

# **Brief Considerations regarding the Main Union Legislative and Transposition Instruments, adopted with the View to Supporting Ukraine in the Context of the Russian Invasion**

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**ABSTRACT:** On February 24, 2022, the European Council condemned, in the strongest terms, Russia's invasion of Ukraine, considering it "a serious violation of the territorial integrity, of the sovereignty" of an independent state, also representing a serious violation of international law and the principles of the United Nations Charter. In the same context, the European Council reaffirmed the need to adopt protective measures for refugees from Ukraine and to support the Ukrainian economy. Therefore, the member states of the European Union have determined that it is necessary for the Union legislator to adopt an appropriate regulatory framework, to which this material refers and which is to be presented, prioritizing two fundamental directions: (a) providing support both to Ukrainian citizens as well as to other refugees from Ukraine, located in the territory of any state of the European Union; (b) granting concessions to the Ukrainian authorities by adopting trade liberalization measures for all products, adopting policies on accelerating the elimination of customs duties for trade between the Union and Ukraine.

**KEYWORDS:** preferential treatment, trade liberalization, temporary protection, refugee, rights

## **Introduction**

The invasion of Ukraine by Russia on February 24, 2022, had a profound negative impact both on the daily life of the inhabitants of Ukraine, regardless of whether they are citizens of this country or foreigners under conditions of legal stay, and on Ukraine's ability to trade with the Union European both because of the destruction of the road and railway infrastructure, because of the closure of access to the Black Sea as a result of the attack on the port cities and because of the destruction of the production capacity.

In what follows, we will identify the main legal instruments of the Union as well as the rules of transposition regarding the two previously specified directions.

Regarding the protection of refugees from Ukraine, the member states have activated the *temporary protection* provided for in Decision (EU) 2022/382, establishing the existence of a massive influx of displaced persons from Ukraine to allow temporary refuge in the European Union as well as the sharing of responsibility between the state's members of the management of the situation of refugees from Ukraine.

In agreement with the EU legislative approach, the Government of Romania adopted Emergency Government Ordinance no. 15/2022 regarding the provision of humanitarian support and assistance by the Romanian state to foreign citizens or stateless persons in special situations, originating from the conflict zone of Ukraine, completed and amended by the Emergency Ordinance no. 20/2022 regarding the amendment and completion of some normative acts as well as for the establishment of some support measures and humanitarian assistance.

With reference to the commercial relations between the European Union and Ukraine, they are based on the "Association Agreement between the European Union and the European Atomic Energy Community and their member states, on the one hand, and Ukraine, on the other" (OJ L 161, 29.05.2014, p. 3; In accordance with Council Decision 2014/668/EU of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Energy Community Atomic Energy and their Member States, on the one hand, and Ukraine, on the other, Title IV

of the Association Agreement, which deals with trade and trade-related matters, applied provisionally from January 1, 2016, and entered into force on September 1, 2017, following ratification by all member states).

Through this Association Agreement, the European Union and Ukraine express their desire to strengthen and at the same time expand relations in order to achieve a gradual economic integration of Ukraine, in this sense, Article 25 of the Agreement provides for the progressive establishment of a free trade zone between the parties, in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994, hereinafter referred to as “GATT 1994”.

Thus, in the economic field, in order to support Ukraine, the European Union adopted Regulation (EU) 2022/870 of the European Parliament and of the Council of May 30, 2022, regarding temporary trade liberalization measures in addition to the commercial concessions applicable to Ukrainian products under the Agreement of association between the European Union and the European Atomic Energy Community and their member states, on the one hand, and Ukraine, on the other (OJ L 152, 03.06.2022, entered into force on 04.06.2022 with applicability until 05.06.2023, see in this regard, article 8 paragraphs (1) and (2)).

### **Union legislative and transposing provisions on "temporary protection" applicable to refugees from Ukraine**

On March 4, 2022, the Council adopted Implementing Decision (EU) 2022/382 establishing the existence of a massive influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing a temporary protection. (Council Directive 2001/55/EC of July 20, 2001, regarding the minimum standards for granting temporary protection, in the event of a massive influx of displaced persons, and measures to promote a balance between the efforts of the Member States to receive these persons and bear the consequences of this reception - OJ L 212, 07.08.2001, p.12)

*What is “temporary protection” and what rights does it give to the beneficiaries?*

In the sense of Article 2 of Directive 2001/55/EC, “temporary protection” means a procedure of an exceptional nature intended to ensure, in the event of a massive and imminent influx of displaced persons from third countries who cannot return to their country of origin, immediate and temporary protection, especially if there is also a risk that the asylum system will not be able to handle this influx”.

In the sense of GEO no. 15/2022, norm of transposition of the directive mentioned above, the *beneficiaries* of the provisions of this GEO are considered “foreign citizens and stateless persons in special situations who come from the area of the armed conflict in Ukraine and enter Romania and who do not request a form of protection according to Law no. 122/2006 on asylum in Romania” (see in this regard article 1 paragraph (1) of GEO no. 15/2022) who are in temporary accommodation camps and humanitarian assistance.

Decision (EU) 2022/382 constitutes the legislative context for the application of the provisions of Directive 2001/55/EC, with application starting on or after February 24, 2022, to the following categories:

- (a) Ukrainian citizens residing in Ukraine before February 24, 2022;
- (b) stateless persons and nationals of third countries, other than Ukraine, who benefited from international protection or equivalent national protection (who can prove that they had a legal residence in Ukraine before February 24, 2022, having, as the case may be, a permanent stay, temporary, or studying, on the basis of a valid permit issued in accordance with Ukrainian law and who cannot return under safe and stable conditions to their country or region of origin) in Ukraine before February 24, 2022;
- (c) family members of the categories mentioned above.

For the purposes of this decision, in conjunction with the provisions of Article 15 paragraph (1) of Directive 2002/55/EC, the following terms are defined as follows:

(i) “supporter of family reunification” means the refugee from Ukraine who is granted temporary protection in a Member State of the European Union and who wishes to be joined by one or more members of his family.

(ii) family member means:

a) the spouse, the supporter of family reunification, but also the partner with whom they are in a stable relationship, when the legislation or practice in force of the Member State in question applies to unmarried couples a treatment comparable to that applied to married couples, under its national legislation on foreigners;

b) unmarried minor children of a person mentioned above or of his/her spouse, regardless of whether they are legitimate, born out of wedlock or adopted;

c) other close relatives who were living together as part of the family when the events that led to the massive influx of displaced persons took place.

We must specify, that pursuant to Article 15 paragraph (6) of Directive 2001/55/EC, the members of the reunited family are granted residence permits, based on temporary protection.

*What is the period for which refugees from Ukraine are recognized the right to temporary protection on the territory of the European Union?* The duration of temporary protection is one year. If the conflict in Ukraine does not end within this period, the protection is automatically extended, with periods of six months, for a maximum duration of one year. Although the union text does not provide, we are of the opinion that this maximum term of one year can be extended under the conditions of maintaining the state of war, after a prior decision of the Council on the proposal of the European Commission.

On the basis of temporary protection, the persons concerned can benefit from rights (Militaru 2019, 119) harmonized throughout the territory of the European Union, among which we mention:

- the right to have residence permits for the entire duration of protection, so they will benefit from visas in the shortest time, including transit visas; (see in this regard article 8 of Directive 2001/55/EC).

- the right to be informed in the Ukrainian language or in a language they understand about the rights conferred by the status of beneficiary of temporary protection; (see in this regard article 9 of Directive 2001/55/EC).

- the right to carry out, as appropriate, salaried or independent activities, educational actions for adults, professional training courses and practical training internships at the workplace; (see in this regard article 12 of Directive 2001/55/EC). Applicants for temporary protection, coming from Ukraine and located on the territory of Romania, can be employed without the employment permit provided for in article 3 paragraph (1) and article 17 paragraph (1) of the O.G. no. 25/2014 regarding the employment and posting of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of foreigners in Romania (On the date of entry into force of O.G. no. 25/2014, O.U.G. no. 56/2007 is repealed regarding the employment and posting of foreigners on the territory of Romania), approved by Law no. 14/2016 with subsequent amendments and additions. Moreover, the above-mentioned persons are extended the right of residence for the purpose of work according to O.U.G. no. 194/2002 regarding the regime of foreigners in Romania, republished, with subsequent amendments and additions, without the obligation to obtain a long-stay visa for employment.

*What happens to applicants for temporary protection who do not have documents to prove their professional qualification or experience in the activity necessary for employment?* Article VI paragraph (3) of O.U.G. no. 20/2022 brings the legal solution to such a reality. In concrete terms, the beneficiaries applying for temporary protection in the situation mentioned above can be employed for a period of 12 months with the possibility of extension by periods of 6 months, for a maximum of one year, based on their declaration on their own responsibility

in the sense that they meet the conditions of professional qualification and experience in the activity necessary to occupy the job in which they are going to be employed.

- the right to benefit from the provisions of the legislation in force in the member states regarding access to social security systems. On the territory of Romania, applicants for temporary protection arrived from the conflict zone of Ukraine, have access to the unemployment insurance system, to unemployment prevention measures following their registration at the territorial and Bucharest employment agencies, under the conditions established for Romanian citizens by the provisions of Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment with subsequent amendments and additions.

- the recognized right of different categories of people to benefit from the necessary support, in terms of social assistance as well as medical care. In the application of this regulation, with reference to refugees from Ukraine located on the territory of Romania, we mention the application of articles 2<sup>1</sup>-2<sup>6</sup> of GEO no. 20/2022 with reference to: a) *“persons with disabilities accompanied or unaccompanied who come from the area of conflict”* who benefit on the territory of Romania, free of charge, from the social services from the centres provided for in Article 51 paragraph (3) of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, republished with subsequent amendments and additions, being taken in the records of the general directions of social assistance of the county respectively of the sectors of the city of Bucharest. b) *“accompanying persons with disabilities”* benefit from social services together with them under the same conditions; c) *“elderly persons with reduced mobility or in a situation of dependency”* who come from the conflict zone and are on the territory of Romania benefit, upon request, from social services free of charge in accordance with the provisions of Law no. 17/2000 on assistance social assistance of elderly persons, republished (Law no. 17/2000 on social assistance of elderly persons republished pursuant to the provisions of art. II of Law no. 281/2006 for the amendment and completion of Law no. 17/2000 on social assistance of elderly persons, published in the Official Gazette of Romania, Part I, no. 600 of July 11, 2006; Chapter II was amended by Point 1, single article of Law no. 19 of January 12, 2018, published in the Official Gazette no. 44 of January 17 2018)

- during the period of temporary protection, the member states order that the unaccompanied minor be placed: with adult relatives; with a host family; in reception centers with special facilities for minors or in other forms of accommodation suitable for minors; with the person taking care of the child at the time of travel (See in this regard article 13 paragraph (2) in conjunction with article 16 paragraph (2) of Directive 2001/55/EC);

- providing the necessary medical assistance or other type of assistance to persons with special needs such as, for example, unaccompanied minors or persons who have suffered torture, rape or other serious forms of psychological, physical or sexual violence; (see in this regard article 13 paragraph (4) of Directive 2001/55/EC);

- the right of minors to benefit from access to the education system under the same conditions as nationals of the host Member State. With reference to the rights of refugee minors from Ukraine, located on the territory of Romania, article 10 introduced in GEO no. 20/2022 regulates a series of rights in the educational field, as follows: the right to education in school units under the same conditions and with funding from the same budgets as preschoolers, schoolers, and Romanian pupils; the right to free accommodation in boarding schools, the food allowance, the right to supplies, clothes, shoes, textbooks; the quality of *“audient”* is regulated as being the student educated in an education system from another country, who continues his/her studies at the request of his/her parent or legal representative in an educational unit in Romania until the equivalence of his/her studies and the support of any differences after which they can acquire the status of a student in Romania.

*How does the European Union manage, from a financial point of view, the influx of refugees from Ukraine?*

The financial implications arising from this temporary protection are ensured by the Fund for asylum, migration and integration established by Regulation (EU) 2021/1147 of the European Parliament and of the Council of July 7, 2021 establishing the Fund for asylum, migration and integration (OJ L 251, 15.07.2021, p. 1). Furthermore, the European Union's civil protection mechanism has been activated, so member states can request essential funds to meet the needs of displaced persons from Ukraine present on their territory and can benefit from co-financing for the provision of such assistance (see for more many details, Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No. 1313/2013/EU on a Union civil protection mechanism - OJ L 185.26.05.2021, p. 1).

It is necessary to mention in the given context, Regulation (EU) 2022/613 of the European Parliament and of the Council of April 12, 2022 amending Regulations (EU) no. 1303/2013 and (EU) no. 223/2014 regarding the increase of pre-financing from REACT-EU resources and the establishment of a unit cost. Thus, as a result of Russia's military aggression, the states in the immediate vicinity of Ukraine, including Romania, are facing a substantial influx of people. This represents an additional challenge for the public budgets of these countries, at a time when the economies of the Member States are in the recovery phase following the impact of the COVID-19 pandemic.

As a result, article 68c of Regulation (EU) no. 1303/2013 is amended by Article 1 of Regulation (EU) 2022/613, in the sense that for the implementation of operations related to the migration of refugees from Ukraine, member states may include in the expenses declared in the payment requests a unit cost for the persons who have been granted temporary protection, in accordance with Council Implementing Decision (EU) 2022/382, in the amount of EUR 40 per week for each full or partial week that the person is in the Member State concerned. The unit cost can be used for a maximum of 13 weeks in total, starting from the date of the person's arrival in the Union.

With reference to the amendment of Regulation (EU) no. 223/2014 we specify that the text of Article 6a paragraph (4) was modified by Article 2 of Regulation (EU) 2022/613 in the sense that, compared to the initial pre-financing mentioned above, the European Commission pays 4% of the REACT-EU resources allocated to the programs for the year 2021 as an additional initial pre-financing in 2022. For programs in Member States that recorded a level of arrivals of people from Ukraine above 1 % of their national population in the period February 24, 2022 - March 23, 2022, the respective percentage is increased to 34 %.”

### **Union legislative provisions regarding economic support measures granted to Ukraine**

The economic facilities are regulated in accordance with the provisions inserted at points (a)-(b)-(c) of paragraph (1) of article 1, of Regulation (EU) 2022/870 thus, in order to liberalize trade with Ukraine, taking into account the current context, the following preferential regimes are introduced:

(a) *preferential customs* duties on imports into the Union of certain industrial products originating in Ukraine, which are subject to a seven-year phase-out in accordance with Annex I-A to the Association Agreement, *are set at zero*;

(b) the entry price system shall be suspended for the respective products to which it applies, as specified in Annex I-A to the Association Agreement. Customs duties are not applied to imports of the respective products;

(c) all tariff contingencies established pursuant to Annex I-A to the Association Agreement are suspended and the products subject to the respective quotas are admitted without customs duties upon import into the European Union;

(d) no anti-dumping duties are charged (Boghirnea 2022, 34-37);

(e) of imports originating in Ukraine carried out during the application of this regulation (by derogation from the applicability of article 14 paragraph (1) first paragraph of Regulation (EU) 2016/1036 of the European Parliament and of the Council of June 8, 2016 on protection

against imports subject to of dumping from countries that are not members of the European Union (OJ L 176, 30.06.2016, p.21; The previously mentioned preferential regimes apply to products that, on June 4, 2022, are either in transit from Ukraine to the European Union, or is under customs control in the Union, subject to the submission of a request to this effect to the competent customs authorities in the Union within six months of that date; see in this regard, Article 7 of Regulation (EU) 2022/870 ).

The preferential regimes provided for in Article 1 paragraph (1) letters (a), (b) and (c) are applicable under the conditions that Ukraine does not introduce new customs duties, taxes with equivalent effect or new quantitative restrictions or measures with effect equivalent on imports originating in the Union. Also, Ukraine undertakes, in applying this regulation, to keep customs duties at current levels and not to introduce discriminatory internal administrative measures, unless their introduction would be clearly justified in the context of the war. (See this meaning, Article 2 of Regulation (EU) 2022/870). However, the European Commission may temporarily suspend, in whole or in part, by means of an implementing act, the preferential arrangements provided for in Article 1(1)(a), (b) and (c) when it finds that there is sufficient evidence of Ukraine's non-compliance with the conditions listed above. We note, in accordance with the provisions of Article 4 of Regulation (EU) 2022/870 that a product originating in Ukraine, if it is imported under conditions that cause or are likely to cause serious difficulties to Union producers of similar or directly competitive products, the taxes customs duties applicable under the Association Agreement on imports of the respective product can be reintroduced at any time (Niță 2006, 210-216). Both the suspension of preferential measures and the activation of the "safeguard clause" apply only after a prior analysis by the European Commission applying the procedure regulated by this regulation.

## Conclusions

Since the start of Russia's military invasion of Ukraine on February 24, 2022, the European Union has provided Ukraine with massive political, financial and humanitarian assistance, with the strong involvement of member states within a "Team Europe" approach. The whole concerted effort of the member states and the Union can be summed up, without making a mistake, in the statement of the President of the European Commission, Ursula von der Leyen "*...Ukraine can count on the EU's full support... We are also ready to take a leading role in international reconstruction efforts to help rebuild a democratic and prosperous Ukraine. This means that investments will be matched with reforms that will support Ukraine in pursuing its European path.*"

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