proposed EU-wide Resettlement schene with 20 000 places and pledged to provide extra 50 million EUR to support the scheme. (Communication from the Commission 2015)

5.3.5. *Four Pillars*

The first pillar aims for reducing the irregular migration by addressing its root causes. It also focuses on cracking down smugglers and traffickers and providing clear and predictable return policies. Addressing of the root causes should be achieved by further development of cooperation with third countries and providing humanitarian assistance

where needed. This should be achieved by strengthening the role of EU Delegations in key third countries in area of migration. Other form of response is to mitigate the crisis at a local level, especially by continuation of providing financial help to humanitarian and development assistance. Another key point of the first pillar is the fight against smugglers and traffickers, which is supposed to be done through several channels. First of all through cooperation with thirds countries on the issue, as the bases of smugglers networks are usually located in those states. Second, the EU Agencies should provide help to Member States in their action against smuggling. Assistance in all phases of the fight against smugglers should be available - identification, investigation, prosecution, and confiscation of their assets. Commission also committed to improve EU legislation to tackle migrant smuggling and to improve enforcement of Employers Sanctions Directive to better the action against illegal employment. Because the flaws in the enforcement of the Return system are often used by smugglers as a motivation for irregular migrants, the Commission decided to adopt a Return Handbook and gave priority to to the implementation of the Return Directive in the Member States. Commission also proposed to strengthen legal basis of the Frontex, so it would have stronger role in the enforcement of the return. (Communication from the Commission 2015)

The second pillar is focused on border management, more specifically on strengthening the border capacities of both Member States and the third countries. It aims to improve the border management of the Member States, through the subsequent funding and a publication of a Union standard for border management - a document which aims to provide the information for management of borders to all Member States to prevent variations in different borders. Another important points of this pillar are the reinforcement of Frontex, strengthening coast guards and improving their coordination on EU level and a proposal for “Smart Borders” - initiative to increase the efficiency of border controls through new technology. (Communication from the Commission 2015)

The third pillar puts emphasis on strong common asylum policy. As the Commission states in the Directive, the EU already had a common rules which should be enough to provide basis for trust between Member States and fair asylum system. However, during the migration crisis, the Member States had different approaches towards refugees and

the distrust between Member States only increased and public opinion about EU asylum system became very negative. In reaction to this situation, the Commission proposed to improve the asylum rules. As a priority the Commission set the full and correct implementation of already existing Common European Asylum System, supported by systematic monitoring and by giving further guidance to improve the standards on reception conditions and asylum procedures. The Commission also decided to include specific provisions to fight against abuses of the system, as the abuses often led to overflowing the capacities of Member States which then were not capable to quickly enough provide protection to people in need of it. Another important part of the third pillar was focus on the revision of Dublin system, which proved to be highly ineffective during the crisis. According to Commission, already in 2014 five Member States had to deal with 72% of all asylum applications. The crisis showed that the Dublin system is no longer plausible option for distribution of asylum applicants towards Member States, and Commission decided to evaluate and possibly revise the Dublin Regulation. (Communication from the Commission 2015)

The fourth and last pillar is focused on legal migration. It proposed creation of a new policy on legal migration to attract skilled workers. This policy was a response to many economic and demographic challenges stated by the Commission, as for example aging of the population or high dependency on highly-skilled jobs. Main measures proposed in the document are the revision of the Blue Card Directive, modernisation of visa policy, more effective integration of migrants and re-prioritizing funding for integration policies, and encouragement of Member States to exchange best practices in the area on European level. (Communication from the Commission 2015)

There is no doubt the European Agenda on Migration meant significant progress in the creation of common European migration and asylum policy, and many of the new measures introduced significantly improved the system of the EU. However, there were also several points of criticism - for example lack of focus on the protection of human rights of the refugees. According to Solidar, a network of Civil Society Organisations, the agenda is focused too much on the aspect of securing borders, without paying sufficient attention to guarantees of human rights for all the refugees. In its report, Solidar calls for

more comprehensive solution, which would focus on understanding the roots of the crisis as well as EU's reflection on its own responsibility in the issue. (The new EU Agenda on Migration 2015) The focus of the EU on tackling the smugglers as a solution of the problem is also seen negatively by experts and organizations, as it is not addressing the core reason of the increase of smuggling networks - the rising demand in third countries. Another point of criticism was the fourth pillar and the Commission's decision to focus on the attraction of legal migrants. This measure aims to help with many problems Europe is facing, but in general it does not provide a solution to incoming flows of irregular refugees, as it is aimed on attracting only highly-qualified third country nationals. (Protection in Europe: Safe and Legal Access Channels 2017)

5.4.EU Pact on Migration and Asylum

On 23. September 2023 the Commission presented proposal for a new Pact on Migration and Asylum, with overall similar objectives as the Agenda - improved and faster procedures, balance principle of fair sharing of responsibility and solidarity, rebuilding trust between the Member States, and more. As stated in the press release: *“With the new Pact on Migration and Asylum, the Commission proposes common European solutions to a European challenge. The EU must move away from ad-hoc solutions and put in place a predictable and reliable migration management system”*. (New Pact on Migration and Asylum 2020)

The Pact includes four recommendations, five Asylum and Return reforms and five legislative proposals. The new legislations are: Screening Regulation, Asylum and Migration Management Regulation, Crisis Regulation, amended Asylum Procedures Regulation, and amended Eurodac Regulation. The main documents proposed for reform are the EU Asylum Agency Regulation, the Reception Conditions Directive, the Qualification Directive, the Union Resettlement Framework, and the Return Directive.

The Screening Directive is one of the most important novelties of the Pact. It introduces a pre-entry screening of third-country nationals at external borders. It contains uniform rules about the procedures that should be followed at the pre-entry stage of assessing the applications of third country nationals. The main objective is to ensure quickly define

identity of the person as well as health or security risks that may be related. The screening is also supposed to detect if the person is likely to receive international protection, so the people who are at risk can obtain this protection as soon as possible. At the same time it is supposed to prevent ‘abuse’ of the asylum system of Member States. (European Commission 2020) It is also one of the most controversial legislations of the Pact, as it is criticized by many organizations, experts, and other humanitarian actors. While on one hand the Directive provides faster access to asylum to people who pass the screening, the national authorities would be able also to decide on return of many people very swiftly, just based on the pre-screening without giving them the opportunity for proper assessment of their asylum application. (Guilbert, Milova, and Movileanu 2021)

Along with the Screening Directive another important, and controversial, piece of legislation is the solidarity mechanism. It sets down a new system that provides to the states three options for their solidarity: relocation, return sponsorship and “in kind” contributions. The main point is, that if the state determined by the Dublin system is overflowed with applications, other Member States are expected to assist this Member State by relocating asylum seekers and refugees in their territory. While in theory it sounds like good solution for enhancement of cooperation on the issue between Member States, there are concerns that this system is too ambitious and in reality will not work. According to some, this system even reinforces the principle of the first country of entry from the Dublin Regulation and the voluntary relocation will not work in practice, as may member States are reluctant to receiving migrants and refugees. It also may lead to continuation of human rights violation at the external borders and continuation of high pressure on the ‘ first’ Member States. (EuroMed Rights 2021)

Concerning other legislation introduced by the CEAS, the Commissions proposes revisions and amendments of several directives: amendments to the Eurodac system, to the Dublin III Regulation, the Reception Conditions Directive, the Qualification Directive, the Asylum Procedures Regulation and the Return Directive. Some of these legislations were already proposed to be revised in 2016, and the Pact only amends and build on these proposals. For instance, the Asylum Procedures Regulation should be amended by new rules for expulsion procedure, expulsion and asylum decisions and fast

tracked decisions in specific cases. Eurodac system was also supposed to be heavily revised in 2016 - especially by broadening the database of collected information by photos and other personal information, reducing the age for those who must be covered by Eurodac (to 6 years), and lowering the limits on the use of collected data. All of these revisions served as a base for the proposal of Eurodac revision in the New Pact on Migration. (Peers 2021)

Reforms of the Dublin III Regulation is connected the proposal to prepare a new piece of legislation - Regulation on Asylum and Migration Management (RAMM). Because the main aim of RAMM is to provide assistance to the countries of first entry, by transferring asylum seekers to other Member States, it is very similar to the system set by the Dublin III. The Commission therefore proposed incorporate amended version of Dublin III into RAMM, with adding some criteria for relocating the asylum seekers to other Member States. (Guilbert, Milova, and Movileanu 2021)

The New Pact on Migration is facing criticism for many reasons, few of the main concerns are: it doesn't take into consideration the reality of migration policies and practices in different Member States, the first entry countries do not have enough resources to implement some of the provisions of the Pact, and possible increase of human rights violations of migrants and refugees at the external borders.

The EU is currently in process of adopting different directives and regulations of the Pact. The events in the last year had a big impact in the development of EU migration policy as well as on the adoption of the new measures proposed in the Pact. Covid-19 pandemic, the humanitarian crisis on the borders with Belarus, growing pressure on traditional routes of migrants and lastly full-scale Russian invasion of Ukraine - an unprecedented set of challenges that affected migration and asylum management heavily. However, all of these events also pushed EU to keep up on the progress in creation of long term, more harmonized and more fair common migration policy - in the last year Member States agreed on negotiation mandates for Eurodac and Screening regulations, on implementation of the solidarity mechanism, and a Joint Roadmap on the Common European Asylum System and the Pact on Migration and Asylum was presented. While there is without a doubt still a lot of work to be done in the area of European migration and asylum policies, there is also a significant progress achieved over the last few years.

One of the most important steps in the last year was the Commission's unprecedented decision to activate for the first time the 2001 Temporary Protection Directive. The Directive was activated on the 4 March 2022 as a response to sudden influx of Ukrainian refugees after Russia's full-scale invasion of Ukraine. The following chapter provides detailed policy analysis of the Directive.

6. Policy analysis of the Temporary Protection Directive

This chapter discusses in detail the Temporary Protection Directive. The first part of the chapter consists of policy analysis of the Directive, analysing the policy objectives, its content, and the policy process of its adoption. The second part of the chapter is focused on the events that followed the activation of the Directive. It discusses the reasons for the activation of the Directive, analyses of the Implementing Decision of the Council and the major challenges in the implementation across the Member States in general. Lastly, this section provides overview the possible next steps for the EU and Member States.

6.1. Policy objectives

The Directive was adopted following a mass influx of persons fleeing the war conflict in Yugoslavia. There was a need to create a common mechanism, that could be used in case of a need for response to sudden mass influx of refugees. According to this mechanism, the temporary protection would be granted on group basis, instead of individual as it is stated in the Refugee Convention from 1951. Originally, the main objectives of the Directive derived from the Amsterdam Treaty. However, with the adoption of the Lisbon Treaty in 2009 the main general objectives were replaced by common system of temporary protection, solidarity and fair sharing of responsibilities, based on articles 78.2.c TFEU and 80 TFEU. (Council Directive 2001/55/EC 2001)

The two main objectives of the Directive are to prevent blocking of asylum systems of Member States and to provide immediate protection and help to those in need. The Directive establishes minimum standards for granting the temporary protection in the event of mass influx and determines obligations of the Member States in case of mass influx of the refugees. It aims to provide help to persons who need it, but also to reduce possible secondary movements of the refugees and to harmonize the temporary protection

standards across the Member States. (Temporary Protection Directive n.d.) Second objective of the Directive is to promote balance of effort between the Member States in receiving and bearing the consequences of providing temporary protection to high numbers of refugees. The solidarity mechanism established in the Directive is of voluntary nature. More specifically, it is based on the rule of double voluntarism - it shall provide help both financially and by possible redistribution of refugees. Therefore, the proper functioning of the mechanism depends on the effort and willingness of the Member States to provide aid to other Member States either through receiving number of refugees or through financial help. (Council Directive 2001/55/EC 2001)

The Directive is in accordance with the principle of subsidiarity, as the two main objectives (minimum standards for temporary protection and balance of efforts between the member States in receiving and bearing the consequences) couldn't be achieved on national levels by the Member States, and therefore there was a need for action on the Community level. The Directive does not take unnecessary measures to achieve the objectives, therefore it is also in accordance with the principle of proportionality. (Council Directive 2001/55/EC 2001)

6.2.Procedures and instruments

Regarding the procedures, the Directive states that the Member States shall bring into force the laws, regulations, and administrative provisions latest on December 31st, 2002. The measures adopted by the Member States need to contain a reference to the Directive. The standards and measures set by the Directive are linked and interdependent to achieve better effectiveness and coherence, and for this reason they are all included in one legal instrument. According to the Directive, the activation must be decided by a Council Decision, which binds all Member States in relation to the displaced persons. The reasons for activation are described very broadly in the document. The activation can be initiated only by Commission, either based on the request of Member State or *ex officio*. The procedure of activation consists of a lot of steps and is quite complicated, which is one of the reasons why it has not been activated until 2022. The activation does not require unanimity, the decision can be adopted by qualified majority vote (European Commission. Directorate General for Home Affairs. 2016) The implementation of

temporary protection should be accompanied by administrative cooperation between the Member States and the Commission. (Council Directive 2001/55/EC 2001)

As mentioned, one of the main objectives of the Directive is to set and secure minimum standards for temporary protection in all Member States. Articles 8 to 19 provide the obligations for the Member States towards persons under temporary protection. Some of the included rights are a reduction of formalities regarding the visas and provision of residence permit during the entire duration of protection. Member States also need to provide the temporary protection status holders with access to labour market and children with access to education under the same conditions as state nationals. Another important measure is the obligation to provide to the persons under temporary protection access with accommodation, with social welfare and secure access to healthcare during the whole duration of the protection. (Council Directive 2001/55/EC 2001)

Regarding the solidarity mechanism, the Article 25 of the Directive states that: *'The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons.'*

In case the number of persons is higher than the reception capacity of the state, Council can examine the situation and after assessment, it can act and provide additional support to the Member State. Cooperation is important factor in the solidarity mechanism; Article 26 requires Member States to communicate all requests for transfers with other Member States and notify both the Commission and UNHCR. Member States are also required to communicate the data about the number of persons with temporary protection on their territory and information related to the implementation of the temporary protection measures. (Council Directive 2001/55/EC 2001)

To complete the Directive, European Refugee Fund was established as a source of financial support by a Council Decision on 20th September 2008. This fund was later replaced by the Asylum, Migration, and Integration Fund (AMIF), which currently serves as a source of funding also for the implementation of the TPD and supports financially the Member States. AMIF is adopted for the period of seven years with the same duration as the multiannual financial framework. Current period started on January 1st, 2021 and

lasts until December 31st 2027 with allocated budget of €9.882 billion. (Regulation (EU) 2021/1147 of the European Parliament 2021) Article 6 of the Decision provides guideline for case of a need of emergency measures. According to this Article, the Fund may be used to finance emergency measures to assist one or more Member States in the event of sudden mass influx of refugees, especially in response to appeal from international organizations. In the case of activation of the Temporary Protection Directive, the Fund shall help to finance following: reception and accommodation, provision of means of subsistence, including food and clothing, medical/psychological or other assistance, staff and administration costs incurred as a result of the reception of persons and implementation of the measures, and costs of logistics and transport. (2000/596/EC 2000)

6.3. Policy process

6.3.1. Agenda setting

One of the catalysts for the proposal of Temporary Protection Directive was so called 'Kosovo crisis' in 1999. The war in the region of former Yugoslavia caused mass influx of refugees (highest since the end of the Second World War), which shed light to the lasting inconsistencies in asylum and migration policies of Member States. The response on European level was uncoordinated, and the pressure was concentrated on a few Member States. This was caused by the differences of the temporary protection standards in each state, which led to secondary movements of refugees towards the states with more generous temporary protection (more benefits, longer duration, etc.). (Council Directive 2001/55/EC 2001)

However, while the refugee crisis in 1999 was one of the main reasons for proposing the Directive, it is important to note that the preparation of the Directive was also part of a long-term EU's objective to create more integrated asylum and migration policy, which started already in the beginning of 1990s. In 1995 the Council adopted a Resolution on burden-sharing, and in 1998 The Action Plan of the Council and the Commission was published. The plan provides for rapid adoption of minimum standards for giving temporary protection. In 1999 the Council adopted conclusions on displaced persons from Kosovo, in which it called on Member States and Commission to learn from lessons from the Kosovo crisis. (Proposal for a Council Directive 2000)

Consequently, the harmonization process started. The proposal for the Directive initiated by the Commission was framed by the new Amsterdam Treaty, but also by the call for Common European Asylum System in Tampere. In the special meeting in Tampere in 1999 the European Council acknowledged the need for agreement on the temporary protection and the Temporary Protection Directive became one of the main points of the Tampere programme. (Proposal for a Council Directive 2000)

6.3.2. Policy formulation

On May 24th, 2000, Commission submitted proposal for a Council Directive on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States receiving such persons and bearing the consequences thereof. The document was proposed by the Directorate General for Justice, Freedom, and Security. (Proposal for a Council Directive 2000)

As a result of mandatory consultation, responsible European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs published its report on the proposal in February 2001. The Committee suggested altogether 35 amendments to the proposal on the single reading. The included amendments were for example suggestion for different approach from the proposed principle of solidarity, to consider UNHCR as an advisor about the definition of situation that calls for temporary protection. The Committee also suggested to include deadline for decision-making when request for activation of the Directive is submitted. Specifically, the Commission should examine and potentially submit the proposal to the Council within one month and the Council shall take the decision within three months of it being submitted. Regarding the return of the temporary protection holders in their home country (Article 6), the proposal states that: *'the Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the long-term, safe and dignified return, in accordance with Article 33 of the Geneva Convention and the European Convention on Human Rights. The European Parliament shall be informed of the Decision.'* The Committee suggested that the Council Decision should take into account also recommendations from UNHCR and other international organizations, and Parliament

should be informed not only of the Decision but also of the Commission's proposal, so it would be involved as much as possible in the decision-making process. (EP legislative resolution 2001) Suggested Amendments on single readings were partially agreed on by the Commission.

The two Committees for opinion (Employment and Social Affairs and Budgets Committee) decided not to give an opinion. (Procedure File: 2000/0127(CNS) European Parliament n.d.)

Another opinion was provided by the Economic and Social Committee, that accepted the proposal overall positively, only with a few comments, and suggested to approve the text without significant amendments. The Committee highlighted that the Directive sets only minimum requirements, which according to the Committee allows simple and transparent harmonization of procedures and actions. The mechanism of declared availability for distribution of displaced persons and the fact that the Directive promotes integration (albeit only temporary) was also highlighted in the opinion as a positive factor. The Committee proposed that the Directive should apply also on people fleeing from natural disasters, not only from political situations and expressed concern about the insufficient duration (one year and maximum two-year extension), because the political conflicts tend to last longer. Lastly, the Committee suggested more responsibilities for NGOs and social partners at both national and local levels. (Opinion of the Economic and Social Committee 2001)

The Committee of Regions was also consulted on the matter and suggested several changes in its report. While the Committee welcomed the proposal for the Directive and stated that it is necessary to establish minimum standards for temporary protection as well as prepare an instrument to deal with mass influx of refugees, in some areas the Committee proposed solutions that tended to be slightly more restrictive than the proposal itself or the comments of other Committees and international organizations. For example, unlike the Economic and Social Committee, the Committee of Regions welcomed the limitation of duration of temporary protection to one year with possible extension up to two years. Regarding the Articles 13 and 14, the Committee welcomed the right to family reunification without the obligation to justify this right, but didn't agree with the granted

freedom to choose a Member State in which the family would be reunited, as there might be a *'possibility of subsequently upsetting the balance of burden-sharing in the admission of persons for temporary protection'*. Instead, it suggested family reunification in the Member State in which the majority of family members stays. As for the principle of double voluntary action, this is according to the Committee less effective solution. Instead, it suggested a quota system that would in their opinion ensure more effective provision of protection and more transparent burden-sharing. (Opinion of the Committee of Regions 2001)

UNHCR also provided opinion on the proposal, with comments and notes. For instance, it suggests possibility of granting beneficiaries of temporary protection permits to remain for compelling humanitarian reasons after the end of temporary protection or to extend it also to cases where return would be inappropriate for compelling reasons arising out of previous persecution or experiences (like traumatized cases). UNHCR also encourages Member States to incorporate in their national legislations some elements from the earlier versions of the Directive, for example that the absence of documentary evidence of the family relationship should not be an obstacle for the reunification, or to extend the concept of family to unmarried couples, children of unmarried couples and adult family members. (UNHCR annotated comments on COUNCIL DIRECTIVE 2001/55/EC 2001)

From the opinions on the procedural page of the European Parliament we can see that the main actors participating in the process of policy formulation and agenda setting at the time were mostly institutional actors, mainly the Committees of EP, Social and Economic Committee and the Committee of Regions, or the UNHCR. During this period all the actors were in favour of the policy and welcomed the proposal, because of the need of the EU to create more cohesive and harmonized mechanism for reception of refugees and asylum seekers. This need was even stronger after the Kosovo refugee crisis in 1999, when the Member States faced many problems with mass influx of refugees and the need for harmonized conditions for providing temporary protection to people in need became even more evident. In this climate, the Temporary Protection Directive seemed like a good component of new asylum and migration system. (Procedure File: 2000/0127(CNS) European Parliament n.d.)

6.3.3. Adoption and decision-making

On May 28th, 2001, the Council reached an agreement and adopted the Directive on 20th July 2001 after the consultations. On August 7th 2001 the Directive was published in Official Journal. (Procedure File: 2000/0127(CNS) European Parliament n.d.)

6.3.4. Transposition and implementation

The Directive entered into force on August 7th, 2001, and the deadline for transposition into national laws was set for December 31st 2002. (Council Directive 2001/55/EC 2001) In the case of states joining the EU later, the Directive was transposed into national laws the year they joined the EU. Although the Directive was adopted and transposed into national laws two decades ago, it was not implemented until the March 4th, 2022, when the Council decided to activate it. The second part of the chapter analyses the reasons for the activation and the process of the implementation of the Directive.

6.4. Implementing Decision of the Council

In reaction to the mass influx of refugees from Ukraine caused by full-scale Russian invasion of Ukraine, the Council voted on Implementing Decision (EU) 2022/382, that established the existence of a mass influx of displaced persons from Ukraine within the meaning of the Temporary Protection Directive, and therefore activated the Directive for the first time since its adoption. While according to the Directive qualified majority vote shall be enough for passing the Decision, in this case all the Member States voted unanimously in favour of activation of the Directive. (Council Implementing Decision 2022/382 2022) The EU showed support for Ukraine since the beginning of the invasion and condemned the Russian aggression against Ukraine. The implementing decision establishing mass influx is only part of the EU's response to the migratory pressure, but it is one of the most important, as it provides easier access to the essential amenities for Ukrainian refugees and at the same time helps the Member States to deal with high number of refugees arriving. As stated in the Implementing Decision, since the beginning of the invasion EU faced high risk of Member States' asylum systems being unable to deal with such a high number of refugees in short period of time. (Council Implementing Decision 2022/382 2022)

The main objective of the Decision is to introduce temporary protection for Ukrainian nationals fleeing from the Russian aggression in their territory. However, the Decision also includes nationals of third countries, who have been living in Ukraine under refugee status (or equivalent protection), and the stateless persons and nationals of third countries who have been legally residing in Ukraine before the February 24th and who are unable to safely return to their country of origin. The Council also encouraged Member States to extend the protection to the people who arrived to EU territory shortly before the beginning of the invasion, either because they came for reasons unrelated to the aggression (for example work or holidays) or because they fled due to the growing tensions in the days before the start of the invasion. (Council Implementing Decision 2022/382 2022)

Regarding the funding, according to the Decision, the Member States shall receive financial support from Asylum, Migration, and Integration Fund. Furthermore, additional funds were mobilized from the Multiannual Financial Framework 2021 - 2027. Lastly, Member States can request crucial items for people enjoying temporary protection in their territory or co-financing of these items through the Union Civil Protection Mechanism that has been activated after the start of the full-scale invasion. (Council Implementing Decision 2022/382 2022)

Because harmonization of minimum standards is important objective of the Directive, part of the Decision focuses on cooperation between the Member States and the EU institutions. It established a 'Solidarity Platform', a tool for facilitation of cooperation between the Member States and the Commission. The EU is supposed to monitor and coordinate reception capacities of the Member States, so in the case of necessity it may provide them with additional support. Through the Platform the Member States should exchange information about their reception capacities and the number of persons enjoying temporary protection in their territory. In addition, Member States should also provide relevant information to the EU through other platforms, for example the EU Migration Preparedness and Crisis Management Network. (Council Implementing Decision 2022/382 2022)

All the Member States agreed that they will not apply Article 11 of the Temporary Protection Directive. This Article states that: *'A Member State shall take back a person*

*enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5.*¹ This is the only Article from the original Directive that was not applied. (Council Implementing Decision 2022/382 2022)

6.5.Implementation

Due to the shock in many countries when the Russian invasion started and the sudden mass influx of refugees immediately after Russian attack, the Member States had to act swiftly and try to implement the temporary protection in a very short time. And because the Directive was activated for the first time, the implementation process in many EU countries has been challenging and at some points difficult to manage. Most of the Member States enacted the Directive through two possible forms of legal acts: government ministerial decisions, and law order or decrees. The only exception was Malta, which enacted the Directive by a decision of the competent authority. (EUAA 2022)

Because the Directive sets only minimum standards for temporary protection, Commission published in addition operational guideline, with the aim to specify the standards that the Member States shall provide. Guidelines were published on March 21st, 2022, and contained answers from Commission on number of issues that the Member States have reported during the first days of implementation of the Directive. The guidelines are intended as a living document, i.e., they shall change and develop to keep pace with the updates and Member States' experience as they emerge. So far, the document covers three main areas of guidelines: (i) persons covered by temporary protection, (ii) right to move freely, (iii) registration, (iv) residence permit, (v) unaccompanied minors, (vi) human trafficking, (vii) access to the asylum procedure, (viii) repatriation assistance, (ix) provision of information in a document/leaflet, and (x)

¹ Article 5 sets down the rules for decision for the duration of the temporary protection, therefore the Article 11 concerns the whole duration of the period when TPD is activated

information to be reported under the blueprint. (Communication from the Commission on Operational guidelines 2022)

Even with the provision of guidelines that were supposed to help the Member States with the implementation and harmonize more the whole implementation process, every Member State interpreted the Directive and the Council Decision differently. This caused differences in policies and politics throughout the Member States, which pose a significant challenge up to today. (ECRE 2023) Another important factor are the reception capacities of the Member States. Some Member States don't have strong state facilities that would help with the reception procedure, and civil society actors were often the ones left with the main responsibility, while in others Member States, state facilities took the lead in dealing with the crisis. (Rasche 2022)

While the whole process of implementation has not been easy, some sectors and issues have been specifically difficult to deal with and continue being a challenge for many Member States. Several areas of the temporary protection are problematic also due to the big differences in implementation. The main challenges are access to accommodation, healthcare, education, securing freedom of movement across the EU and access to labour market. It is important to note, that the rights are interconnected. Therefore, inability to access one right has negative implications on the others. For instance, due to the lack of childcare and difficult access to education, a lot of women are not able to access the labour market, because they usually have both the role of the breadwinner and the caregiver, and without available childcare they are forced to stay at home with their kids.

Accommodation still is one of the most pressing issues related to the implementation of the Directive. (Committee on Civil Liberties, Justice and Home Affairs 2022) Since the beginning of the war, it was very difficult for Member States to find enough facilities to provide accommodation to all the refugees arriving in a short period of time and help from private actors and locals proved as crucial especially during the first months. All the Member States have provided a scheme to cater beneficiaries of temporary protection with accommodation or with subsidies to accommodation. Nonetheless, both duration and type of the accommodation differ significantly across the Member States. Most of the

accommodations provided are only a short-term solution. Some EU countries have specified period (even as short as three months), in others the refugees were not informed about the time period during which they are able to stay in the accommodation. Finding alternative accommodation is often a challenge for the temporary protection beneficiaries for various reasons - lack of finances, shortage of affordable accommodation in urban areas, lack of documentation, temporary nature of their stay, etc. (UNHCR 2022)

Another critical issue is the access to education. According to the Save the children report, one third of Ukrainian children didn't go to school between their arrival to the EU and start of the summer. (Committee on Civil Liberties, Justice and Home Affairs 2022) That however, is not in violation of the Directive, as the TPD doesn't oblige the Member States to ensure that children under temporary protection will be enrolled in school systems no later than three months since the application for international protection was submitted (unlike with asylum-seekers). (UNHCR 2022) The main barriers to access to education are the lack of capacities of European schools and kindergartens, but also the lack of information, language barrier or absence of permanent address. (Committee on Civil Liberties, Justice and Home Affairs 2022) According to the UNHCR report, the lack of space in schools is the main roadblock in access to education, with 22 out of 26 countries reporting this as the biggest issue. (UNHCR 2022)

The access to the labour market is interconnected with the lack of access to education and childcare. As stated by the UNHCR, the most common barrier to access the job market is the lack of childcare arrangements. Because the majority of the temporary protection beneficiaries are women and children, it is essential to provide women with childcare options so they can actively participate in the job market and be economically self-sufficient. However, this is not the only aspect that impacts the accessibility of labour markets. The language barrier is another important factor. Even though most of the Ukrainian refugees are under temporary protection in EU for over a year, many of them face difficulties to learn the language due to difficult accessibility of language classes for adults. The lack of information of the temporary protection beneficiaries of their rights regarding the employment and work conditions also reflects on the accessibility of the labour market. These issues may lead to increased exploitation of some beneficiaries by their employers. Lastly, in some Member States employers require special certifications

(for some jobs), residence permit or permanent address or/and other type of documentation that may be difficult or even impossible to get. (UNHCR 2022)

Difficult access to healthcare is another problem in Member States. This may be caused partially by a lack of capacity in hospitals, which is a long-term problem some Member States face. But according to the UNHCR, the main obstacle in access is the language barrier. Another reason is the lack of harmonization between the Member States; in some Member States the temporary protection beneficiaries have only access to the emergency care. This is particularly problematic for people with pre-existing medical conditions, who are unable to visit general doctors or specialists to be treated. (UNHCR 2022)

Many Ukrainian nationals go back to Ukraine for short periods of time, to visit families, get documents or other reasons. However, different Member States have different rules about the 'pendular' movements of temporary protection status holders. As of March 2023, there are six groups of states with different practices on these movements: states with no restriction, states requiring temporary protection beneficiaries to inform authorities before leaving, states allowing to travel within defined timeframes, states allowing only short-term trips, states where traveling back to Ukraine may result in loss of temporary protection, or states where the rules on return to Ukraine are not specified. (ECRE 2023) The different restrictions on movement across the EU countries are another reflection of the significant differences in the implementation of the Directive in the Member States.

6.6. Reasons for activation in 2022

The Temporary Protection Directive was not activated for 22 years of its existence. Many people didn't think that it will be ever activated, as the Commission proposed its repeal and replacement by a new crisis management scheme. (Küçük 2023) The Commission proposed introduction of an 'immediate protection' in 2020 in the Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum as a part of the New Pact on Migration and Asylum. In the end the Directive was activated as a part of series of measures that were taken in reaction to Russian invasion of Ukraine. There is a number of publications on why the Commission decided to activate

the Directive just now, and not during the previous refugee crises in 2011 when over 600 000 people fled armed conflict in Libya or in 2015 when hundreds of thousands of Syrians tried to flee to EU from armed conflict in their home country. (Ciğer 2022) Most of the experts agrees on one main reason on why TPD wasn't activated before - lack of political will. The next part of the chapter discusses the reasons for its activation in connection to the previous refugee crises and the reasons behind Commission and Council decision to activate this specific Directive as a mean to help Ukrainian refugees.

Ciğer in article *5 reasons why: Understanding the reasons behind the activation of the TPD in 2022* defines five main reasons why it was not activated before. As one of the reasons she defines the so called 'Europe's double standard' and suggests that the TPD was activated after Russian attack on Ukraine unanimously because Ukraine is European country, and its nationals are predominantly white Christian Europeans. (Ciğer 2022) This factor played an important role and was partly a reason of the huge wave of solidarity towards Ukrainian refugees across the whole Europe. The different approach towards Ukrainian refugees compared to refugees from other parts of the world is a serious issue that is widely discussed by experts, CSOs and some politicians. It is essential that EU takes care of all refugees and asylum seekers that need help regardless of their country of origin. However, the double standard is most likely not the only reason why the EU decided to activate the Directive so far only this one time.

Another important factor is the reason for displacement of refugees is Russian aggression. One of the reasons behind Russian attack on Ukraine was its progressing Western political orientation, EU included. European Union has a direct interest in this conflict, as it is proclaimed by Russia as one of its enemies. (Ciğer 2022) This is important difference when comparing the situation with the crises in 2011 and 2015. EU condemned the aggression immediately and has been supporting Ukraine in many ways as a whole (for example in form of sanctions against Russia) or as individual Member States (for example by providing arms to Ukraine). Therefore, the activation of TPD for Ukrainians is only another form of help to Ukraine during the conflict.

The number of people arriving to EU from Ukraine within a very short period was another important factor in the decision of the Council to activate the TPD. In less than ten days after the start of invasion, more than 650 000 refugees arrived through border crossings

in Poland, Slovakia, Hungary, and Romania. The number was expected to increase even further, the estimation of the Council was that the number of persons seeking international protection would be between 1.2 to 3.2 million. (Ciğer 2022) With this amount of people arriving, the asylum systems of the Member States would be overwhelmed and the applications couldn't be processed properly and in time. (Interview with Employee of European Commission 2023) Also, it has to be considered that the Member States facing the biggest pressure on their asylum systems were mostly Central European states, that did not have any previous experience with large numbers of refugees seeking asylum.

The whole process was significantly facilitated thanks to the pre-existing agreement according to which Ukrainian nationals could cross the border of the EU freely for period of 90 days. The visa-free entry to EU territory made a big difference, when comparing to asylum seekers from other countries, like Syria or Iraq. (Ciğer 2022) Visa-free entry basically created the free choice asylum state system right after the first refugees started to arrive. Because Ukrainian nationals didn't need visa to enter the EU territory, they could move freely through the whole Schengen territory, and could decide in which Member State they want to apply for protection. This helped the Member States that share a border with Ukraine to ease pressure, as part of the asylum seekers decided to continue to other Member States, and it contributed to the balance of efforts. There were concerns from states that are traditionally more appealing for protection seekers, because of better protection standards, that they would have to accept unevenly more refugees. But in the end, they didn't have to face significantly higher number of applicants for protection as other Member States. This is because there are other factors that had impact on the decision of Ukrainian nationals on where to settle and the level of benefits and rights in the country is not always a decisive factor for refugees. Their choice is often influenced by a so-called structural factor, such as geographic proximity, existing family or social networks in the state, language ties, cultural and social proximity, etc. If we also consider these factors, the harmonization of temporary protection standards plays only secondary role to them. In the case of Ukrainian refugees, the data show that the structural factors are indeed the motivation factor, with over 30% deciding based on existence of previous family ties. (Küçük 2023) This causes higher pressure on the countries with already existing Ukrainian diaspora (for example Czech Republic). These are often the countries where another structural factor plays a role - geographic proximity. It is therefore much

more convenient for Ukrainian refugees to settle in these Member States, for variety of reasons and it is unlikely that they would settle in other part of Europe, even if the temporary protection provisions may be more generous elsewhere. (Rasche 2022)

Geographic location and proximity of Ukraine to Europe played an essential role from several different perspectives. First, important aspect was that countries neighbouring with Ukraine were better prepared to take in the refugees and were in better economic situation than Ukraine itself. This is rather rare phenomena when it comes to armed conflicts and wars. When we consider similar situations in other parts of the world, for example the burden sharing in MENA region, it is usually the poor countries that often lack necessary logistics that are taking the largest burden as they share borders with countries of origin. (interview with Verra- Larucea 2023) Also, the people's perception of war is different when the war is happening right behind one's borders, than when it's happening further away. This may have been factor especially for states that share border with Ukraine. In addition, as Ciğer points out, there is no third country to stop the arrival of displaced persons. In the past during the refugee crisis the strategy of the EU was often deterrence through making a deal with third country to stop refugees coming to Union territory. For instance, the EU-Turkey Statement was adopted with the purpose to stop Syrian refugees in Turkey and to prevent their arrivals in exchange for financial support of the refugees in Turkey. (Ciğer 2022)

The interviews conducted during the research confirmed, that another decisive factor in the approach of the Member States that were not usually in support of accepting migrants (Poland, Czech Republic, Slovakia) were also historical ties. While cultural ties, geographical proximity, etc. are for refugees important factors when deciding in what state they should apply for protection, during the interviews the idea of importance of historical ties emerged as well. The Eastern and Central European countries have all similar historical experience with Soviet imperialism. Because of this, majority of public but also politicians tend to be more empathetic towards Ukrainians and their current experience with Russian aggression. This has reflected also in the support of Ukrainian refugees. This factor is important especially when we compare the position of some Central European Member States towards the Council Decisions from 2015 imposing

mandatory quotas (Decision 2015/1601) and voluntary relocation scheme (Decision 2015/1523). Both Poland and Czech Republic are now the Member States with highest numbers of the Ukrainian refugees, but in 2015 they were with Hungary infringed by the Commission before the Court for not fulfilling their obligations under the two decisions. (Küçük 2023) Therefore, we could've see quite radical shift towards refugees in the political arena in both countries. If this is only temporary phenomena is discussed in the next chapter.

Considering the whole situation, the activation of the TPD was the most convenient solution for both the Commission and the Member States. First, it is important to keep in mind the political climate around the topic of migration, that has been very fragile ever since the crisis in 2015 and the debate on quotas, redistribution and solidarity mechanisms. Especially the countries of the Visegrad Group had (and still have) very strong stance on these issues, and even though they showed an incredible solidarity with the Ukrainian refugees, it is very likely that measure different than TPD would never pass the Council vote unanimously. The EU has not been able to create stronger asylum solidarity framework, despite the attempts of the Commission in 2015. At the same time is EU heavily criticized by civil society for its passive approach in helping the migrants and effectively solving issues in migration and asylum area. Through activation of the TPD the Council and Commission managed to deflect the criticism for lack of action but at the same time managed to achieve political consensus and prevented any further divisions between the Member States. The temporary factor in the Directive also helped to achieve political consensus on the activation. While the temporary nature is criticized by many experts and NGOs, on political level it was seen as a welcomed benefit. Another aspect that is by civil society actors seen rather as a weakness than a positive, but on political level probably helped during decision-making is the fact that the Directive sets down only minimum standards. Because of this it was seen by many Member States as a way to have less responsibilities but still comply the international obligations. (Küçük 2023)

The opinions on the activation of the TPD, its effectiveness and the content of the Directive differ, and it is a very complex topic. However, considering the whole picture,

it is important to note that the situation when it was activated was the exact kind of situation the Directive was designed for. The asylum systems of the Member States would probably not be able to deal mass influx of refugees by themselves under normal asylum procedures.

6.7. Future prospects

As mentioned, the TPD is only a temporary solution, and its maximum duration is up to three years. Therefore, after March 2025 it won't be possible to renew the Directive for the upcoming year. In case the war in Ukraine does not end until 2025, there are two possible options how the Member States can deal with the Ukrainian refugees after the period for activation of the TPD expires. The first one is to opt for individual processing of each temporary protection beneficiary and determine the asylum based on individual assessment. This, however, would be very complex procedure and could cause a lot of pressure on the national asylum systems. Another possibility is to recognize the refugee status of temporary protection by a group recognition. This would seem as less complicated option, especially considering that the TPD itself is based on the group recognition of all Ukrainian nationals as adequate candidates for temporary protection. The group recognition has been used as a recognition mechanism in most of the cases of granting refugee status to the refugee population throughout the history. The group recognition could however have political repercussions. The activation of the TPD has been a political decision, and the decision to grant refugee status/asylum to the temporary protection holders would also depend on the political environment at the given time. (Küçük 2023) Ideally there should be a call on EU level that would provide guidelines for the Member States on how to continue after the TPD. If the Member States are left with the decision on their own, there is a risk of further fragmentation of the conditions for the refugees in the Member States.

Czech Republic and Slovakia

Both Czech Republic and Slovakia did not have any historical experience with migration due to their historical development. During the communist regime, there was not any immigration, only emigration of people trying to flee the oppressive government. The historical development had massive impact on the migration policies of both states as well

as on the perception of migration by public. It is important factor especially when we compare the position of Slovakia and Czech Republic with other Member States, that have long term tradition of migration policies. The things changed only after the Velvet Revolution in 1989, when both states had to build their asylum and migration policies from scratch. During the first three years they did it as one state, and after split of Czechoslovakia in 1993 as two separate entities. However, even after the fall of communism and consequent democratisation, both states still did not have to face any significant migratory pressures during the first decades of their existence. So compared to countries in Western Europe, Czech Republic and Slovakia lacked both traditional migration policy and experience with migration. This is an important factor, that needs to be considered when we discuss the approach towards migration and the development of migration policies of both states, because it influenced the whole Europeanisation process of their migration policies, and the shift in their approach in 2015.

The following part of work consists of two main parts – one focused on Czech Republic, one on Slovakia. Both parts first discuss the Europeanisation of migration policies with focus on pre-accession period and the European refugee crisis in 2015, then analyse the current state of migration policies in both states and lastly, it analyses the implementation of Temporary Protection Directive that is in both countries known as Lex Ukraine. The last part then discusses the main challenges during the implementation of the TPD.

7. Czech Migration Policy

The competence over migration policy in Czech Republic has the Ministry of Interior on all the bases. In addition, it cooperates with the Ministry of Foreign Affairs, Ministry of Labour and Social Affairs, and it is supported by other public offices. (Stojanov et al. n.d.) Within the Ministry of Internal Affairs, the office responsible for migration related issues and policies is the Asylum and migration policy department. This department deals with majority of issues related to the asylum and migration, such as work on policies for refugees and international protection, integration, entry, and residence of the third country nationals in the Czech Republic, and suggestions for creation of asylum centres (or other facilities that are supposed to provide help to migrants, refugees, asylum seekers, etc.). The department was established in 2000 by the Ministry of Interior, by merging the Department for refugees and the Department for protection of borders. However, it gained

most of its competencies in 2009 and 2011, when the state started to gradually take away the responsibilities of the Police department and move them to the Ministry of Interior. In 2009 the department took over the permissions for permanent residence, and in 2011 also over agenda of temporary residence. (Ministry of Interior of Czech Republic n.d.)

7.1. Europeanization of Czech migration and asylum policy

The Europeanization of Czech migration policy started after the Velvet Revolution in 1989, i.e., after the fall of communist regime in Czechoslovakia. The most significant changes started in the late 1990s, when Czech Republic became one of the candidate states for the EU accession. The decision to put Czech Republic officially on the list of candidate states led to a series of conversations about necessary changes in migration policy that stemmed from European *acquis communautaire*. In the beginning of the 2000s, the EU already had adopted several migration and asylum policies and continued to work on even further harmonization of migration and asylum. The candidate states therefore had to prepare their legislations if they wanted to access the EU. The so-called EU conditionality was the main catalyst of Europeanization process of Czech migration policy. To comply with EU law, candidate states had to make significant reforms in different policy fields, including migration. In Czech Republic this happened without any significant political opposition. The topic of migration was not salient in Czech Republic at this period, and it was completely depoliticised, therefore there was no actual dispute over the conditions the EU set for the accessing states. Among the most important changes in the migration policy of Czech Republic at the time were for instance visa requirements for citizens of states in Eastern Europe, improvement of standards in asylum law and further harmonisation of this law or strengthening the protection of borders and to focus on the fight with irregular migration. Further Europeanization of this policy field came in 2007 when the Czech Republic joined the Schengen system, which by its nature requires further harmonization of migration and asylum policies, as it secures the free movement of persons within the Member States. (Beger 2020)

Both periods, the pre-accession period, and the period from 2004 to 2015, can be characterized by compliance with the EU law and, due to the EU conditionality and the

need of integration of Czech Republic in the EU institutions, by strong Europeanization. Considering the Radaelli's (2003) classifications, we can say that the Europeanization happened through vertical mechanism, i.e., there was adaptational pressure from the EU to the nation state. Furthermore, we can say that the outcome of Europeanization in this period was transformation because the state accepted the policies suggested by the European Union, correctly transposed and implemented them.

As in the other states of Visegrad Group, a shift in perception of migration occurred in 2015 with the European refugee crisis. While before the topic of migration was not salient in the region, after the crises it became publicly discussed on everyday basis by politicians and the public.

According to Berger (2021), before 2015 the asylum and migration policy was shaped almost exclusively by government and the responsible administration without public attention. At the time the EU conditionality served as a guideline to adopt EU standards in technical and uncontested process. Therefore, in this period the policies were managed in bureaucratic and technical environment that was highly apolitical. (Berger, 2021) The depolarisation of bureaucracy was one of the conditions for accessing the EU, therefore the depoliticised bureaucracy is not the case only for the Czech Republic, but also for other Member States that joined the EU later, especially in the Central Europe region. However, while before the crisis the policy field was managed almost solely by administration, and in line with the EU standards, shift came with strong politicisation of the topic in 2015. Since the European refugee crisis almost all the parties took a restrictive stance towards migration. (Beger 2020)

In their report *Risks and challenges of Czech migration policy in the context of 'migration crisis'*, Stojanov et. al. define three main challenges related to the creation of Czech migration policy: the perception of migration as a threat, orientation on temporary work migration and lack of systemic and coherent approach toward migration. (Stojanov et al. n.d.)

The perception of migration as a threat plays important role in the approach toward migration in Czech Republic in long term perspective, i.e. even before the refugee crisis in 2015. (Stojanov et al. n.d.) The politization of the topic only increased this

phenomenon. In 2017 all parties running for the election of the Chamber of Deputies discussed the migration in their manifesto. However, the issue became salient mainly through public debates, where most of the politicians took a rather restrictive stance towards the topic of migration, especially regarding the decision imposing mandatory quotas. As Berger explained: *“new salience of the policy field provoked an enhanced public contestation of the government when the relocation scheme was announced in 2015”*. (Beger 2020)

The refusal to comply with the EU decisions culminated in the infringement procedure against

Czech Republic, Hungary, and Poland for not complying with their responsibilities under the EU law. In September 2015 the Council passed the decision for quotas on redistribution of asylum seekers. The Member States that voted against this decision were Czech Republic, Slovakia, Hungary, and Romania. Slovakia and Hungary asked for the revision of the decision on the European Court of Justice, but the Czech Republic did not join them. However, it also did not comply with the adopted Decisions. Therefore, in 2017 the Commission started infringement procedure against Czech Republic, Poland, and Hungary for not transposing the Council decisions on relocation and resettlement of refugees. Consequently, the case was referred to Court of Justice of European Union by the Commission. (Berger, 2021) In April 2020 the Court has decided that the states indeed did not comply with their responsibilities under the EU law. Czech Republic (as well as other V4 states) neither joined the voluntary redistribution system that was established in 2019. While according to the Commission the decision of the European Court of Justice is important because it will serve as a precedent for the future, the three Member States have different opinions - because the system of quotas for redistribution of asylum seekers were not in place anymore, the Court decision could not ensure any remedies. (Czech Television 2020)

While the approach of the Czech Republic has been rather restrictive even before the crisis in 2015, the main shift appeared during and after the refugee crisis in 2015. The main reason was that the migration became one of the key political topics, and further restrictions of migration were among the main points of political programmes of both populist and traditional political parties. (Stojanov et al. n.d.) This contributed highly to

the overall negative approach towards migration and asylum. Before 2015 we can talk about strong Europeanization of Czech migration and asylum policy, with the outcome of policy transformation. After 2015 however, we see a shift to negative approach towards strong European influence, but the Europeanization is still there. The difference is that since 2015 the general outcomes of Europeanization fit more under the term absorption, rather than transformation. While the state is still 'europeanizing' its migration policy, if the legislations limit the competencies of the state, the country tries to adjust/modify it. While absorption does fit general approach towards Europeanization of migration policies, in specific cases in Czech Republic we can even talk about inertia, i.e., when state refuses to transpose the European legislation. The clear example is the refusal of Czech government to transpose and implement the Councils' decisions on relocation and resettlement of refugees.

7.2. Present state of Czech migration policy

7.2.1. The Strategy of Czech Migration Policy

The core of Czech migration and asylum policy are the strategy of the Czech migration policy and the migration strategy principles. These documents, available on the website of the Ministry of Interior, are basically guidelines and summary of main priorities of the Czech migration and asylum policy. They were published in 2015, in the context of refugee crisis in Europe and the ongoing debate on quotas and redistribution of refugees in the EU. The Strategy of Czech Migration Policy is the essential document that defines the key priorities of the Czech Republic, sets main objectives in the area on both national and EU level and provides specific instruments to achieve these objectives. (Ministry of Interior of Czech Republic 2015) It is therefore one of the most important documents for analysis of the Czech migration and asylum policy.

The aim of the principles is to clearly establish the position of Czech Republic, by formulating its priorities in the field of migration, integration, and international protection. The document also aims to open a discussion and improve the level of information on the topic both on the academic level, but also in the public spaces. The document contains six principles altogether, and one main principle that is marked as a

'cross sectional element of the principles': the safety aspect of migration. Therefore, all the principles are related to the safety, and even their order in the document reflects the priority in relation to the safety aspects of migration. Nonetheless, the principles also reflect on other important issues related to the topic, such as integration of foreign nationals, irregular migration and return policy, international protection, outside dimension of the migration, free movement of persons within the Schengen area, cooperation, and interconnection with other EU policies. (Ministry of Interior of Czech Republic 2015)

The principles state that Czech Republic will:

1. will fulfil the obligation within its migration policy to secure peaceful coexistence of its citizens and foreign nationals, and through effective integration, it will prevent the emergence of negative social phenomena;
2. will secure the safety of its citizens and effective law enforcement in the field of irregular migration, return policy and organized crime associated with people smuggling and human trafficking;
3. will meet its commitments in the area of asylum and provide flexible capacity of its system;
4. will strengthen its activities in order to provide assistance to refugees abroad and to promote the related prevention of further migration flows, including the support for the development of countries in managing migration crises;
5. will promote the maintenance of the benefits of the free movement of persons within the European Union and the Schengen Area;
6. will support legal migration which is beneficial to the state and its citizens so that the Czech Republic can respond flexibly to the needs of its labour market and reflect the long-term needs of the state;
7. will fulfil the international and EU obligations in the field of migration, and will actively participate in the all-European debate and search for common solutions.

These seven principles are the basis for Czech migration policy strategy. The aim of this strategy is to define clear, balanced, and flexible migration policy of the Czech Republic focusing on strengthening the positive aspects of migration whilst combating the negatives and risks. (Ministry of Interior of Czech Republic 2015) The strategy is

designed with the respect towards the common policies proposed or regulated by the EU, for instance international protection (asylum), protection of external borders of the EU and return policy. On the other hand, the document points out the need for relatively high degree of discretion for the Member States in other areas of migration and asylum, especially legal migration area and integration of foreign nationals. Therefore, the strategy takes into consideration both the situation at EU level, and specific needs and available resources of the state. Furthermore, the document highlights the need of all the EU common rules being adhered by all partners. Therefore, one of the priorities of Czech Republic is to comply with the common EU rules at every level.

It proposes grounds for effective migration policy and its successful implementation. The four main points are to: i) to receive legal immigrants and facilitate entrance procedures, taking into account the need to maintain competitiveness in the global economic environment; ii) to ensure the return to the country of origin while ensuring the non-refoulement principle or the access to the international protection to the migrants who do not choose a legal entry in the European Union intentionally or unintentionally, forced by external circumstances; iii) to secure a degree of integration of the foreign nationals permanently residing in the territory of the Czech Republic which will prevent security risks and negative social phenomena and will lead to a social cohesion and a protection of the rights of members of the society and iv) to actively pursue the external dimension of the migration policies, including the assistance to refugees and the promotion of the development of the source and transit countries of migration. (Ministry of Interior of Czech Republic 2015)

Integration

The first point of the strategy is integration. Integration in Czech Republic is based on the strategic document from 2000 known as Concept of Integration of Foreign Nationals. The document describes the integration policy as well-balanced and non-problematic in long term. The policy consists of network of regional centres and projects (on both national and regional level) that are being consistently monitored by the Ministry. Additionally, the document acknowledges important role of NGOs and CSOs, that are also very active in the process of integration of foreign nationals. The document defines as one of the main objectives at the national level to keep developing the integration policy on all the levels.

Other objectives are for instance prevention of security risks and social exclusion of foreign nationals or spread of awareness on the issues of migration and integration between both foreign nationals and the public. The strategy emphasizes the fact, that the integration is one of the areas of migration policy with lower level of harmonization within the EU, which is perceived as positive. Accordingly to this stance, the first objective of the strategy at EU level is set - to maintain the current level of harmonization. (Ministry of Interior of Czech Republic 2015) This reflects the position of the Czech Republic towards many issues related to migration not only in the period when the Strategy was published, but especially after the peak of migration crisis in Europe. However, it can't be said that the Strategy rejects European cooperation on the issue; the second objective at the EU level is to develop practical cooperation within the EU, focusing on promotion, sharing of good practice, and securing of the financial support from the EU funds that are established for this area.

The strategy specifies nine instruments that are supposed to help achieve the objectives. They are for example update of the Concept of Integration of Foreign Nationals (last time updated in 2011), strengthening the activities in exchange of information and experience, creation of Centres for Integration of Foreign Nationals (especially at local levels), and more. (Ministry of Interior of Czech Republic 2015)

Irregular migration and return policy

The second point is focus on irregular migration and return policy. More specifically, the need of the Czech Republic to have consistent approach in combating irregular migration and in returning of third country nationals to their territory. Czech Republic had received less than 1000 asylum applications in 2014, and therefore was not facing a high numbers of asylum seekers arriving in its territory compared to other Member States. (Asylum Levels and Trends in Industrialized Countries 2014) Nevertheless, the fight with irregular migration and return are one of the highest priorities of the Czech migration strategy. According to the document, the high prioritization of this point stems from the fact that migration is a constantly changing dynamic policy area and there are very limited possibilities to correctly predict the development of migration. For this reason, the strategy calls for flexible and consistent approach of Czech Republic, so if the situation becomes unstable, the state can react swiftly and in an adequate manner. Prevention of

migration is defined as one of the main areas of focus, especially in long-term perspective. Several instruments to increase prevention were defined: effective pre-entry control and return policy, cooperation with third countries, fight against human trafficking and consistent detection and punishment of the organizers of irregular migration. Furthermore, the document presents other important measures to prevent irregular migration, for instance effective interconnection with the area of awareness of legal migration options, policy of returns, and cooperation with third countries. The main objectives at the national level are to secure the safety of the Czech citizens through effective prevention and combat with irregular migration, criminal prosecution of the human traffickers, and maintaining both the quality of decision making regarding the visa procedure and the effective return policy, while respecting human rights and dignity. The EU level objectives focus mostly on strengthening the prevention measures and the measures to combat irregular migration in the EU territory, through enhancement of protection of EU external borders and through cooperation with third countries especially based on negotiation and implementation of readmission agreements. The defined instruments are cohesive with the objectives on both levels. A significant part of the instruments is based on strengthening of different areas, especially related to protection. For instance, strengthening of residence controls, of the monitoring of return operations, and strengthening of the control mechanisms used before the entry of third country nationals in the Czech territory. Another important instrument mentioned are the focus on promotion of legal migration options (and the risks associated with irregular migration) and international cooperation in the field of detection and combating of irregular migration. Special attention is paid to the issue of human trafficking and the possible measures to prevent it and support the victims of such activities. (Ministry of Interior of Czech Republic 2015)

Asylum

The third point of the strategy is the asylum. The asylum system of Czech Republic, as of other Member States, is based on CEAS and complies with the rules adopted by the EU. In the migration and asylum policy area, the rules for granting asylum are highly harmonized across the EU and regulated by different EU legislations. In the field of asylum, the main priority is to keep a flexible asylum system that can react to the

dynamics of refugee flows and guarantee sufficient capacity to receive asylum seekers. The objectives on the national level regarding the asylum are standard and in compliance with both national and EU legislation - flexible capacity, dignified treatment of asylum seekers, refugees and persons under subsidiary protection, improvement of quality and effectiveness of Czech asylum system and implementation of the Concept of the National Resettlement Programme.

The objectives for EU level also put emphasis on the cooperation with EU institutions and with other Member States. At the period when the strategy was published, solidarity instruments (like quotas for redistribution of refugees) were discussed topic at the EU level. While the strategy sets cooperation as one of the main objectives in the asylum area, it rejects any introduction of compulsory solidarity instruments. This can be considered in line with the long-term political approach in Czech Republic towards compulsory solidarity mechanisms and quotas.

Six instruments to achieve the objectives in the asylum area were defined. Big focus is put on the preparedness of the country for potential high fluctuations in the number of asylum seekers arriving to Czech Republic and overall improvement of capacity of the asylum system. This is supposed to be achieved by the creation of preparedness plan by the Ministry of Interior, modernization of the information system, implementation of joint training of the EASO and implementation of the resettlement programs. Another important point is the cooperation at the EU level and compliance with the EU laws. The main instruments in this area are the completion of the legislative process for the amendment of the Asylum Act and monitoring of the debate in the EU about the possible revision of CEAS and analyse its function with focus on the Dublin system. (Ministry of Interior of Czech Republic 2015)

Assistance to third countries

One of the most important points in the migration and asylum policy at both the EU and national level, is the assistance to the refugees in the third countries. This is perceived as a way to lower the migration flows and numbers of refugees arriving to the EU territory, and to support and protect the refugees at the same time. The support is directed at the countries of origin, third countries that host large numbers of refugees in their territory and EU countries that receive significantly larger numbers of refugees than other Member

States. Czech Republic has been involved in the projects to support these countries both on the EU level but also on the basis of bilateral agreements with some states. In 2015 government introduced Permanent Programme with the aim to help the third countries handle the refugee situation.

As for the objectives in this area, the Czech Republic aims to establish projects of assistance in the regions of origin, participate in the programs established by the EU and promote joint EU projects in the third countries. The objectives also highlight the comprehensive approach that is interconnected with other policies on both national and EU level. The instruments' part points out the need to focus on the interconnection and better coordination of the external dimension of migration policy at different levels. It also highlights participation of Czech Republic in various projects and programmes, such as Regional Development and Protection Programmes of the European Union or Programme of Medical Evacuation. (Ministry of Interior of Czech Republic 2015)

Free movement of people under Schengen system

Because the migration flows and policies have impact on the Schengen area and vice versa, the fifth point in the strategy is the free movement of people and Schengen cooperation. The Schengen conditions are highly harmonized by the EU, and the Czech Republic has stated interest in supporting the efforts for better implementation of these rules, especially since the Czech legislation in this area stems from the EU legislations. This point highlights the need to keep the movement within the Schengen space as free as possible, as it is in the interest of all the states, but also points out the need to extent the protection on the external borders of the EU. This stance is reflected also in the objectives, that at the national level aim to promote Schengen cooperation, consistently implement and comply with the EU law and Schengen standards and prepare Czech Republic for Schengen evaluation. At the EU level, the main objective is to maintain the current level of freedom of movement, while focusing on protecting the external border. The instruments consist of implementations of EU acts or amendments and compliance with the EU law in the area, and the fulfilment of the National Schengen Plan 2014. (Ministry of Interior of Czech Republic 2015)

Legal Migration

The legal migration is another point of the strategy. Czech Republic has been targeted mainly by foreign nationals coming from Vietnam, Ukraine, and Russia. While the legal migration certainly is among the groups of EU policies with higher level of harmonization, the Member States still enjoy a certain level of flexibility, especially when it comes to economic migration. Czech Republic has a legal migration policy based on the principles that were approved in 2010. This policy allows for flexibility to the needs of the state. Because of significant benefits of legally migration especially for state economy. The document highlights its importance and positive impact. Accordingly, the overall objectives at the national level are to support and to improve the legal migration policy. For instance, the flexible adjustments of the policy with the outputs of the regular strategic discussion on the needs in this field, to achieve desirable volume of legal migration (just enough for absorption capacity of Czech Republic), and implementation of EU laws governing the field of legal migration. The EU level objectives are to high degree related to keeping the level of harmonization of legal migration policies as it is - limited. In line with this is also the goal to maintain the decisive role of the Member States in the field of legal migration and employment (including the right of the Member States to determine the volume of the migration).

The instruments are mostly different programmes, projects and strategic documents that are supposed to either attract desirable migrants from third countries (for example some highly skilled workers) or support the legal migrants coming to Czech Republic. In addition, there are also various amendments to be transposed into law or implemented, to improve the system of receiving legal migrants and their conditions. (Ministry of Interior of Czech Republic 2015)

Implementation of the EU policies

The EU plays a significant role in the development of migration and asylum policies of the Member States. In the migration strategy, Czech Republic has acknowledged the importance of implementing the existing legal obligations in the field of asylum and migration, so the common policies in this area function effectively and well. Czech Republic also aims to contribute to proper implementation of majority of proposed voluntary provisions under the New Agenda on Migration. However, the document also

states that the Czech Republic will participate in the discussions on possible review of some of these obligations and in debates on new solutions. According to the strategy, there is need to maintain the flexibility as much as possible, especially with the adoption of measures that would alter the foundations of existing common asylum and migration system. It also remains pragmatic towards the redistribution of refugees, quotas, or other balancing mechanisms that were debated at the time. Nonetheless, the objectives regarding this point are all related to the cooperation with the EU and other Member States. For instance, constructive policy contributing to the solution of problems in the area, cooperative approach to seeking common practices in the EU, solidarity with other Member States, fulfilment of international obligations in the field of migration and efficient use of financial resources from the EU.

The instruments are assessment of the EU common policies and of their impact on Czech Republic, active representation of the Czech Republic in the EU institutions and engagement in practical cooperation at international and EU level. (Ministry of Interior of Czech Republic 2015)

External migration policy as a priority

Czech politicians are generally more in favour of helping in the third countries that face high influx of refugees and in the countries of origin, than in accepting refugees and asylum seekers in their country. In this context, this strategy is seen as an effective prevention of mass influx of refugees in the territory of the EU. (Stojanov et al. n.d.) The external dimension of migration policy is an important component of Czech migration policy, as it is also stated as one of the priorities in the Strategy of Migration Policy. In 2021, the Approach of the programme Help in Place was approved by the Ministry of Interior. The main aim of this programme is to support the third countries with high numbers of refugees. According to the Ministry of Interior, the main part of the project consists of financial support of projects related to strengthening the protection of borders, support of returns of refugees and reintegration, and fight against irregular migration . (Ministry of Interior of Czech Republic n.d.) While the Programme existed also before, in 2021 it was reassessed by the Ministry of Interior, and four main priorities were set. The priorities are divided by the geographical locations, according to the main routes of migratory flows to EU territory. The first priority is the Eastern Mediterranean and

Western Balkan route, that comprises the countries in Near East and Western Balkans. In the Eastern Mediterranean, the countries of highest interest are Afghanistan and Lebanon, with the main goal to help with stabilization of the political and economic situation to prevent humanitarian catastrophe. At the Western Balkans route, as the most important countries were defined Bosnia and Herzegovina, Northern Macedonia, and Serbia. The second priority are the countries that share the borders with the EU. This includes Ukraine, countries of North Africa and Belarus. The special attention in the Programme is paid to Belarus and to monitoring the situation at Belorussian borders with the Member States. As the third priority was defined the Central Mediterranean route, with the biggest attention paid to Libya and Niger, and the support of these states in protection of their borders. Lastly, the Western Mediterranean route is set as a fourth priority. Czech Republic promised financial support of the Team Europe initiative for the support of protection of this route. (CZDEFENCE 2022) After the full-scale Russian invasion of Ukraine the programme also provided financial assistance to secure immediate help to Ukraine. (Ministry of Interior of Czech Republic n.d.)

From this programme and the focus on external migration in the Strategy, it is clear that the external migration is one of the main components of the Czech migration and asylum policy. This can be related to the overall sense of fear of migration in the Czech Republic; in that climate it is easier for politicians and the state to support other countries rather than dealing with the influxes of migrants in the state. While it is without a doubt important to provide support for third countries and countries of origin to deal with the high influx of refugees, it can't be the main, or only, solution. Also, experts tend to be critical towards this strategy, especially regarding its effectiveness and understand it mostly as a political strategy to legitimize the rejection of refugees arriving to Europe. (Stojanov et al. n.d.)

7.3.Lex Ukraine

The provisions stated under the Temporary Protection Directive were in Czech Republic adopted as a series of legislative measures known as lex Ukraine, a special legislation designed for managing the high influx of refugees from Ukraine. Lex Ukraine sets down the standards for temporary protection in Czech Republic, the scope of people who are eligible for the temporary protection, the standards for granting the accommodation,

access to healthcare insurance, etc. So far it has been novelized five times since its adoption, modifying the temporary protection standards in the terms of accommodation, social welfare, and more. (Ministry of Interior of Czech Republic n.d.)

According to lex Ukraine, refugees eligible for temporary protection are the citizens of Ukraine who left Ukraine after the February 24th, or those who were previously living in Ukraine legally, stateless people and people with international protection status who lived in Ukraine before the February 24th, and the family members of all the groups above. Additionally, eligible for temporary protection according to Czech law are also people with other nationality, who are unable to return to their country of origin for safety reasons. (Lex Ukrajina – základní přehled 2022) Czech Republic also provided all the temporary protection holders with health insurance for free. The health services were available since the very first arrivals of the refugees. In accordance with the TPD, all the temporary protection beneficiaries have free access to labour market and can participate in retraining or engage in self-employment. They will also be entitled to unemployment benefits. The humanitarian allowance was set for 5000 CZK (around 200 EUR), and it may be granted repeatedly for a period of five months. ('Lex Ukraine' law package enters into force 2022) Regarding the accommodation, especially during the first months, a very important role was played by private actors and households who provided accommodation for refugees in their houses or apartments. Because of this, a solidarity allowance for hosts was also established, for which the people who provided free accommodation to the temporary protection holders were eligible. ('Lex Ukraine' law package enters into force 2022)

In June 2022 lex Ukraine was followed by two novelizations of the lex Ukraine, known as lex Ukraine II and III. The main goal was to secure the continuation of provision of help to temporary protection holders, and at the same time allow Czech government to stop the state of emergency. (Lex Ukrajina II, Ministry of Interior of Czech Republic 2022) It also introduced some changes for easier monitoring of the numbers of temporary protection holders in Czech Republic and decreased some of the financial benefits. The main changes regarded conditions for denying of the request for temporary protection and for the forfeiture/expiration of the temporary protection, new rules for health insurance

and other benefits, the financial support for accommodation, and the measures for the citizens of Russia or Belarus. (Summary of Lex Ukraine II 2022) According to the lex Ukraine I, the temporary protection holders had free access to health insurance for the period of 360 days since their arrival, the novelization cut this period for 150 days. After, they must register at the local authority or monthly pay for their health insurance. The selection process for monthly allowance was also modified, and the temporary protection holders who are living in the state accommodation with food and basic hygiene needs for free, are no longer entitled to the allowance. (Summary of Lex Ukraine II 2022)

Lex Ukraine IV was adopted in November 2022. The main reason for novelization was to extend of the temporary protection until March 2024. It also included changes in the rules for obtaining qualification in practicing psychology in the Czech Republic, the rules for registration of Ukrainian children in kindergarten and the rules for compulsory education for the next school year. (Ministry of Interior of Czech Republic 2022)

The latest novelization, lex Ukraine V, so far contains the biggest changes for the temporary protection holders. Most of the provisions of this novelization are in effect since July 1st, 2023. The main goal of the novelization is to support persons who are living in state provided accommodation, so the temporary protection holders who already work won't stay in these accommodations. In other words, to 'push' the Ukrainian refugees towards individual rent accommodation. According to the government, this should lead the temporary protection status holders to participate more in the labour market. (Consortium of Migrant Assisting Organizations 2023a) Major changes are especially in the field of accommodation, especially the emergency housing. Emergency housing is financed by the state and provided by the regions, usually consisting of hostels, guest houses or hotels, but also camps or apartments. The emergency housing is provided to the temporary protection beneficiaries for free and the owners get paid from the state 350 CZK per person for each night. The lex Ukraine V tightens up the conditions in the emergency housing; it limits the period during which temporary protection beneficiaries can live in emergency housing for free on only 150 days since obtaining the temporary protection. After this, temporary protection beneficiaries can either pay full rent (if the capacity of the facilities allows it), or they must move out. The only exception are the so-called vulnerable persons, who can get free accommodation also after period set by the

state. As vulnerable persons are considered children under 18, students who study in Czech schools under 26 years, senior citizens over 65, pregnant women, parent that takes care of children younger than 6 years (only one per family), disabled persons who can prove their disability and the persons taking care of them. Additionally, the apartments that are supposed to serve for permanent living, can't be used for emergency accommodation anymore. This means that the temporary protection beneficiaries have to move out or have to change the state support for regular tenancy. (Consortium of Migrant Assisting Organizations 2023b) Second important change is the so-called humanitarian allowance, that was before set to 5000 CZK per person, and after 6 months of stay in Czech Republic reduced on the level of living wage (4620 CZK per adult and 3320 CZK per child). The decision on granting the allowance depends also on other factors, such as income of the temporary protection beneficiary or the costs of housing. After the novelization the humanitarian allowance consists from two parts - amount for securing the basic necessities and the costs for housing (the costs for housing are however do not reflect the real costs of accommodation, but the amount that is set by the state). (Consortium of Migrant Assisting Organizations 2023b) In a nutshell, these changes mean that a lot of temporary protection beneficiaries living in Czech Republic will lose their access to the allowance. This will affect for example temporary protection holders who are paying the market price rent, but the money they make barely covers the rent, and therefore are dependent on the allowance to cover other necessities for living. (Consortium of Migrant Assisting Organizations 2023a)

The Consortium of Migrants Assisting Organization criticized the changes in the novelization. According to the Consortium, the changes in the novelization were prepared without real understanding of the needs of temporary protection beneficiaries and the providers of accommodation. Instead of help, the lex Ukraine V may cause the further economic problems for the temporary protection beneficiaries who are already amongst the poorest. While the goal of the novelization is to increase the participation in the labour market, it will probably result in a higher number of temporary protection holders working in the 'grey zone'. It is necessary to consider the fact that the Ukrainian refugees already have enough motivation to work, as they need wages to support themselves. However, there is number of obstacles, they have to face when accessing labour marker (for example the language barrier), and therefore they have to opt for unqualified jobs

with very low wages, that usually can't cover even the price of the market rent. Pressuring the temporary protection holders may lead to increase of the number of people working in low qualified, low-income jobs instead of fully integrating in Czech labour market and using their full potential. Another problem will have the groups of people who can't work but are not qualified under the 'vulnerable person' category. For instance, traumatized persons, oncological patients, or persons with psychiatric diagnoses. These groups of people are excluded from the financial state aid even though they are not able to participate in the labour market. Lastly, another criticized point is the cancellation of allowance for the so called 'solidarity households', i.e., the households that accommodate the Ukrainian refugees in their own houses/apartments and obtain financial contribution from the state. Now, they have to switch for regular rent contract with the temporary protection holders, even though they often accommodate the poorest refugees that are not able to afford to cover market rent price and energy costs. (Consortium of Migrant Assisting Organizations 2023a) This means financial and administrative complications not only for the Ukrainian refugees but also for the solidarity households, that are the people who by providing their houses and apartments help significantly to the state to manage the mass influx of refugees.

7.3.1. Implementation of lex Ukraine

Initial reaction

Czech Republic was one of the main destinations of the Ukrainian refugees that fled to Europe after the beginning of the war. Overall, Czech Republic accepted almost 500 000 Ukrainian refugees.

The initial reaction of the state was fast and quite effective, especially considering the high numbers of refugees arriving in a very short period. Czech government defined three main phases of dealing with the refugee crisis; the first one was the immediate humanitarian aid and provision of safe space (first 30 days), the second adaptation and integration (30 to 180 days) and the third is the long-term solution (180 to 360 days). (Strategic Priorities of Government of Czech Republic 2022) The first phase was mostly focused on managing the logistics, registration, and provision of humanitarian assistance to the refugees (accommodation, healthcare, food, etc.). The amount of solidarity towards

Ukrainian refugees in Czech Republic was unprecedented and is one of the reasons behind the successful management of the first weeks of the war. Of course, the state played a big role, but without the support of NGOs, regions, volunteers and public, the situation would be much more difficult to manage. (Strategic Priorities of Government of Czech Republic 2022) The Ministry of Interior and the Fire Department of Czech Republic were the main actors in managing the crisis. A *UK Points* (or one-stop service points) were created across the country, which proved to be very beneficial in the organization of the refugees. The one-stop service points were established in several Member States to deal with the pressure of mass-influx. In Czech Republic, the points were led by the fire department and the Ministry of Interior, with the support by the police department and the volunteers. According to the Member of Parliament Martin Exner, the efficiency of the *UK Points* was indispensable, especially during the first weeks. Through them refugees had access to immediate assistance (registration, accommodation, social and health insurance, financial aid) within dozens of minutes upon their arrival. (Interview with Exner 2023)

Long term challenges

Czech Republic faces a record number of refugees in history, and compared to other Member States, Czech Republic accepted the highest number of refugees per capita - almost half a million. The initial response was from large part managed thanks to the mobilization of Czech society and NGOs. Essential role was also played by the regions, and local authorities. Czech Republic still faces significant challenges concerning the integration of the refugees.

The first important area is, as in many other Member States, the accommodation. As already discussed, a significant amount of accommodation was provided by Czech society, thousands of Ukrainian refugees stayed in Czech households. This, however, is an example of very temporary solution. While the accommodation was for free, some of the cases there were many issues. According to one of the respondents, there was number of cases when the refugees had to pay for utilities in their accommodations. This happened not only in private households that hosted the refugees, but also in places of common living, for instance dormitories. Another issue the respondent pointed out was the big difference in quality of the accommodations. There were several cases when the refugees

were placed in the accommodations very far from urban/rural areas, without any means of transport or amenities in reachable distance. This highly complicated also other factors of integration, for instance access to the labour market. Other example is that some of the dormitories where the refugees stayed during the winter season, were without heating. Therefore, some of the accommodations did not provide for the basic human needs. (Interview with Respondent 1 2023)

The Czech government is aware of the need to provide more long term, stable housing to the temporary protection beneficiaries, and the solution was provided in the newest novelization of lex Ukraine in June 2023. As already mentioned, the aim of the modifications in access to accommodation and of the cancellation of financial aid for the hosting households, is to 'push' Ukrainians towards rental market. However, there is a lot of critics of this solution. Jelínková in the interview determines the accommodation as one of the main failures of the implementation process, and her main point of criticism is lex Ukraine V. According to this respondent, there is thousands of persons who will stay without places to live, because the government didn't prepare any plans to provide other kind of accommodation. Another problem is the fact that while the vulnerable groups are defined in the novelization, it may be difficult to prove for them that they indeed belong to one of the vulnerable categories. (Interview with Jelínková 2023) On the other hand, the respondent from Commission sees it more like a necessary step towards further integration of the Ukrainians, especially when we compare it to accommodation system in Slovakia. However, the respondent also stated that it is impossible to know the implications of this novelization yet. Because lex Ukraine V was adopted in the beginning of summer, many of the temporary protection beneficiaries returned to Ukraine soon after the new rules were implemented, or even before. So, according to the respondent, we will see the real implications only in September, when the people return from Ukraine. Therefore, the situation will also depend on the number of people that return, and that decide to stay in Ukraine after the summer. According to the respondent, so far there have not been any cases of people who would end up on the street because of the new rules. (Interview with Employee of European Commission 2023)

Another issue is the access to labour market. According to Jelínková, it is one of the main problematic areas, alongside the accommodation. While the State is seeing it positively

because the employment rates are high, it is important to also consider the kind of jobs that the temporary protection beneficiaries in most cases have. The Czech Republic didn't use the full potential of the Ukrainian refugees, who are often highly qualified and educated. This will have negative implications on Czech Republic from the long-term perspective. (Interview with Jelínková 2023) Because of the difficulties the temporary protection beneficiaries face to access the labour market, Ukrainians work for wages that can be even lower than minimal wage. This has negative implications on both sides - the Ukrainians who do not earn enough money to secure their basic needs and can't use their full potential, and the state that has no incentive to invest in automatization, because the labour force is significantly cheaper. (Interview with Jelínková 2023)

Another sector under pressure is healthcare. In this area, the opinions of the respondents differ. Czech Republic provided free general healthcare insurance for the first 150 days to all temporary protection beneficiaries, which is overall seen as a positive step. According one of the respondents, healthcare is one of the main issues for the Ukrainian refugees. Some of the people experienced denunciation of healthcare because they didn't speak Czech and were told by the doctors to come only with a translator, because of the language barrier. The main problem was however the access to general practitioners. Most of the Ukrainians have experienced difficulties when they were trying to register to general practitioners. (Interview with Respondent 1 2023) This is caused by the overall lack of practitioners, which was a problem in Czech Republic before the arrival of Ukrainian refugees, and it became significantly more difficult. Another respondent, Jelínková, evaluated the decision to provide the healthcare insurance very positively, even though it was only for period of 150 days. She also stated that regarding the healthcare, it was very beneficial that some of the doctors already had experience with Ukrainian patients, because in Czech Republic was large Ukrainian diaspora even before the full-scale invasion. Concerning the lack of general practitioners, her opinion was in accordance with the other respondents - it is a long-term issue, and the situation got worse with the arrival of Ukrainian refugees as the demand became even higher.

Regarding the education, the situation is according to respondents better than at Slovakia. This was mainly because there were already some bases for integration of foreigners into

the education even before the arrival of Ukrainian refugees. After years of lobbying, in 2021 several improvements were made in the education system of foreigners, for instance creation of educational material or choosing of several schools that provided education with Czech as a second language. This was achieved by active participation of public sector, but it was heavily supported also by Pedagogical Institute. Thanks to the previous reform of the education system for foreign students, there were already quite stable basis to build on with the arrival of Ukrainian refugees. This is an example of a need for long term, strategic planning of integration of foreigners; in the sectors that were not neglected by the state before was the situation significantly easier to manage even during the mass influx of refugees. (Interview with Jelínková 2023) However, there were still some issues, especially regarding the capacities of schools but also childcare options, such as nurseries or kindergartens. According to report published by European Union Agency for fundamental Rights, in June and July of 2022 over 62% of children of two to six years did not attend nursery or kindergarten, in most of the cases due to the lack of capacity. (European Union Agency for Fundamental Rights 2022) Besides the lack of capacities, there are also other factors that may play a role in the lower attendance of Ukrainian children in schools. For example, many did not participate in the classes not because the flaws in the system but because it was new and unknown environment for them. (Interview with Exner 2023) It can be said that, most likely, the lower attendance was a combination of all these factors and more.

8. The migration and asylum policy in Slovak Republic

The area of migration is in Slovakia under the competence of three ministries: Ministry of Interior, Ministry of Foreign Affairs and the Ministry of Labour, Social Affairs and Family. The biggest share of the competences has the Ministry of Interior, with two important authorities: the Migration Office and the Authority of border and foreign policies of Ministry of Interior. (Guličová and Bargerová n.d.)

The Authority of border and foreign policies manages the organizational structures regarding protection of the state border, fights irregular migration and people smuggling,

border controls, residence permits for third country nationals and oversees the adherence of the Dublin regulations.

The Migration Office is an authority responsible for overall management of migration and asylum, especially for the persons who are applying for some form of international protection (asylum, temporary refuge, etc.). Its main functions are decision-making about granting the asylum, or other form of protection, securing the basic care for asylum seekers as well as securing the access to the accommodation, to labour market, language courses, education, and social and healthcare services. The Office also cooperates with the Office of High Commissioner of the UN for refugees, and with non-governmental organizations on national level. Further, it participates on the creation of migration policies of Slovak Republic. (Guličová and Bargerová n.d.) Additionally, the Ministry of Labour has a department of migration and integration of foreigners, which coordinates and manages the issues related to the work migration and integration and is responsible for creation of policies in the field of work migration and integration. The Ministry of Foreign Affairs is active mostly through the representation organs of Slovakia in foreign countries, by providing visas and by assisting with the readmission agreements, voluntary returns, and deportations. (Guličová and Bargerová n.d.)

However, essential role is played also by NGOs and international organisations. Number of NGOs in many ways replace the state in areas like legal advisory centres, integration, education, social work in asylum camps, and much more. These NGOs are for instance CVEK, Human Rights League, Milan Šimečka Foundation, and more. The most active international organization in Slovakia in this policy field is the International organisation of Migration (IOM), that has a lot of responsibilities that should be covered by the state as well. Therefore, it is important to note that NGOs and international organizations have an important role in the migration policy, and in many cases, they supply for the state that is not effective enough in dealing with all the challenges the migration and asylum pose. (Filipec and Borárosová 2017)

8.1. Europeanization of Slovak migration and asylum policy

Since split of Czechoslovakia in 1993, Slovakia had to overcome significant changes in the policy field of migration and asylum policies. Similarly to the case of Czech Republic, during the pre-accession period from 2000 to 2004 the Europeanization was much stronger than during the 1990s. This was caused mainly by the conditionality principle, as the Slovak Republic had to adopt new reforms and legislations in the field of migration and asylum policies to access the EU. Despite this, during this period there was not adopted any document that would redefine the migration policy of Slovak Republic. The Slovak lack of focus on migration policies was reflected also in the document Negotiation position of Slovak Republic, that in regard to migration stated: “the extent of international migration in Slovakia is negligible”. (Filipec and Borárosová 2017) So, while there has been Europeanisation to a certain degree, as Slovakia had to adopt certain legislations to access the EU, it was more about adopting on the paper the official legislations that the EU wanted, rather than implementing these legislations in practice and focusing on creating a stable and effective migration policy.

So, while the pre-accession period was a first step towards europeanized migration and asylum policy, the period after the accession of Slovakia to the EU was followed by significantly stronger Europeanization. After the accession the differences between Slovak and European migration policy became too visible, so there was a need for significant reforms in the Slovak migration and asylum policy field. (Filipec and Borárosová 2017) We can say that the Europeanization was stronger after the accession to the EU, as the Slovakia started to implement European legislation into national law, adapt domestic policies and also adapted the institutions of the migration and asylum policy (by creating specific offices to deal with migration and asylum issues). (Práznovská 2020) The problematic area was especially the application of migration policy in practice, lack of personnel and overall problem with coordination of migration policies (this remains a challenge to this day). (Filipec and Borárosová 2017) One of the most important steps in this period was adoption of the Conception of the Slovak Republic Migration Policy. This document was a response to a need for a more comprehensive document on Slovak migration policy that arose after joining the EU. (Práznovská 2020) This document was adopted in 2005 with the aim to fill the gap in the migration and asylum policy. In 2007 Slovakia joined Schengen, which meant further Europeanization.

At the same time the focus shifted mainly on protection of external borders, and fight against irregular migration and human trafficking, which led to neglect of other important parts of migration and asylum policies. (Filipec and Borárosová 2017) Consequently, after 2010 Slovakia adopted the Migration Policy of the Slovak Republic with a view to 2020, that was later replaced by Migration policy with a view to 2025. These documents updated and modernized Slovak migration policy and had incorporated provisions from the EU. So, there was a reorientation of the direction and shape of the national policy, so the European policy became part of national policy. Therefore, we can talk about significant Europeanization of the area. Considering the classification by Radaelli (2003), in this period we can talk about transformation of Slovak migration policy because the Europeanisation was very visible, and there are deep and significant changes in the national legislation. Furthermore, the state accepts the European suggestions and legislations overall as they are, without significant criticism.

Radical shift in approach towards migration occurred in 2015, with the European refugee crisis. While until 2015 the Slovak approach towards migration could be characterised simply as 'passive or reluctant', year 2015 marked a begging of a new approach towards migration, especially in the political arena. During the refugee crisis and debate in the EU about possible solutions, in consistency with other countries of the Visegrad group, also Slovakia persistently refused the mandatory redistribution and other mandatory solidarity mechanisms. The topic of migration and common European solutions to these issues was widely used especially by the so-called alternative media, that are very anti-European oriented. Additionally, it is important to note the overall approach towards migration in Slovak society was rather negative or neutral, mostly due to the overall lack of experience with immigrants in Slovakia. This feeling was fuelled by media and political representation of Slovakia at the time, which resulted in high opposition to common European solutions on migration and asylum issues as well as in general anti-European moods in Slovak society. Politicians swiftly used the anti-immigration moods in the society in their favour. Several parties adopted anti-immigration rhetoric, most visibly the Direction - Social Democracy and People's Party our Slovakia, but also other parties in Slovak parliament, for instance Freedom and Solidarity, Christian Democratic Movement, Ordinary People and Independent Personalities, Slovak National Party and

Slovak Democratic and Christian Union. (Školka 2020) The Slovak position towards common migration solutions became the most visible after the Council in 2015 adopted a Decision that provided for redistribution of asylum seekers from Greece and Italy. Slovakia and Hungary contested the Decision, saying it is in violation with the EU law. In 2017 the Court has dismissed the action, affirming the legality of the Decision to establish a mandatory redistribution of the asylum seekers. Slovakia has accepted the ruling and has pledged to accept more refugees, although maintaining its sceptical position towards the mandatory relocations. However, because of the eventual cancellation of the quotas, Slovakia has not accepted any significant number of refugees. (Nguyen 2017) Additionally, Slovak position was also reflected in several proposals presented in Council of Ministers. Namely the Proposal establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary and same proposal for the benefit of Italy and Greece. Both proposals required to relocate number of asylum seekers between the Member States, Slovakia included. Slovakia (alongside Czech Republic, Hungary and Romania) voted against these proposals, in accordance with its political position towards migration at the time. Borárosová and Filipec assume that Slovakia positioned itself „ *as the weak country, with no capacity to help with solutions (which are expected from stronger and richer countries) and not as a country with the possible potential to offer a help* “. (Filipec and Borárosová 2017) This however turned out incorrect – with arrival of Ukrainian refugees in 2022 Slovakia stepped up and managed to provide refuge for massive number of refugees (discussed in detail in the following part of the work). The overall approach of Slovakia towards the European mandatory mechanisms in migration field can be characterized as followed: relocation is against character of voluntary contribution and Slovakia considers it as unfeasible reaction that also ignores preferences of asylum seekers. Instead, during its Council presidency in 2015, Slovakia introduced the so-called ‘flexible solidarity’ (or effective solidarity). This proposal was supported by all the Visegrad group states, and it basically ended the debate on quotas in the EU. The flexible solidarity means that the Member States shall provide support to the Member States that are significantly affected by large influx of refugees, but only through financial or humanitarian support. (Interview with Klus 2023) In other words, the flexible solidarity excludes the possibility of

relocation of refugees between the Member States. However, this was not viewed as particularly helpful by the affected frontier Member States.

The most important changes in Slovak migration policy happened in the period before or right after the accession to the EU, or to the Schengen system. These changes were induced by conditionality principle in the pre-accession period, and then by the slow Slovak integration in EU after it became official Member State. Therefore, we can say that as with Czech Republic, the Europeanization mechanism was vertical (according to Radaelli's definition of Europeanization mechanisms). (Radaelli, 2003) Regarding the outcomes, in the period from 2000 to 2015 we can talk about Europeanization outcome defined as transformation. (Radaelli, 2003) However, the 2015 shift in approach towards migration meant also changes in approach toward policies. While the Slovak government still supported the European cooperation on the issue of migration and asylum, there were significantly different opinions on the solutions proposed by the EU institutions, and therefore there were also disputes. So, the Europeanisation outcomes in this period can't be classified as a transformation as earlier, but rather fit under absorptia.

8.2. Present state of migration and asylum policy of Slovak Republic

Slovakia has currently three main policies in the field of migration and asylum. They are the migration policy of the Slovak Republic with the perspective until 2025, Integration policy of Slovak Republic and the Strategy of work mobility of foreigners. For the purpose of this work the most important are the first two, therefore they are discussed in detail in this chapter.

8.2.1. The Migration Policy of the Slovak Republic with the Perspective until 2025

This policy was adopted in September 2021, and is the main document of Slovakia with the aim to build a modern, complex, and efficient migration policy in all areas of migration.

The document states the aims and principles of Slovak migration policy, that covers different areas of migration. For example, to create conditions in the field of legal migration with considerations for the priorities but also needs and abilities to accept third country nationals and their integration in society. However, it also aims to achieve a

blanched scope of regulated work mobility based primarily on the security of the citizens of Slovakia and to prevent social, economic, and environmental tensions. Therefore, according to the document the migration flows shall be supported in coherence with needs and capacities of Slovak society and economic and international interests of the Slovak Republic. The document takes into consideration the membership in the EU, and the obligations that stem from it. It highlights the need of Slovak Republic to be active in the implementation of the political obligations from the EU and new migration and asylum related legislations, as well as the need cooperate with EU institutions and other Member States, but also the necessity to promote Slovak interests at the EU level. Overall, the document established nine main areas of priority in the field of migration. (Ministry of Interior of Slovak Republic 2021)

Legal migration and emigration

The first two main areas of priority are legal migration with emphasis on controlled economic migration, and emigration from Slovakia, emphasizing the need of return of work force in the country. Concerning the regular migration, the main goal is to improve the system of entry for and stay of third country nationals that have the goal of employment or entrepreneurship, especially in the professions and areas with a lack of work force. Another objective is to fight the emigration from Slovakia, which is a long-term trend that increased significantly in relation to the membership in EU and Schengen space. The emigration has negative effects on the society, such as brain drain or aging of the population. For this reason, the strategy to reduce economic, social, and demographic causes of emigration is marked as one of the priorities for the period from 2021 to 2025.

International protection

Slovakia provides different forms of protection, all in compliance with the international obligations and European and national legislation. The policy states support for the traditional pillars of migration and asylum policy including the new forms of international protection. One of the main priorities in this area remains to grant asylum within Slovakia's international obligations, respecting the Geneva Convention from 1951 and the New York protocol from 1967, and to respect both national and European legislations. It also takes into consideration that the most important factors in the development of international protection will be the ongoing negotiations on the reform of CEAS.

However, the highest priority in this area on all levels remains an effort to block the potential adoption of the compulsory redistribution system. The rejection of any compulsory solidarity mechanisms is in line with Slovak long-term position, especially since 2015, that is against any mandatory redistribution of refugees. While Slovakia supports the cooperation with EU and between the Member States, and the cooperation is also one of the main principles of this policy, it also consistently highlights that the cooperation, and especially solidarity mechanisms and burden sharing, must be on voluntary basis only. (Ministry of Interior of Slovak Republic 2021)

Integration

Integration is an essential part of migration and asylum policy. The document states here the main aim is to ensure peaceful long-term co-living of the foreigners and the citizens of Slovak Republic. It is under the control of the Ministry of Interior. Essential role is also played by municipalities, as the integration needs to happen first and foremost on local levels. The towns and village should adopt their own integration strategies, policies and measurements and include the foreigners in already existing policies. (Ministry of Interior of Slovak Republic 2021)

Due to the importance of the integration factor, a specific policy for integration strategy was adopted in 2014, and it is one of the main components of Slovak migration policies. The main principles of the Integration policy are equality, justice, and respect of human dignity of every citizen of the country. The policy has a special focus on integration of people who are under international protection, and it highlights the need to establish concrete measures that would diminish inequalities these refugees often have to face. Besides international protection beneficiaries this group also contains unaccompanied children and underaged, women, elderly, victims of violence or crimes, disabled persons, and other vulnerable categories. It puts emphasis on the local and regional level, on employment of foreigners, their inclusion in healthcare and welfare systems, equal access to education, improvement of language skills and support in obtaining adequate accommodation. Lastly, one of the main important goals is to include the foreigners in political community through eventually obtaining the Slovak citizenship and the development of all actors that participate in the integration process. (Human Rights League 2020) According to the report of the Human Rights League published in 2020,

the integration policy establishes measures that are quite modern and correctly defines the responsible institutions. However, there is an issue with its implementation, that is caused predominantly by the lack of interest to implement it completely and properly. The report states that during the control in 2017 was concluded that the integration policy is not being implemented in practice and several suggestions were made. Among the most important were to adopt additional and more effective measures to integrate foreigners, to evaluate the institutional cover of the area of migration and integration, and to react to changes that occurred in migration since 2015 by adoption of new policy. However, the reaction of government was to cancel the obligation of resorts to provide secure control of the integration measures. The government also cancelled the obligation of minister of labour to provide regular reports about the state of completion of the goals that were set by the policy to the government. (Human Rights League 2020) Therefore, even the minimal reporting about the state of integration that was mandatory, was cancelled by the government. This shows that the integration aspect of Slovak migration policy was very neglected during the years, even though in the Migration Policy of Slovak Republic with Perspective until 2025 it is mentioned as one of the priorities. The lack of interest in improvement of Slovak integration structures played essential role in the management of accepting of Ukrainian refugees after the beginning of full-scale invasion.

Irregular migration and borders

According to the international obligations, Slovak Republic fights irregular migration with special consideration regarding underaged persons, persons in need of international protection and stateless persons. The area of irregular migration in Slovak migration policy consists of combination of measures of preventive and repressive character. The main goal is to eliminate the irregular migration flows to Slovakia and therefore diminish the numbers of entry of potentially dangerous individuals into EU territory. This shall also eliminate the potential exploitation of the irregular migration issue by some of the transit states, that use their position for their own economic or political interests. The main tool to achieve this is strengthening protection of the external Schengen borders. The policy also highlights the importance of intense cooperation with transit countries and countries of origin and support of development of their own capacities. (Ministry of Interior of Slovak Republic 2021)

Readmission agreements

The assisted and voluntary return of the TCNs are preferred by the Slovak government. According to the policy, the involuntary returns are used only in cases where all other means to get the TCN back to their country of origin has been tried and failed. The priorities in the field of readmission agreements are to reevaluate already existing agreements with third countries and make new ones, to strengthen the cooperation with representative organs of those third countries whose citizens are among the most frequently deported, to create effective systems of controls of deportation and to support consistent improving of readmission agreements of the EU, especially with the third countries that do not cooperate sufficiently. (Ministry of Interior of Slovak Republic 2021)

Fight against human trafficking

The main goals here are to strengthen the competencies of state organs, proper implementation of the EU Directive about prevention of human trafficking and to increase cooperation with relevant subject on both national and international level. (Ministry of Interior of Slovak Republic 2021)

Humanitarian development and cooperation

As in the case of Czech Republic, also Slovakia is considering the external migration as one of the highest priorities in dealing with migration, specifically the component of support of development and financial aid to the countries of origin and transit countries. The official development cooperation and humanitarian aid in Slovakia is provided under project SlovakAid and it focuses on improving the economic and social situation of the citizens of the third countries. SlovakAid has currently programme partnership with three countries (Kenya, Moldavia and Georgia), and in addition different projects many other states (Albania, Syria, Ethiopia, Somalia, Serbia, etc.). (SlovakAid Projects n.d.) Since 2015, it focuses on the activities that contribute to preventing the causes of forced migration to the EU. There are various areas where help is provided, for instance employment policies or education policies. However, development cooperation is only one aspect of the relation between migration and development, and the document also highlights the importance of humanitarian projects that are focused on reducing the

impact of negative implications of migration crisis caused by long term armed conflicts, or in provision of financial and humanitarian aid.

Consequently, Slovakia pledges to take into consideration the overall goals of Agenda 2030 in all its humanitarian activities and migration policy. The policy also accounts the connection between the climate crisis and migration, and the increase of migratory flows due to the worsening of environmental conditions in some countries. (Ministry of Interior of Slovak Republic 2021) This is a trend that will most likely continue and increase throughout the years, as the climate crisis affects more and more people. The priorities in this area are to increase the coherence between migration and development policy of Slovakia, to direct the humanitarian aid and development cooperation towards the countries that are priority for Slovak Republic or relevant from the perspective of migration flows to the EU territory, and to prevent irregular migration and help specific countries with development.

The communication of the topics concerning migration

Since the refugee crisis in 2015, migration and integration became important part of public and political debate in many countries, including Slovakia. There was a significant increase of extremism towards the refugees as well as spread of misinformation. For this reason, the migration policy contains also the area of communication about migration with public, to broaden public opinion about migration. Regarding to this issue, other important factor is the low numbers of foreigners staying in the country. Slovakia had before the war in Ukraine one of the lowest numbers of foreigners from the whole EU. Therefore, Slovaks don't have the experience with foreign nationals and form their opinions mostly through conveyed information that are not always true. Therefore, it is very important to provide true, complex, and balanced information about migration. The main tools to achieve this are creation of resort-specific communication strategies, plans and activities about specific areas of migration, inter-institutional coordination and exchange of know-how and strengthening of expert capacities, cooperation with non-governmental organizations and international organizations and creation of preventive and informational campaigns about migration and cultural diversity. (Ministry of Interior of Slovak Republic 2021)

8.3.Lex Ukraine

As in the case of Czech Republic, also in Slovakia the measures that are supposed to be provided under TPD were adopted under the package of measure known as lex Ukraine. The first measures in relation to the situation in Ukraine were adopted already on February 25th, and three days later the government adopted a decree on the provision of temporary refuge. On March 2016 the Government adopted a decree transposing the Council Decision about the mass influx of refugees and the activation of the TPD and on 30th of March first version of lex Ukraine was adopted. So far, lex Ukraine has been novelized only once in June 2022, as the series of measures known as lex Ukraine 3. (National legislation implementing the EU Temporary Protection Directive in selected EU Member States 2022)

The temporary protection in Slovakia applies to three categories of persons: Ukrainian nationals and their family members if they lived in Ukraine before the full-scale invasion, foreign nationals and their families who have been granted international protection (or equivalent protection status) before the full-scale invasion, and foreign national who have been granted permanent residence in Ukraine and can't return to their country of origin due to safety reasons.

The Ukrainian refugees that want to stay in the territory of Slovak Republic can either apply for temporary refuge, asylum, or other form of stay. The most common and the easiest way to was however to apply for temporary protection or asylum. Compared to the asylum, the main advantage of the temporary protection is the fact that the refugee can start to work immediately after obtaining the temporary protection. Under the regular circumstances, the refugee with asylum can access the labour market only after nine months after the begging of the asylum procedure. This was changed by the adoption of lex Ukraine, according to which during the duration of these special provisions, the asylum seeker can access the labour market immediately after the beginning of the asylum procedure. (Čo zmenil lex Ukrajina 2022) Important provisions concern also access to the labour market, more specifically to simplify the process for the temporary protection beneficiaries. First, the local offices for labour, social affairs and family must start programs for support of the integration of Ukrainians. Second, is the person with temporary protection wants to apply for job in public sector, there is no more need for

official confirmation about their good reputation from their criminal record. Now they only must provide an honour declaration. The only exception to this is the educational sector, where in addition to the declaration people have to provide also a psychological assessment. An important exception was given to the healthcare workers, who have proof of education but do not have expert qualification. Lex Ukraine allows these persons to work in the Slovak Republic healthcare through the institute of expert internship. (Čo zmenil lex Ukrajina 2022) This is very beneficial to both the Ukrainian refugees as well as Slovak citizens, considering that Slovakia has a long-term problem with lack of medical staff.

Concerning the accommodation, the access to accommodation should be free of charge according to the Directive. The asylum centres were created for temporary protection beneficiaries as well as applicants, in addition to the public, self-governing or private facilities that were provided by the regions. A big role here also played the Slovak public, as many citizens provided their apartments to Ukrainian refugees for free or hosted the refugees in their homes. The Ministry of Interior provides financial aid to all the persons who are hosting displaced persons from Ukraine. After the first novelization of Lex Ukraine, the financial aid is provided per night. One of the conditions is that the temporary protection beneficiary has to confirm once a month at the municipality office that he or she is still residing in the place. The amount of the financial aid is based on the government decision, but the maximum is from 500 EUR to 1500 EUR depending on the number of rooms that are provided. (Čo zmenil lex Ukrajina 2022) However, Lex Ukraine states that when providing an apartment or house that is normally rented to Ukrainian refugees, the private landlords must sign a declaration that any Slovak national didn't apply for the accommodation before. This measure was adopted to prevent discriminatory treatment.

Slovak Republic also almost immediately provided social welfare to the temporary protection holders, in the same amount as the Slovak citizens receive. People under temporary protection are also provided with the full access to healthcare. (ECRE 2023)

Lex Ukraine was consequently novelized again in May 2022 and is known as Lex Ukraine 3. The novelization was prepared by the Ministry of Labour, Social Affairs and Family, and it was focused mostly on measures concerning welfare and social protection. According to the Ministry, the novelization consists mostly of solutions that emerged

after the temporary protection beneficiaries settled down and couldn't been foreseen. (Parlament schválil lex Ukrajina 3 2022)

The financial aid for private actors hosting Ukrainian refugees after the novelizations also includes provisions to cover the costs of the food. Another financial aid will be provided to the centres for children and families that are not state facilities and that accommodate children from Ukraine that arrived at Slovakia without any guardians. Lex Ukraine 3 also changed the provisions of financial aid for compensation of the costs of disabled persons.

8.3.1. Implementation of lex Ukraine

During the implementation process emerged many issues across different sectors, however it can be said that the main problem, from which stem all the others, is the lack of previous experience with migration and management of high numbers of refugees. This was an important factor in both the initial reaction of the state and in the integration of the refugees. Regarding integration, very important role played also the neglect of the integration policy in the past, which after the arrival of Ukrainian refugees resulted on significant problems with the integration of Ukrainians, both in the short- and long-term perspective.

Initial reaction

While the first reaction of the government from political perspective is overall perceived highly positive, the initial management of the state of the high numbers of refugees arriving to Slovakia was quite chaotic and there were many issues with coordination. Because Slovakia shares a border with Ukraine, the priority during the first days was to manage the situation on the border crossings. Slovakia has two border crossing with Ukraine: Ubl'a and Vyšné Nemecké. The latter was due to its more convenient location under higher pressure, as most of the refugees entered Slovak territory through there. The police, army and firefighters did try to manage the situation at the borders, but the main part especially in the first days was done by the international organizations, NGOs, and volunteers. They immediately mobilized and started to organize immediate humanitarian assistance, the registrations of refugees and other necessary activities. Important step was the creation of hotspots immediately at the border crossings. They were available non-stop, and helped Ukrainians with the registration process and other administrative

questions. (ECRE 2023) Nevertheless, according to one of the respondents, the organization and the whole system failed completely. (Interview with Gallová Kriglerová 2023) All of the respondents acknowledged that without the help from NGOs, volunteers, and international organizations it would be impossible to manage the situation. Depending on the person, the level of criticism of the state's initial reaction differed. While the politicians considered the state reaction overall as a positive, the members of NGO heavily criticized the role of the state in the initial reaction to the mass influx of refugees.

The main issue especially in the first weeks was in the coordination, or, the lack of it. The instructions were coming from different sources, which added to the chaos of the whole situation. As mentioned in the analysis of Slovak migration policy, the main institution responsible for migration is the Migration Office. However, this Office is only responsible for asylum. All other segments and local authorities were not coordinated, because there was not any uniformed system. The local authorities didn't even know the exact numbers of persons in their territory. All of this resulted in random ad hoc solutions to problems that suddenly emerged instead of one coherent approach. (Interview with Gallová Kriglerová 2023) The lack of one single institution responsible for management of migration and asylum was already criticized by experts and NGOs before the invasion of Ukraine, for instance in the report of Human Rights League from 2020, one of the main recommendations was to create a unified office that would cover all aspects of migration and asylum. (Human Rights League 2020) Other respondent, member of Slovak parliament, stated that considering the lack of Slovak experience with mass influxes of refugees, the overall reaction of the state was quite positive and efficient. However, the respondent still admitted the importance of the third sector and volunteers in the process and stated that this experience highlighted the shortcoming of Slovak migration and integration policy, for instance in the sectors of employment or education of the foreigners. (Interview with Marcinková 2023) According to other respondent, while during the first week the help of third sectors and international organizations was indispensable, because they helped the state actors which were not ready to manage this kind of situation and didn't know how to react quickly, after first few weeks the situation

stabilized and then the cooperation between the sectors worked very well. (Employee of European Commission, 2023)

Long term challenges

Right after the full-scale invasion, there was a need to deal with the sudden mass influx of refugees, which was very challenging for Slovakia. However, there was also a need for long term solution and for proper integration of Ukrainian refugees in the society. The TPD itself is a measure that can be prolonged up to three years, and there is a high chance that even after this period the Ukrainians will have to stay in the EU territory, because the armed conflict tends to be long-lasting. In the case of Slovakia, the core challenge is the integration of the refugees. According to the policy paper of group of non-governmental organizations from Slovakia, there are several areas that need significant improvement. As in other Member States, one of the main challenges is the access to education. According to the report, the access of foreigners to education was one of the areas that have been neglected for a long time, regardless the fact that before the war in Ukraine, thousands of foreign children were studying in Slovak schools. After the beginning of the war, this number increased significantly in very short time. However, according to data only around 40% of children who are staying in Slovakia under temporary protection. Very important challenge here is the lack of financial resources, especially for elementary schools. The finances are very important, if the schools are supposed to secure proper integration of foreign children (there is a need for more teachers, psychological support, support teams, etc.). NGOs also point out the fact that segregated classes for Ukrainian children are emerging, which is from the long-term perspective harmful and ineffective solution to the problem. Another problem is the lack of places for children in kindergartens, especially in bigger towns. The lack of kindergartens was already a significant problem before the war in Ukraine, and now is the situation even worse. This is alarming not only because the lack of childcare is interconnected to access to other right (such as access to labour market), but also because it creates tensions between the Slovak population and the Ukrainian refugees. (Integrácia ľudí z Ukrajiny 2022)

Another sector is accommodation. The accommodation for the temporary protection beneficiaries is provided either by state, or by private rentals. Essential role especially in

the first weeks was played by Slovak citizens that welcomed Ukrainian refugees in their households. However, there is a need for long term solution that is still absent. The housing system is still unclear, and the support mechanisms to help temporary protection holders to move from short-term or emergency accommodation to more stable forms of living is non-existent. Simultaneously, there are not any support mechanisms for Ukrainians to help them to slowly 'disconnect' from the system of financial aid and to integrate in the society more instead. (Integrácia ľudí z Ukrajiny 2022) The lack of focus on providing long-term accommodation was also pointed out by the respondents - two of them mentioned the lack of systematic solution in this area as one of the core issues. Especially the fact, that the financial aid for people who provide accommodation to Ukrainian refugees is being extended every three months, usually in the last minute. (Interview with Gallová Kriglerová 2023) Waiting for the decision every three months is stressful not only to Ukrainian refugees, but also to the Slovak citizens who provide accommodation.

Social services and welfare are other challenging sector of the integration. First, a significant part of regions provides social and welfare services only to persons with temporary residence or town. This is a long-term issue for foreigners, as for most of them it is possible to gain permanent residence only after months or even years, and it became even more pressing with thousands of people with temporary protection status in Slovak territory. In addition, most of the temporary protection beneficiaries are people from vulnerable groups, and significant part of them also applied for the material need assistance, which means they will probably need to access more social services. The Slovak Republic still has not mechanism or system that would deal with the access to social services or welfare. (Integrácia ľudí z Ukrajiny 2022)

Access to labour market is one of the most important areas when it comes to integration of foreigners into the society. As already mentioned, a significant part of the Ukrainians in Slovakia are not able to find a job because of lack of childcare options. Another issue is that the Ukrainian refugees usually apply for very low qualified jobs, even though more than a half of the refugees has a university degree. According to the analysis of Institute of Social Policy, the educational profile of displaced persons from Ukraine that successfully accessed the labour market, does not correspond with their employment. (Institute of Social Policy 2022) The jobs are usually very low income jobs, that do not

provide enough to cover the costs that the refugees have (especially single mothers, who form majority of the temporary protection beneficiaries). There were also cases of exploitation, when the Ukrainian refugees worked for sums that are lower than the minimum wage allowed by the state. (Integrácia ľudí z Ukrajiny 2022) This problem is also connected to lack of the information, as many of the persons under the temporary protection do not have enough knowledge about their rights as a temporary protection status holder. Another thing is the lack of a solution for business owners or entrepreneurs, who are not able to run a business in Slovakia under the current legislation, as long as they are temporary protection holders (or they another form of temporary residence permit). The report also criticizes the qualification requirements for some of the positions that do not necessarily require it. As mentioned in the analysis of lex Ukraine in Slovakia, in some of the jobs psychological assessments are required. These are often very difficult to obtain, especially due to the overall lack of psychologists and psychiatrist in Slovak healthcare. On the other hand, positively perceived is the decision to allow the healthcare workers to work in their sector under the expert internship status. This is very beneficial for both sides, the Ukrainian healthcare workers can do their job, and the Slovak healthcare system gets more employees which are at the moment desperately needed. (Integrácia ľudí z Ukrajiny 2022)

Another important factor that failed in Slovak case was the lack of data collection and analysis of the data. For the preparation of migration and integration policies it is essential to know the situation of affected groups properly, and without a function system of data collection and analysis it is impossible to manage migration and integration of foreigners. For instance, it is essential to know the structure of the groups arriving to the country, their health conditions to identify the potentially vulnerable groups and adopt appropriate measures. In the case of the refugees from Ukraine, considering the nature of the situation, the collection of data and overall information about people staying in Slovakia was very unclear. Several statics are being done on regular basis by different ministries, but not all of them are published regularly and they often do not comprise all of the data important for policy making. Important part of the process is also the analysis of the collected data, and being active in researches focused on the needs of the TCNs on both local and national levels. (Integrácia ľudí z Ukrajiny 2022) According to Gallová Krieglerová, one of the

main lacks that emerged to surface even more during the implementation of temporary protection is the fact that the policies were not created based on data. Combined with the overall lack of strategy planning and long-term perspectives in the area of asylum and migration, this is one of the biggest challenges for Slovak migration and asylum policy. (Interview with Gallová Kriglerová 2023)

All the problems that emerged during the implementation of the temporary protection measures, especially the integration, stem from the overall lack of coordination and strategy planning by the state. Many NGOs and experts have called for coordination of the migration and asylum policies by one office for a long time, but the division of the policy areas is still the norm, and it is affecting the coordination, especially in the situation of crisis like the mass influx of Ukrainian refugees.

Both Czech Republic and Slovakia still have significant lacks in the proper implementation of the TPD. As discussed, the main challenges remain in sectors of healthcare, education, accommodation, employment, and overall integration of the refugees. This is given by many reasons, and through analysis of reports provided by international organizations and NGOs and analysis of responses from interviews, the main factors were identified as follows: the lack of experience with high numbers of refugees, the lack of coherent strategic planning in the area of migration and asylum, and the neglect of proper implementation of integration policies. Nevertheless, it is important to remember that while there are many things in common, the situation in both states is slightly different. First, the number of Ukrainian refugees under temporary protection is significantly higher in Czech Republic than in Slovakia. Second, while both states had to deal with sudden mass influxes of refugees, several respondents said that Czech Republic managed to deal with the organization especially during the first days better than Slovakia. One of the reasons may be while in Slovakia there are different institutions managing different areas of migration and asylum, in Czech Republic most of the competencies over the whole policy field are under one office. This results in complicated system, that is more difficult to coordinate, especially in a situation of crisis. Similar situation concerns the integration, where Czech Republic already had some bases to build on (especially in specific sectors). On the other hand, in Slovakia integration policy has been neglected for a long time, and there is still not any long-term integration

plan for the Ukrainians, only ad hoc short-term solutions. As articulated by Gallová-Kriglerová: *‘‘it looks as if we were still waiting for them to leave’’*. However, the situation does not look like the situation in Ukraine will change anytime soon, and there is therefore need for long term solutions.

While this chapter discusses mainly the problems and lacks in the implementation of the temporary protection and integration of the Ukrainian refugees, it is important to point out that there were also a lot of positives and considering the situation both countries took extraordinary measures to provide help to the Ukrainian refugees. Especially if it’s considered that neither one has experience with mass migration and the position of both states towards acceptance of refugees in the past.

9. Discussion of findings

9.1. Main challenges in the implementation of the TPD

The previous chapter discussed the implementation of the TPD in Czech Republic and Slovakia and identified the main challenges as well as the potential causes of these problems. From the analysis of reports, official documents, and answers from the respondents we can conclude that in both states the main issues were found in the sector of accommodation, access to labour market, education, healthcare, and welfare. These problems are, of course, interconnected with other challenges, as for example the lack of childcare induces problems to access the labour market for single mothers or care takers. In the case of Slovakia, many problems were caused by the lack of coordination, and dispersion of competencies over migration among different institutions and offices. In addition, the lack collection of data on migration and their analysis poses another challenge, especially in long term perspective. In comparison, Czech Republic managed the organization slightly better. Lastly, the issue of integration is a problem both states face, but in this case the Czech Republic has already taken steps to fasten the integration of Ukrainian refugees, while Slovakia still lacks incentive in this matter.

9.2. The influence of the EU on asylum and migration policies of Czech Republic and Slovakia

All the interviewed pointed out the importance of impact of the EU on the migration and asylum policies of both Member States. Regarding Czech Republic, Jelínková stated that the EU influence is huge, and in most of the cases very positive. Especially if we compare the situation of Czech migration and asylum policy from ten years ago, and now. Jelínková pointed out, that it would be very beneficial if there would be more incentives for harmonization of integration policies across the EU, which is now managed by the method of open coordination. This would be very beneficial for Czech Republic. On the other hand, in the field of working migration, which is not significantly harmonized on the EU level, is further harmonization not very realistic. She also points out the differences between the Member States; the important factor here is the experience with migration, which differs significantly across the EU. The Member States with existing tradition of migration policies can make better use of EU legislations, while for other states (especially Central Europe) it is more difficult to catch on. (Interview with Jelínková 2023) This is both due to the lack of experience and lack of resources. Accordingly, member of parliament Martin Exner stated the cooperation with the EU is essential. In interview he points out that most of the EU Member States are too small to be able to properly deal with large-scale issues such as migration on their own, and therefore there is a need for more common EU solutions. (Interview with Exner 2023) The respondents from Slovakia also perceive the influence of EU as significant and positive. According to member of parliament Vladimíra Marcinko, it is essential to find compromises and effective solutions in the area of migration policies at the EU level and it is a right way to go. This was demonstrated in the solidarity of Slovakia's EU partners after the begging of war. (Interview with Marcinková 2023) Another respondent, Gallová Krieglerová, also evaluates the EU influence as strong and positive factor, as it puts pressure on the state to adopt adequate asylum and migration policies. Problem is, according to her, the political aspect of the situation - majority of Slovak political scene rejects common European approach to these policies and harmonization. (Interview with Gallová Krieglerová 2023) As already mentioned, migration is a topic often used in alternative media, hoaxes, and disinformation, and the overall position of majority of politicians is rather restrictive to the area of migration and asylum. For this reason, the

EU common solutions and harmonization is important, as it 'pushes' Slovak and Czech migration policy to keep developing and improving.

To conclude, it can be said that the impact of EU is essential especially regarding the long-term political position of these states towards the topic of migration and asylum. All the respondents see the influence of the EU as very beneficial and are in favour of strong Europeanisation of this area. While the respondents support strong cooperation on European level in the field of migration, during analysis I discussed the stagnation of Europeanization of migration in both Member States after the politicisation of this topic in 2015. As suggested, while before the outcomes of Europeanization could be classified as transformation, after the European refugee crisis and the shift of position of Czech Republic and Slovakia the results of Europeanization were weaker, oscillating between inertia and absorption. Therefore, we can say that while the influence of the EU on migration and asylum policies of both Member States is still strong, there was a shift in approach towards migration in both countries in 2015. This shift was induced by European migration crisis and the proposed solutions to this crisis at European level, which were rejected by both Member States. At the same time, during this time the topic of migration became highly politicised in both states, with majority of politicians taking rather restrictive stance towards migration. This resulted in weakening the Europeanisation of migration policy field.

9.3. Impact of Temporary Protection Directive: long term changes or only one-time solution?

9.3.1. Possible impact of Temporary Protection Directive on EU level

The Temporary Protection Directive was activated for the first time in history, only shortly before it was supposed to be repealed and replaced by other legislation. According to Anastasia Karatzas, the activation of the Directive had positive effects on the management of the mass influx of refugees. Because of this, after its activation there was a lot of talks about TPD being used as a blueprint for improving migration and asylum policy, so the EU would be able to apply same time of response in the future. There were also discussions about how it would be possible to apply the measures under TPD to other countries and refugees. However, now it appears that the situation of Ukrainian refugees

was unique and won't be replicated. This is due to different factors, for instance cultural and geographical proximity, large existing Ukrainian diaspora in the EU, and the existing provision of visa-free entry of Ukrainian citizens to the EU territory. Many actors expected some proposals and amendments that would incorporate some elements from the TPD but instead, as Karatzas pointed out, we have seen a push towards a new pact. Karatzas warns that many of the proposals that had the goal to improve the new migration system infringe on fundamental rights more than they cater to them. At the same time, there is a shift towards the externalization and securitization of the borders, as well as increasing push to prevent people coming to EU in the first place (as can be seen also in the case of Czech Republic and Slovakia, where one of the main priorities is the external migration policy). Many of the proposals focus more on these aspects of migration, which could lead to even more detentions, longer times for processing the asylum applications, and more squabbles between the Member States about which one is responsible for processing the asylum application. So, according to Karatzas, there was many good things that came out of the activation of the TPD, for instance that it focused on the immediate integration of people in the society, all these things are missing in the proposals for a new pact (particularly in the new versions of the pact that come from the Council), which is a missed opportunity. Instead, there are now discussions about new proposals that would contain derogations, which is very harmful for the rights of migrants. The inclusion of derogations would mean that the Member States could derogate even further from asylum and migration policies of the EU. (Interview with Karatzas 2023).

The future of asylum and migration policy is also interconnected with the current crisis of rule of law the EU is facing. Because it is up to the Member States if they decide to implement the policies or no, even if the TPD would have impact on the ongoing negotiations on the new pact, there would still be the question about its proper implementation by the Member States. This concerns especially the countries of Visegrad Group, that already have a history with rejecting EU migration and asylum policies. Karatzas points out, that in the process of negotiating the new pact, there have been statements that some Member States will not comply with the new system. (Interview with Karatzas 2023) Example of this is for instance the refusal of Poland to comply with the proposed Regulation on asylum and migration management, and there are also important examples from the past, that are discussed in the previous chapters. The refusal

of some Member States to comply with the common asylum system and EU laws raises questions about the competencies of the EU in overseeing the implementation of its legislations and complying with the law. There are many instruments to ensure compliance of the Member States, for instance to freeze the funding, or rely on the Court of Justice of the EU. However, so far these have proven as insufficient in the past. Therefore, the future of European migration and asylum policy, including the potential impact of the TPD, will also depend on the development in this area. The current situation is indeed difficult and complicated, as on one side there is a push for further harmonization of this area, but on the other there are some Member States that refuse to comply, which defeats the point of harmonized system and standards across the EU. However, there were also positives pointed out by respondents. According to Constanza Vera-Larrucea, the activation of TPD and the acceptance of Ukrainian refugees caused huge demonstration of generosity in Member States that are traditionally reluctant to join EU asylum initiatives. Now they took advantage of the common asylum system and there was an increase of cooperation between the agencies across Europe. According to this respondent, there is a sort of revival of the idea of responsibility sharing, that was considered dead after the negotiations on migration pact, and the activation of TPD may be sort of a push that the asylum regulations needed for the new pact to be adopted. (Interview with Vera-Larrucea 2023)

Opinions on the potential impact of the activation of the TPD on the negotiations of the new pact on asylum and migration differ. There are also a few other factors in the play, for instance the upcoming election for European Parliament. First and foremost, as was the activation of the TPD inherently a political decision, so will be the scale of its possible impact on the negotiations on the new pact. As for now, the most realistic version is that some aspects of the TPD may be incorporated in the proposals and amendments. However, all the respondents agree on one thing: the activation of the TPD was a one-time decision, and it is most likely not applicable in other situations. The Ukrainian case was an exception, due to the nature of the Russian aggression, the geographical and cultural proximity, existing agreements on visa-free stay in Europe and other factors.

9.3.2. The influence of Temporary Protection Directive on national level

The approach towards acceptance of refugees in Slovakia and Czech Republic shifted with the arrival of Ukrainian refugees, that were immediately welcomed by both countries, a decision that had both public and political support. The following section offers overview of main factors that influenced this shift in approach.

After the beginning of the full-scale invasion, there were many discussions about the significant difference in approach towards the Ukrainian refugees compared to previous refugee waves from other parts of the world. Indeed, there were many factors that played a role in the case of Ukrainian refugees (the EU perspective is discussed in the policy analysis of the TPD part). While the shift in approach was very visible on the European level, in the case of Visegrad countries it was visible even more, if we consider their general approach towards accepting the refugees from third countries. According to some of the respondents, very important was the historical experience of both countries. Member of Czech parliament Martin Exner highlighted the history of these countries and its relation to the migration. First, the most formative historical experience in this case is the invasion of Czechoslovakia by the Warsaw Pact army in 1968. In this context it is important to note that while the country was invaded by armies from several different states of Soviet bloc, the overall perception of these events in Czech and Slovak republic is that the largest share of the blame has by far Russia, as the decision was made in Kremlin. Exner believes that many people remembered experience of their own country with Soviet aggression, which resulted in enormous solidarity toward the Ukrainian people. (Interview with Exner 2023) In accordance with this, another respondent also pointed out the relation between the solidarity and the experience with Kremlin ordered occupation of Czechoslovakia.

In the case of Czech Republic, the public position towards Ukrainian refugees was also influenced by the large number of Ukrainian nationals already residing in Czech either on temporary or permanent basis. The large Ukrainian diaspora was an important factor to influence the public opinion, as people already had 'experience' of living with people from Ukraine. (Interview with Exner 2023) This might have been a strong factor also in Slovakia, considering that Ukrainian migrants among the most common nationality from Third Countries in Slovakia. (Filipec and Borárosová 2017)

Important factor in both countries was the cultural proximity of Ukrainians. The public opinion in both countries tends to be sceptical towards foreigners, so the similarities with language, historical experience and cultural similarities played an important role with part of the Czech and Slovak society. This is also connected to another important factor - the hoaxes and disinformation about refugees that are part of political and public debate since 2015 on regular basis. As explained by Slovak member of parliament Vladimíra Marcinková, a number Slovak politicians have used the topic of migration as a tool to gain political votes. (Interview with Marcinková 2023) The portrayal of migration as a threat had severe effects on opinions of Slovaks and Czechs on the topic of migration. According to other respondent from Czech Republic, Jelínková, important role played the fact that to Ukrainians people believed their refugee story, that the people believed that they needed the protection. This was caused by combination of many factors, including cultural proximity, but very important role was played by geographical proximity. The refugees were fleeing from country bordering with Slovakia, and very close to Czech Republic, so it easier for people to believe they indeed are refugees. In the case of previous refugee influxes, the people were coming from regions that were not so 'well known' by the general population. Finally, the political situation at both countries during the begging of the invasion was essential. In February 2022 both Member States had government formed from pro-European and pro-western governments that immediately came to support Ukraine and rejected the Russian aggression. The positions of both governments helped to form an opinion of public, and the decisions of both governments to provide support for Ukrainian refugees as much as possible made a big difference. In comparison, in 2015 both countries had populist governments formed by parties, that tend to use migration as a tool to create fear and tensions in society.

In conclusion, there is number of factors that influenced the reaction of both states. From the analysis of the interviews we can conclude, that among the most important were cultural and geographical proximity, current political situation in both countries, and the historical experience of invasion of Czechoslovakia by Warsaw Pact in 1968. However, these specific factors suggests that the acceptance of Ukrainian refugees was indeed a special situation, and it most likely won't replicate in future with refugees from other parts of the world.

While the reaction of both states to the arrival of Ukrainian refugees was at the begging seen as a possible catalyst of further Europeanization of the field, after year and half it turned out it most likely will be not and both countries will keep their rather passive or reluctant position towards migration and asylum policy field.

On the national level, the opinions of respondents for potential impact of TPD and the experience with Ukrainian refugees on asylum policies of Czech Republic and Slovakia differed. The general opinion of interviewed politicians was that it most likely will impact the developments in the field of migration and asylum. For instance, according to Exner, it will have important influence that will come up with the time. However, he also mentions the important factors that very already discussed, for instance the cultural proximity and the fact that Ukrainian refugees are less used in disinformation and hoaxes. Nevertheless, he pointed out that that Czech Republic tried how it is to deal mass influx of refugees, which helped to change the perception of refugees in the Czech society, and in the future the situation will keep improving. (Interview with Exner 2023) The experts that were interviewed saw the situation more negatively. According to Jelínková, the half of million of Ukrainian refugees in Czech Republic may lead to sight improvement of the measures in the migration area, the systems may get used to the refugees and migrants. She also points out that there might be a change in the perception of integration measures, that would not be perceived as something 'extra', as it is now. However, she does not believe that it would lead to kind of improvements, that the Czech Republic would have the asylum policy as it should have according to Dublin system in the near future. (Interview with Jelínková 2023) In the Slovak case, Gallová-Kriglerová explained, that there is no will in the current political scene in Slovakia. While many actors hoped that the implementation of TPD would create a good framework to adopt effective migration and asylum policies, but now it looks like it was a missed opportunity. The critical situation was solved, and now nobody is trying to propose strategic documents or to change the current policy. The potential change in the migration and asylum policies is first and foremost political decision. (Interview with Gallová-Kriglerová 2023) And, as Gallová-Kriglerová, also the respondent from the Commission points out the fact that there is no political will in most of the current mainstream political parties in Slovakia. In the Czech Republic, the situation is similar. The respondent pointed out the recent vote on the June Council about one of the legislative proposals for the New Pact on Asylum

and Migration. Slovakia decided not to vote, but the Czech Republic voted in favour of the proposal. This was followed by backlash in the Czech Republic, where the majority was against the proposal. This example reflects, that the political and public perception of migration in both Member States has not changed after the experience with Ukrainian refugees. (Interview with Employee of European Commission 2023)

To conclude, based on the analysis of the factors that influenced the shift in approach in the first place, and on the opinions of respondents we can say that the impact of the TPD in Slovak and Czech Migration policy is most likely only temporary, and will not bring any long-term improvements to the migration and asylum system of both countries, neither it will serve as a catalyst for further Europeanization of these policy fields. Probably the only way a long-term influence on migration policies of these states would occur was if the Directive would influence the negotiations of the New Pact on Asylum and Migration, which then would significantly influence migration and asylum policies of all Member States. However, right now it is impossible to guess if there will be impact of TPD on the negotiations of the new pact and in what scale.

10. Conclusion

The work discusses the influence of EU on migration and asylum policies of its Member States through theoretical framework of Europeanization. The chosen case study focused on two Member States – Slovakia and Czech Republic – and on the implementation of the Temporary Protection Directive in these states. The Temporary Protection Directive was an important piece of European legislation on migration and asylum; however, it was not activated until March 2022. After Russian full-scale invasion, the European Council has decided to activate the Directive as one of the respond measures for sudden mass-influx of refugees from Ukraine to EU territory. This was a historical event, as the Directive has not been triggered for more than 20 years of its existence. The work focused on the impact the activation of this Directive has on the migration and asylum policies at both EU and national level. The aim was to answer following research questions:

How European policies influence Slovak and Czech migration policies? Will the activation of Temporary Protection Directive influence Czech and Slovak migration policies in the future? What were the main challenges during the implementation of Temporary Protection Directive in Czech Republic and Slovakia?

In my work I argued that vertical Europeanization has been very strong in the two selected Member States, especially in the period of pre-accession and right after the accession to the EU. However, there has been a shift in approach towards migration during European refugee crisis in 2015, which resulted in stagnation of Europeanization. Based on the analysis of official documents, literature, and the interviews that were conducted during the research, I concluded that while in the pre-accession and accession period the Europeanization outcomes were strongest (transformation), after 2015 the outcomes became weaker due to the politicization of the topic of migration. The outcomes in 2015 therefore fall under the category of absorption, with one exception: when Czech Republic refused to transpose and implement the Council's decisions about mandatory relocation and burden sharing. In this case, the outcome of Europeanization was even weaker – inertia.

While there has been shift in approach towards migration in both Czech Republic and Slovakia with the arrival of Ukrainian refugees, the research showed it was most likely a unique situation that will not replicate in the future and neither it will have long-term influence on migration and asylum policies of both Member States. Therefore, the hypothesis that *the shift of approach towards Ukrainian refugees could act as a catalyst for further Europeanization of migration policies of Czech Republic and Slovakia in long term perspective* was rejected. This is due to several reasons that were discussed in the work (cultural and geographical proximity, political situation at both Member States, historical experience, etc.).

Lastly, the worked defined the main challenges during the implementation of Temporary Protection Directive in Czech Republic and Slovakia. Because the activation of Directive was recent event and these states don't have experience with managing large influxes of refugees in their territory, it is important to define the biggest challenges in the process and discuss what needs to be improved. As the main challenge I defined the lack of coordination and long-term neglect of the policy field of migration (especially in the Slovak case). This then reflected in other areas, amongst which the most problematic were the access to healthcare, welfare, accommodation, labour market and education.

The Europeanization of migration in Czech Republic and Slovakia is not studied in depth in both states, and the activation of the TPD and the sudden (temporal) shift in approach towards migration caused a big deviation from the position these two Member States

consistently kept regarding the migration since 2015. This field is also very dynamic, with the TPD still being triggered most likely until March 2025 and the ongoing negotiations on New pact on asylum and migration at the EU. Therefore, it is important to follow the impact this will have on migration and asylum policies of both Member States in the upcoming months and years.

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