

ESSAY COMPETITION 2023

# COMMON EUROPEAN ASYLUM SYSTEM?

THE UNEQUAL TREATMENT OF SYRIAN AND  
UKRAINIAN REFUGEES

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## Introduction

The disparity in the treatment of Syrian and Ukrainian refugees raises questions about the compatibility of the Common European Asylum System with the international commitments undertaken by the European Union (EU)<sup>1</sup>, in particular the provisions of Article 3 of the Geneva Convention of 1951, which states that contracting states must apply its provisions without discrimination as to race, religion or country of origin. In this analysis, we seek to address the reasons behind the EU's different responses when faced with refugees of different origins, namely the use of agreements with third countries and push backs during the 2015 crisis and the activation of the Temporary Protection Directive (TPD) during the 2022 crisis. The aim of this comparison is to highlight how the lack of homogeneity between member states (MS), media coverage and the discourse of their political leaders contribute to the formation of a negative public opinion and hinder the possibility of consensus and cooperation on asylum. We believe that the construction of a genuine common asylum system depends on overcoming these obstacles.

In order to understand the European law applicable to this matter, it is important to give a brief theoretical background on the inclusion of asylum in the EU Treaty, and also on the development of the Common European Asylum System.

Following the mass displacements that took place in the aftermath of the Second World War, the need to regulate the right to asylum became clear to the international community. It was in this context that the 1951 Geneva Convention and its 1967 Additional Protocol emerged, essentially helping to recognise the concept of refugee and the principle of non-refoulement. The introduction of this issue into the EU Treaty dates back to 1992, when the Maastricht Treaty incorporated international cooperation on asylum into the EU's institutional framework, specifically the third pillar: Justice and Home Affairs (JHA). In 1997, through the Treaty of Amsterdam and under Article 78 of the TFEU, the competence for the EU to develop a common asylum policy was introduced, with the jurisdiction of the CJEU. But it wasn't until 1999, at the Tampere European Council, that talks began on the development of a Common European Asylum System to realise the provisions of Art. 78. In 2000, the EU Charter of Fundamental Rights was approved, enshrining the right to asylum in Article 18 and referring to the Geneva Convention and the New York Protocol. However, it wasn't until the Lisbon Agreement in 2009 that the CDFEU gained the force of primary EU law and the Area of Freedom, Security and Justice (AFSJ) was established in Part III of Title V of the TFEU. The scope of Article 67 is thus extended to include the development of this policy on the basis of solidarity between Member States and fairness between third country nationals.<sup>1</sup>

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<sup>1</sup> European Parliament Policy Department for Citizen's Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK's withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

It is in this context that the Common European Asylum System (CEAS) emerged, developed in two phases (between 2008-2013 and between 2015-2017). This system began by defining the minimum common standards in this area, with the Qualification, Temporary Protection, Procedures and Reception Directives and the Dublin II and EURODAC Regulations. Following the Hague Programme (2004), the second phase sought to move towards greater standardisation and harmonisation in this area, with the Qualification, Procedures and Reception Directives revised and the Dublin III<sup>2</sup> Regulation approved. The Temporary Protection Directive appeared in the first phase of the CEAS' development, but was activated for the first time in 2022, following the Russian invasion of Ukraine.

The TPD was developed in the wake of the conflict in the former Yugoslavia, which at the time produced the largest wave of refugees to the EU since World War II, highlighting the need to create a mechanism that would enable Member States to respond to a mass influx of displaced persons by providing them with immediate protection.<sup>3</sup> Thus, Directive 2001/55/EC on rules for granting temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States was adopted, helping to reduce disparities between MS and secondary movements.<sup>4</sup>

However, although the EU received several migratory waves between 2001 and 2022, the TPD was not activated in any of them. The literature prior to the Ukraine refugee crisis explored the reasons for not activating the TPD, essentially pointing to the lack of consensus, the length of time, the ambiguity of the concept of "mass flow" and the fear of creating a *pull factor*<sup>5</sup>.

The usefulness of this directive has been questioned not only by authors who consider it obsolete<sup>6</sup> but also by the European Commission, which in a 2016 study<sup>7</sup> even suggests repealing it. However, its rapid activation following the start of the conflict na

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<sup>2</sup> European Parliament Policy Department for Citizen's Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK's withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

<sup>3</sup> European Parliament Policy Department for Citizen's Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK's withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

<sup>4</sup> Considerando n.º 15 da Diretiva 2001/55/CE relativa a regras em matéria de concessão de proteção temporária no caso de afluxo maciço de pessoas deslocadas e a medidas tendentes a assegurar uma repartição equilibrada do esforço assumido pelos Estados-Membros da EU [online]. Disponível em: <https://eur-lex.europa.eu/PT/legal-content/summary/temporary-protection-if-there-is-a-mass-influx-of-displaced-people.html>

<sup>5</sup> The most frequent arguments for its non-activation involve that it required lengthy procedures, that "mass influx" is a vague term, that it would be difficult to reach a qualified majority vote in the Council, and that the activation would create a 'pull-factor' for migrants. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. P.17. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>6</sup> INELI-CIGER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>7</sup> European Commission. Directorate-General for Migration and Home Affairs. *Study on the Temporary Protection Directive: Executive Summary* [online]. January, 2016. Disponível em: [https://home-affairs.ec.europa.eu/system/files/2020-09/executive\\_summary\\_evaluation\\_tpd\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/executive_summary_evaluation_tpd_en.pdf)

in Ukraine (8 days after the start of hostilities) calls into question the previous conclusions<sup>8</sup>.

The EU's reaction to the refugee crisis following the Russian invasion of Ukraine, by activating the Temporary Protection Directive and accepting a considerable number of refugees, stands out in contrast to the response to the 2015 crisis<sup>9</sup>. In the latter, where the refugees were mainly Syrians, the EU faced criticism for a lack of solidarity and coordinated action between member states<sup>10</sup>. of solidarity and coordinated action between member states<sup>12</sup>. The refugee crisis following the Russian invasion of Ukraine showed that the EU has the capacity to mobilise resources and accept refugees when the political will is there<sup>11</sup>. . However, the response to the 2015 crisis raises questions about the consistency of the humanitarian values of the different EU MS when faced with different origins of migrants, which jeopardises unity and the European integration project <sup>12</sup>.

There are several reasons for the inequality of the EU's response to the migration crises of 2015 and 2022. Despite the fact that both crises share the characteristic of consisting of the abrupt displacement of a large number of people<sup>13</sup> people<sup>15</sup> fleeing a conflict and seeking refuge in the territory of a small number of EU Member States, the use of legal and political instruments by the EU was quite different<sup>14</sup>. We believe that the

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<sup>8</sup> During the first year of the Syrian refugee crisis, dealing with one million refugees was depicted as unprecedented and impossible, but in 2022, over two million refugees arrived in Europe within the course of two weeks, revealing the falsity of the claim that Europe could not handle that many refugees within months (Khalid, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponivel em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>9</sup> While internal disagreements and inaction have characterised the EU's response to the 2015-2016 refugee crisis, the treatment of Ukrainian refugees fleeing the Russian invasion has been the first stone on the road to exemplary behaviour in the eyes of EU and international law. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponivel em: <https://hdl.handle.net/11250/3073837>

<sup>10</sup> This attitude not only contradicts Europe's international protection history but also leads many to question the founding common values of European integration: human dignity, freedom, equality, solidarity, principles of democracy and the rule of law (Charter of Fundamental Rights of the European Union, 2000) GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union. [online]. ISSN 2630-6263, ss. 1-18. Disponivel em: DOI: 10.14782/ipsus.539105

<sup>11</sup> The EU activation of the TPD was a significant step towards a more humane protection regime (Venturi & Vallianatou, 2022), and it sent a clear message of a joint EU commitment to implement a coordinated response to tackle the humanitarian catastrophe of the massive mobilisation of Ukrainian people into European borders (Carrera et al., 2022). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponivel em: <https://hdl.handle.net/11250/3073837>

<sup>12</sup> These actions not only violate the fundamental human rights of Syrian refugees, but also undermine the EU's commitment to the principles of human dignity and equality, and threaten the stability and security of the region as a whole. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponivel em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4> Solidarity has been a fundamental principle of European integration so expressed concerns about burden-sharing and guaranteeing balanced efforts (minimal in many cases) among Member States in providing temporary protection shows that they have deeper problems of confidence and trust each other and in the mechanisms of European integration. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union. [online]. ISSN 2630-6263, ss. 1-18. Disponivel em: DOI: 10.14782/ipsus.539105

<sup>13</sup> Both refugee crises were very sudden and their size was similar, about six million people in each case. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>14</sup> The EU had a clear refugee policy both in the case of Syria and Ukraine, but these policies could not have been more different. The EU policy on Syrian refugees was a legacy policy on political refugees not designed for Syria, while the EU adopted a specific policy on Ukrainian refugees. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

reasons the reasons for this disparity are: a) media coverage; b) the identity of the refugees; c) previous waves of migration; and d) the proximity of the conflict, so we will analyse each of them individually.

It is important to emphasise from the outset that although in both cases the people fleeing the conflict abstractly met the conditions to apply for refugee status under the international law set out in the 1951 Geneva Convention, the vast majority of people from Ukraine chose to apply for temporary protection under the Temporary Protection Directive, So legally it would be more correct to refer to refugees<sup>15</sup> in the case of the Syrian conflict and beneficiaries of temporary protection in the case of the 2022 crisis<sup>16</sup>, with implications for the rights<sup>17</sup> and freedoms conferred by each of these statutes. However, in order to facilitate exposition, with this proviso, the two terms are used interchangeably throughout the analysis..

## Media Coverage

Adopting a constructivist perspective<sup>18</sup>, , and recognising the impact of the media in shaping public opinion and the consequent pressure exerted on the political sphere, the different approach adopted in reporting on refugee-producing conflicts<sup>19</sup>, evidencia um apelo a preocupações desiguais. Desde logo a diferente cobertura reveals an appeal to unequal concerns. First of all, there is the different media coverage of the two conflicts, one of which is reported daily and analysed by various experts in the field during prime

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<sup>15</sup> the 2015 Syrian refugee crisis is categorized as a “refugee” crisis due to the fact that the majority of Syrians arriving in Europe were fleeing conflict and persecution, making them eligible for protection under international law (UNCHR 2015). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>16</sup> in the case of the Ukrainian refugee crisis, the term “refugees” is used for the same reasons [due to the fact that displaced persons were fleeing conflict and persecution, making them eligible for protection under international law], even though most individuals from Ukraine have applied for temporary protection status instead of seeking asylum (Eurostat 2023). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>17</sup> Moreover, the majority of Syrians were granted subsidiary protection and were entitled to residence and work permit but not to family reunion rights (Carrera et al., 2022). SALES, Matias Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>18</sup> The theory of constructivism can be used to explain how social constructions and resulting discourse have shaped the difference in the international response toward the Syrian compared to the Ukrainian refugee crisis. NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>19</sup> In migration-media studies, and in particular in the aftermath of the Syrian refugee crisis, extensive literature has investigated the role of the media in shaping public opinion and policy decisions in the context of humanitarian crises, the representation of refugees in the press, and the power of the media in framing narratives in refugee crisis-related contexts. (...) According to different literature, the media can play a crucial role in shaping public opinion and influencing policy-making cycles in crisis-related scenarios such as the Ukrainian-Russian conflict and its subsequent refugee crisis (Eberl et al., 2018). SALES, Matias Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

time, while the other is reported vaguely, sparsely<sup>20</sup> and being confusing<sup>21</sup> and complex<sup>22</sup>. Then there was the narrative around the conflict itself, with reports on the Russian invasion of Ukraine adopting a humanitarian approach<sup>23</sup>, emphasising the need to empathise with the Ukrainian people, victims of Putin's invasion<sup>24</sup>. On the other hand, the reports on the 2015 refugee crisis emphasised a security approach<sup>25</sup> concerned with the imminence of terrorism, the lack of infrastructure to receive the large number of people fleeing and the consequent economic burden, denoting a lack of knowledge about the contours of the conflict in the Middle East<sup>26</sup> and resulting in a lack of empathy with the Syrian refugees<sup>27</sup>.

In addition, several political leaders have spoken out in diametrically opposed ways in both crises, notably Hungary's Prime Minister Viktor Orbán<sup>28</sup> and Bulgaria's

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<sup>20</sup> as the Syrian civil war gained momentum from 2011 to 2015, the Western world did not have the same understanding of the situation because no predominant international narrative of the conflict arose (CBC, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>21</sup>The Syrian civil war was incomprehensible even to well-informed Europeans. Syria is known as a most colorful agglomeration of ethnic groups and religions, and such a state is difficult for outsiders to understand. On the one side stood the inhumane dictator Bashar Al-Assad. On the other side stood ISIS, the fanatical Islamic State, while all kinds of other ethnic and religious groups fell in between. Dozens of foreign parties aggravated Syria's domestic complexity. Russia, Turkey, and a score of Western countries had small numbers of special forces on Syria, overtly to fight ISIS, but also to check one another. The civil war slowly gained momentum from 2011 to the great exodus of 2015. Nobody succeeded in explaining to the public what the horrific civil war in Syria really was about. Several of the few heroic journalists who went there were killed. Therefore, no narrative evolved that evoked sympathy for the suffering Syrian refugees. Were they Muslims? Did they sympathize with ISIS? Were they Christians? If so, why did they sympathize with Assad? Without a credible narrative that arouses sympathy, no refugees are likely to attract much popular support among outsiders at any time. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>22</sup> In Syria, the main concern was perceived to be ISIS, and Russia was supposed to fight it, and so was the Syrian government, while dozens of other countries were somehow involved. The drama was too complex. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>23</sup> SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>24</sup> This humanitarian media framing and positive narratives circulated at the beginning of the crisis and claimed the necessary reception of refugees fleeing the horror of the Putin-initiated war and encouraged the idea of help and protecting our fellow Ukrainian neighbours. SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>25</sup> SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>26</sup> The shortage of coverage of the Syrian civil conflict and the fact that it has not been framed to fit into the same distinct black-and-white boxes as the attacks on Ukraine has led to the lack of coherent, universal, humanitarian policies toward Syrian refugees. NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>27</sup> Europeans did not understand what the civil war in Syria was about or who fled and why. Therefore, they had little sympathy for the refugees from Syria. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>28</sup> Back in 2016, Hungarian Prime Minister Orbán had described non-European refugees as “Muslim invaders” and had claimed that “Hungary should not accept refugees from different cultures and religions to preserve its cultural and ethnic homogeneity” (Reilly & Flynn, 2022). However, one week after the Russian invasion, President Orbán said the motto “we're letting everyone in” near the Hungarian-Ukrainian border (Bathke, 2022), while Bulgarian Prime Minister Kiril Petkov also echoed the media-fuelled discriminatory narrative by underlying that “these people are Europeans. These people are intelligent, they are educated people.... This

Prime Minister Kiril Petrov<sup>29</sup>, demarcating the opposition of Central European MS in the case of receiving Syrian refugees, but making room for Ukrainian refugees. The pressure exerted by this bloc of MS is also one of the main reasons given for the impossibility of achieving the qualified majority in the Council needed to activate the Temporary Protection Directive in the context of the 2015 crisis, while at the same time being the reason given for its successful activation in 2022.<sup>30</sup>

## Refugee Identity

From the perspective of post-functionalist theory, which attributes international co-operation to the belief in a common identity<sup>31</sup>, and taking into account the phenomenon of Orientalism<sup>32</sup>, it is clear that the identity of refugees, produced by both conflicts, has had an impact on the different openness of MS to their entry into the EU<sup>33</sup>. The demarcation of West and East, focussing on different religious beliefs and customs, has increased mistrust and contributed to reducing the recognition of Syrian people as needing help. On the other hand, the identification of Ukrainian refugees with European

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is not the refugee wave we have been used to, people we were not sure about their identity, people with unclear pasts, who could have been even terrorists...” (Brito, 2022). SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>29</sup> in February 2022, when referring to Ukrainian refugees, Bulgarian Prime Minister, Kiril Petkov told journalists, “These people are intelligent. They are educated... This is not the refugee wave we have been used to... people with unclear pasts who could have been terrorists” (CBC, 2022), NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponible em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>30</sup> The reluctance to accept refugees among Central European governments posed obstacles to the activation of the TPD in 2015, while their support became crucial for its activation in 2022. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponible em: <https://hdl.handle.net/11250/3073837>

<sup>31</sup> Post-functionalism places a significant emphasis on identity politics. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponible em: <https://hdl.handle.net/11250/3073837>

<sup>32</sup> Orientalist philosophy, which was present in the 20th century colonial discourse, as these types of narratives implicitly suggest that war is a natural phenomenon in places outside of the Western world and portrays a lack of civilisation (Ellison & Andrews, 2022). (...) Moreover, this Orientalist approach that portrays Ukrainian people as “civilised” and the Syrian refugees as “terrorists” or “problematic”, paves the way to treat them politically different, while our understanding of the situation (Khalid, 2022). Disinformation, misinformation and xenophobia played a key role in creating mainstream negative narratives on the reception of Syrian and other non-European asylum seekers back in 2015-2016, contrary to what happened in 2022 with the Ukrainian humanitarian crisis. SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>33</sup> From a post-functionalistic perspective, the activation of the TPD during the 2015 refugee crisis would not have been expected due to the exacerbation of cultural divisions across Europe, pitting proponents of a multicultural and open Europe against opponents. (...) In contrast, when the war in Ukraine broke out in 2022, the question of how to coordinate a response was not subject to intense politicization. The focus shifted more towards the practical and humanitarian aspects of managing the influx of displaced individuals. Viewing this situation through a post-functionalist lens, the absence of significant cultural divisions meant that the issue of coordinating a response did not become politically contentious. Consequently, this lack of politicization facilitated the activation of the TPD. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponible em: <https://hdl.handle.net/11250/3073837>

people<sup>34</sup> and traditions<sup>35</sup> has helped to increase awareness of the need for help and empathy. This demarcation was even made through a direct comparison<sup>36</sup> between the two<sup>37</sup>. The xenophobic component of this discourse becomes even more evident when we consider the discrimination faced by non-white residents of Ukraine<sup>38</sup> when they tried to flee the conflict.

Nor did the different genders of the refugees, predominantly male in the 2015 crisis<sup>39</sup> and predominantly female<sup>40</sup> in the 2022 crisis, contribute to this effect, insofar as there was an association between the proliferation of crime, which is more easily associated with males and a negative image linked to Syrian refugees<sup>41</sup> was created, along

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<sup>34</sup> Daniel Hannan, British reporter from The Telegraph, wrote in an opinion article on 26 February “They seem so like us. That is what makes it so shocking. War is no longer something visited upon impoverished and remote populations. It can happen to anyone” Charlie D’Agata, a senior CBS correspondent in Kyiv, stated on air “This isn’t a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades. You know, this is a relatively civilised, relatively European – I have to choose those words carefully, too – city, where you wouldn’t expect that or hope that it’s going to happen”. SALES, Matias Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>35</sup> Through this dehumanising comparison, media coverage gradually helped push and frame a positive narrative on the need to protect Ukrainian refugees because they were similar to Europeans, behaved like Europeans, and had cultural and democratic values close to those of Europeans SALES, Matias Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>36</sup> Regrettably, this positive narrative was developed upon pillars of discriminatory comparisons with refugees from different origins, races or cultures, especially from North Africa and the Middle East, and, therefore, fostered on prime time TV double standards in the way they are treated. SALES, Matias Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>37</sup> In this very same line, Phillipe Corbé, a commentator at the French BFM TV, stated that “we’re not talking about Syrians fleeing bombs of the Syrian regime backed by Putin, we’re talking about Europeans leaving in cars that look like ours to save their lives” and Kelly Kobiella, a reporter for NBC News covering the refugee drama from Poland, mentioned in prime time: “Just to put it bluntly, these are not refugees from Syria. These are Christians or white” SALES, Matias Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponible em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>38</sup> It is also important to note that while Western and European policies generally favoured Ukrainian over Syrian refugees, many Ukrainian refugees (especially those of colour) also faced discrimination There are countless stories of the struggles faced by non-white students and migrant workers who did not fit the ‘typical Ukrainian’ image being stranded at borders, beaten by sticks, and denied access to accommodation and transportation (Luquerna, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponible em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>39</sup> The composition of the refugees has also been very different. From Syria, families or young men emigrated. The prominence of young men aroused the suspicion that the real aim was for work, which has been less appreciated. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponible em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>40</sup> From Ukraine, the outflow has consisted of three groups: women, children, and old age pensioners, but virtually no men since Ukrainian men of the age 18–60 have not been allowed to leave the country because of potential military service. Women and children arouse compassion and no fear. Given that only some members of the families depart, the perception that they will return dominate. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponible em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>41</sup> The Syrian refugee group consisted of more men than the Ukrainian refugee group, as men aged 18–60 were prohibited from leaving Ukraine to defend their country (Karasapan, 2022). Male refugees tend to be depicted as more prone to crime, violence, and radicalization (Strickland, 2016). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponible em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

with the belief that the real purpose behind this migration was economic, once again discrediting the suitability of asylum seekers from the Middle East.

### Previous migration vacancies

In addition, previous experience in receiving people of these nationalities is also quite different. Whilst several member states, such as Germany and Sweden, have successfully received and integrated people from the Middle East into their societies in the past, this experience has not been shared by the others<sup>42</sup>. But in previous waves of migration of Ukrainian nationals, there has been the formation of a body of low-skilled workers needed to respond to labour shortages in some MS<sup>43</sup>, seen as beneficial for economic development<sup>44</sup>. These factors are directly related to the perception of the length of stay - while many Ukrainian migrants in previous waves of migration have ended up returning to Ukraine<sup>45</sup>, this return is not visible in Syrian migrants who have settled in Germany and Sweden<sup>46</sup>.

In fact, the difference between the various MS is precisely what jeopardises the cohesion and sustainability of a "Common European Asylum System". While historically pro-immigration and pro-European MS such as Sweden and Germany are open to receiving refugees regardless of their origin, this is no longer the case with MS such as Poland, Bulgaria and Hungary, which have always been against the possibility of responsibility sharing and redistribution/allocation quotas for the refugees received by the MS, and have even been accused of practising *push backs*.<sup>47</sup>.

In the 2015 crisis, Poland refused to accept responsibility sharing mechanisms and redistribution/allocation quotas for the refugees received by the MS. In the 2015 crisis,

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<sup>42</sup> An issue that has received surprisingly little attention is the prior migration inflows. Two West European countries had received large inflows from the Middle East, namely Germany (mainly Turks and Kurds) and Sweden (many Christian Syrians, Iraqis, and Kurds). These were the two countries that welcomed Syrian refugees in 2014. In Southern and Eastern Europe, by contrast, surprisingly few people from the Middle East had arrived previously. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>43</sup> The Ukrainian immigrants typically worked in agriculture, construction, and household, low-paid and temporary jobs. They were rarely competing with locals. Many Ukrainian migrants went back and forth. Many worked for a few months in Central Europe and then returned to Ukraine. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>44</sup> This vast Ukrainian migration attracted minimal public attention because it was appreciated. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>45</sup> The Ukrainian migration to Europe was very different. It had been large for years. After Ukraine became independent in 1991, many Ukrainians went to various European countries to work or to study. Numerous Ukrainians, probably most, went home to Ukraine intermittently and then out to earn more money again. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>46</sup> The Syrian migration has been quite different since Syria has been in a terrible state for a long time. The main traditional European recipient countries, Germany and Sweden, have not seen much of a return of migrants to Syria for that reason. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponivel em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>47</sup> Further, Eastern European States "illegal pushback policies" further demonstrate a discriminatory and polarized political climate toward Syrian refugees. Adnan Nasser & Alexander Langlois, World Leaders are Forgetting About Syrian Refugees, Carnegie Endowment for Int'l Peace (May 5, 2022), <https://carnegieendowment.org/sada/87079> (identifying Poland, Hungary, and Romania as a few states that have enacted these policies).

Poland refused to accept mechanisms for sharing responsibility and redistributing refugees, and faced criticism for its treatment of refugees on the border with Belarus<sup>48</sup>. In the Ukrainian refugee crisis, on the other hand, the treatment was completely different and there was a political effort to openly welcome them<sup>49</sup>, although once again it was clear that this openness was based on the concept of white, Christian Ukrainians, while in contrast, residents of Ukraine who could not fit this description encountered obstacles when they tried to cross the border<sup>50</sup>.

### Proximity of the conflict

If we look at this issue from the perspective of state-building theory, especially in terms of the state's concern with internal security<sup>51</sup>, the proximity of the conflicts - one of them with a direct border with the EU<sup>52</sup> and the other quite distant<sup>53</sup> and separated by other countries, can perhaps explain the ease of consensus reached at the beginning of the conflict in Ukraine<sup>54</sup> versus the distance and emotional detachment that occurred during the Syrian conflict.

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<sup>48</sup> Furthermore, in the case of *D.A. and Others v. Poland*, Syrian nationals suffered pushback at the Polish-Belarusian border and were repeatedly denied their right to protection under Articles 3 and 4 of the 1951 Convention, relating to the Status of Refugees and its 1967 Protocol, when Polish authorities unlawfully aimed to reduce the number of asylum applications registered in Poland. The Court held that Article 3 of the Convention was violated due to the illegally denied access to the asylum process and “exposed . . . risk of inhuman and degrading treatment and torture in Syria.” The mistreatment of Syrian nationals in this case highlights the serious consequences of the Polish government’s efforts to restrict the number of asylum applications, which disregards their obligations under international law. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>49</sup> For example, Poland displayed a warm welcome for Ukrainian refugees, taking immediate actions to integrate, protect, and assist Ukrainians. The State even enacted legislation to grant Ukrainian citizens and their families equal access to the Polish labor markets and afforded them social benefits such as the right to education and healthcare. The Polish Border Guard and other public services have expedited quick border crossings, arranged for free transportation, and facilitated humanitarian assistance and medical aid for Ukrainian refugees. Although the promptness and efficiency of aid for Ukrainians should be applauded, the apparent and unlawful bigotry toward Syrian refugees that it revealed cannot be ignored. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>50</sup> There are also accounts of Polish authorities taking aside African students and refusing them entry into Poland, although the Polish Ambassador to the UN told a General Assembly meeting on 28 February that assertions of race or religion-based discrimination at Poland’s border were “a complete lie and a terrible insult to us.” He asserted that “nationals of all countries who suffered from Russian aggression or whose life is at risk can seek shelter in my country.” According to the Ambassador, people from 125 different nationalities have been admitted into Poland from Ukraine. Global Detention Project. *The Ukraine Crisis. Double Standards: Has Europe’s Response to Refugees Changed?* [online] March 2022. Disponível em: <https://reliefweb.int/report/ukraine/ukraine-crisis-double-standards-has-europe-s-response-refugees-changed>

<sup>51</sup> “(…) the theory suggests that a security threat needs to be present for the member states to transfer authority to the EU on these matters. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>52</sup> In the case of Ukraine, the country has a direct land border with Romania, Poland, Slovakia, and Hungary and there is no third country where the EU can make a migration deal to stop the arrival of asylum seekers and to return them. CIGER, *Meltem Ineli. 5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>53</sup> Building on the state-building lens, the theory suggests that the TPD was not activated during the 2015 refugee crisis, because the perceived collective security threat was not sufficient to persuade member states to transfer authority over their borders to the EU level. The civil war in Syria was not perceived as a direct threat to Europe. Therefore, member states were not willing to transfer authority over their borders. Instead, many reintroduced border controls to restrict migration and others disregarded the Dublin regulation to accommodate more refugees. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>54</sup> Moreover, the state-building lens points to that the activation of the TPD in 2022 for refugees from Ukraine was driven by a collective security threat. The Ukrainian refugee crisis was perceived as a potential threat to Europe, particularly in neighboring countries, due to fears of becoming the next target of Russian aggression. As a result of the perceived security threat, member states

In addition, the pre-existence of an agreement to grant visas for 90 days to people with Ukrainian passports, thus providing a legal entry route into the EU<sup>55</sup>, led to the rapid realisation that Ukrainian refugees would be more easily able to enter, highlighting the practical impossibility of controlling the EU's external borders and indicating great pressure on the infrastructure for receiving and issuing visas<sup>56</sup>.

On the contrary, the lack of any agreement of this nature that could facilitate the regular entry of Syrian refugees into the EU<sup>57</sup> implies that in addition to the physical difficulty of reaching the borders<sup>58</sup>, there were administrative barriers<sup>59</sup>, which contributed to the consolidation of the perception of distance from the conflict and the need for an urgent response<sup>60</sup>.

Physical separation also contributed to the design of the policy that was eventually adopted by the EU in the context of the 2015 crisis, characterised by push-backs and the implementation of the EU-Turkey Deal<sup>61</sup>. However, we believe that the activation of the

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were willing to transfer authority to the EU on migration through the activation of the TPD. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>55</sup> In the Ukrainian refugee crisis, displaced individuals from Ukraine had access to a legal route through neighboring countries, which facilitated their movement. Additionally, Ukraine has a Visa deal with the EU, allowing Ukrainians with biometric passports to enter the EU without a Visa for a period of 90 days (EEAS 2017) RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>56</sup> the likelihood of high migratory pressure on EU's Eastern borders (The Decision notes that "the Union is likely to be faced with a very large number of displaced persons, potentially between 2,5 million and 6,5 million as a consequence of the armed conflict, of whom it is anticipated that between 1,2 and 3,2 million would be persons seeking international protection" (...) a clear risk that the Member States' asylum systems will be unable to process the arrivals without adverse effects on their efficient operation and on the interests of the persons concerned and on those of other persons requesting protection. INELI-CIGER, Meltem. 5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022 [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>57</sup> In contrast, Syrian refugees faced a different situation. With the exception of quota refugees, the primary means of reaching Europe was through illegal and risky boat journeys across the Eastern or the Central Mediterranean route (Wagner 2015, 1). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>58</sup> In contrast, Syrian refugees faced a different situation. With the exception of quota refugees, the primary 34 means of reaching Europe was through illegal and risky boat journeys across the Eastern or the Central Mediterranean route (Wagner 2015, 1). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>59</sup> It is quite difficult for persons fleeing conflict and violence to enter the EU territories legally: the Member States often close down their diplomatic representations in war-torn countries and "for nationals of these countries, obtaining a visa to enter the EU is nearly impossible". Moreover, the EU law and/or the ECHR does not oblige MS to grant a visa to TCNs and stateless persons fleeing conflict or violence in view of applying for asylum upon their arrival in the Member State. (see X and X v Belgium ECLI:EU:C:2017:173; M.N. and Others v. Belgium [GC], Judgment of 5 May 2020). Although TCNs can apply for protection at the external borders, it is well known that the EU's attempts to externalise its asylum policy to third states such as Turkey and the well-documented pushback practices make it difficult to seek asylum in the EU. Thus, for a Syrian, Afghan or Iraqi asylum seeker entering the Union territories legally or even approaching the EU border is very difficult and this lessens the number of displaced persons arriving in the EU and makes the activation of the TPD more difficult. CIGER, Meltem Ineli. 5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022 [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>60</sup> The Syrian civil war started in 2011 and evolved during several years without any clear direction. The civil war turned much worse in 2015, especially with the Russian bombing of Aleppo, but this was not well understood in Europe. After all, ISIS was a serious problem in Syria, and Russia was supposed to combat it. Media reported Russia's extensive bombing of hospitals, but that was only part of the reporting and did not arouse a strong public reaction. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>61</sup> The EU decided to try to resolve the Syrian refugee problem by persuading Turkey to stop them from crossing the border to Greece and keeping them in Turkey. This meant that the EU in fact declared that it did not want Syrian refugees if it could avoid them. In March 2016, the EU agreed with Turkey to limit the number of asylum seekers entering Greece. Irregular migrants attempting to enter Greece would be returned to Turkey. In exchange, the EU agreed to resettle Syrian refugees from Turkey on a one-to-one basis, reduce visa restrictions for Turkish citizens, pay 6 billion euros in aid to Turkey for Syrian migrant communities, update the customs union,

TPD would be the most appropriate option in this case, since it would respond to the needs of Syrian refugees, avoiding unequal treatment in different MS<sup>62</sup> motivated by the individual analysis of asylum applications<sup>63</sup> and allowing the choice of MS<sup>64</sup>.

In fact, the rapid and effective activation of the TPD in the case of the Ukrainian refugee crisis shows that the EU has the right mechanisms in place to respond to situations where there is an abrupt and massive influx of people, when the political will is there. The activation of the TPD made it possible to respond to the needs of Ukrainian refugees without provoking a crisis within the EU or overloading its infrastructure. In this way, we want to show that it really is possible to reach a consensus that ensures a humanitarian response in line with the international commitments made.

Although there were several calls for the activation of the TPD during the Syrian refugee crisis<sup>65</sup>, including by MEP Elisabetta Gardini<sup>66</sup>, these calls were not heeded. The activation of the TPD has now helped to densify the concept of mass influx and to understand which are the criteria that can lead to the fulfilment of the necessary requirements for its use<sup>67</sup>.

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and re-energize stalled talks regarding Turkey's accession to the EU (Terry 2021). ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>62</sup> In the absence of group-based temporary protection, asylum-seekers escaping from similar conditions were treated differently in each Member State. Some continued to move around within the EU while many remained stuck outside the EU's borders, with front-line Member States placed under heavy pressure and burden. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. *Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union*. [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

<sup>63</sup> While the TPD's application ensures immediate temporary protection on a collective basis without individual assessment of each asylum request, this was not the situation for Syrian refugees (Garcés Mascareñas, 2022). This means that the asylum requests on an individual basis were made at the borders of EU member states while the asylum-seeking processes ranged from six months to one year to have a response. SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>64</sup> "Moving away from "fortress Europe" and the robust Dublin asylum system, the TPD allowed the formal lifting of visa requirements and a particular protection status, granting residence permits to Ukrainian beneficiaries up to three years. It also provided harmonised rights across the EU, such as work permit and immediate access to national education and health systems, and housing benefits (Carrera et al., 2022). (...) the TPD allows the territorial distribution of refugees based on their own preferences of residence (Carrera et al., 2022), contrary to what happened with Syrian asylum seekers, who were dependent on the reception preferences of each member state (Garcés Mascareñas, 2022)." SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>65</sup> While European policymakers were well aware of this mass influx, it was academics, activists and social workers that called for the activation of the TPD in 2015 (Orchard and Miller, 2014; Yeo, 2015; Tsourdi and de Bruycker, 2015; İneli-Ciğer, 2016). Nevertheless, despite these calls, the EU has not even considered implementing the TPD regarding the Syrian refugee crisis. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. *Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union*. [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

<sup>66</sup> In 2015, MP Elisabetta Gardini asked the Commission whether it agreed that the legal conditions for triggering the Temporary Protection Directive had been met in view of the Syrian conflict and ensuing crisis in the Mediterranean and, hence, a proposal to the Council had to be submitted. However, once again, the Directive was not implemented. INELI-CİĞER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>67</sup> By reviewing the Council Implementing Decision 2022/382, one may conclude that the Council when determining the existence of a mass influx situation took into account: a) the number of arrivals, b) the rate of arrivals, c) potential migratory pressures, d) Ukrainians not needing a visa to arrive in the MS, d) potential inability of asylum systems of MS to cope with the mass arrivals. INELI-CİĞER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in*

## Conclusion

Critically analysing the EU's response to different migration crises has allowed us to highlight the need for a more consistent and equitable approach. Throughout this essay, we have examined the EU's different reactions to distinct migration crises, highlighting the activation of the Temporary Protection Directive (TPD) during the Ukrainian crisis in contrast to the Syrian refugee crisis in 2015, which was marked by a lack of solidarity and coordination between member states.

This analysis reveals not only the complexities of the EU's asylum system, but also the political and social disparities between member states, particularly evident in the resistance of countries such as Poland, Bulgaria and Hungary to co-operation and responsibility-sharing. The divergence of attitudes and approaches highlights the challenges faced by the EU in finding a unified and equitable response to the migratory crises.

Indeed, overcoming the current challenges requires not only internal reforms, but also a reflection<sup>68</sup> on the EU's fundamental values and its ability to translate them into concrete actions. Implementing measures<sup>69</sup> that guarantee the acceptance and protection of refugees, regardless of their origin, is crucial to building a Common European Asylum System and an EU that is truly united, cohesive and committed to the humanitarian principles that underpin it and the international principles to which it is bound<sup>70</sup>.

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2022 [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>68</sup> The Ukraine refugee crisis presents Europe with not only an important opportunity to demonstrate its generosity, humanitarian values, and commitment to the global refugee protection regime; it is also a critical moment of reflection: Can the peoples of Europe overcome their widespread racism and animosity and embrace the universalist spirit of the 1951 Refugee Convention? Global Detention Project. *The Ukraine Crisis. Double Standards: Has Europe's Response to Refugees Changed?* [online] March 2022. Disponível em: <https://reliefweb.int/report/ukraine/ukraine-crisis-double-standards-has-europe-s-response-refugees-changed>

<sup>69</sup> The EU must take immediate steps to address this issue, by providing safe and legal pathways for Syrian refugees to reach Europe and access asylum, and by ensuring that all refugees are treated fairly and with dignity and respect, regardless of their nationality, religion, or other characteristics. International cooperation is crucial to provide resettlement, family reunification, and humanitarian visas. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>70</sup> The EU's blatant and unlawful operations to stop Syrian asylum seekers from reaching safer EU shores unjustly excludes Syrians from their right to seek asylum, which is guaranteed under Article 18 of the EU Charter.<sup>53</sup> These actions not only violate the fundamental human rights of Syrian refugees, but also undermine the EU's commitment to the principles of human dignity and equality, and threaten the stability and security of the region as a whole. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

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