

# GMS Flash Alert

## Immigration Edition

2022-051 | March 9, 2022



# European Union - Measures for Refugees from Ukraine; Steps by Spain

The European Union's Directive 2001/55/EC has been activated in order to enable immediate and temporary refuge in the European Union to (mainly, but not restricted) those Ukrainian nationals residing in Ukraine who have been displaced on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date.<sup>1</sup> (For related coverage, see [GMS Flash Alert 2022-045](#), 4 March 2022.)

Also, the European Commission published a comprehensive overview of facilitation measures concerning border controls, part of the bloc's Schengen rules, while still ensuring the necessary level of border checks.<sup>2</sup>

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## WHY THIS MATTERS

The armed conflict in Ukraine is forcing large numbers of people to leave their jobs, their homes, their way of life and cross borders – in hopes of reaching safety – into Ukraine's neighbouring countries, such as Moldova, Hungary, Slovakia, and Poland. This refugee situation is forcing a re-think in the EU and its member states of standard border-crossing policies and practices.

Immigration counsel, global-mobility professionals, and companies with employees (and their families) relocating as they flee danger in Ukraine, should keep abreast of the changing situation and take steps to assist those affected.

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## Context

The United Nations (UN) High Commissioner for Refugees estimates that, under the worst-case scenario, up to 4 million people may potentially flee Ukraine.<sup>3</sup>

Depending on how the conflict evolves, based on current estimations, the European 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.<sup>4</sup>

Within a few days, by the beginning of March, more than 650,000 displaced persons arrived in the European Union through Poland, Slovakia, Hungary, and Romania. These numbers are expected to increase.

The waiting times at the border crossing points are constantly rising, while queues and congestion are reported, especially on the Ukrainian side of the border.<sup>5</sup>

## Do Ukraine Nationals Need a Visa to Enter Schengen Area?

Nationals of Ukraine are exempt from the requirement to be in possession of a visa when crossing the external borders of member states for stays of no more than 90 days in any 180-day period (Ukraine is listed in Annex II to Regulation (EU) 2018/1806).

The European Commission has turned its attention to helping ensure the effective and efficient management of the crossing of persons fleeing Ukraine through the borders with Poland, Slovakia, Hungary, and Romania and to helping avoid congestion at and around the borders, while maintaining a high level of security for the entire Schengen area. The Commission has recommended the following operational guidelines<sup>6</sup>:

- simplification of border controls for certain categories of persons, including vulnerable persons, such as children, and other categories, such as transport workers, that find themselves in Ukraine while carrying out their activities/services;
- the possibility to organise border controls outside of border-crossing points;
- special arrangements for crossing the borders by rescue services, police, fire brigades and border guards, and seafarers, regardless of their nationality;
- the establishment of emergency support lanes, in order to help ensure access and movement of organisations providing humanitarian aid to people in Ukraine;
- outside the scope of the Schengen rules, the waiving of customs duties and border-crossing measures aimed at facilitating the entry of pets travelling with their owners from Ukraine.

## Directive 2001/55/EC: How Is It Going to Be Implemented?

This Directive applies to the following categories of persons displaced from Ukraine on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date:

- a) Ukrainian nationals residing in Ukraine before 24 February 2022;
- b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and,
- c) family members of the persons referred to in points (a) and (b).

## How Long Will the Temporary Protection Last?

In accordance with Directive 2001/55/EC, the duration of temporary protection should be for an initial period of one year.

Unless terminated under the terms of Article 6(1), point (b), of that Directive, that period should be extended automatically by six-monthly periods for a maximum of one year. The Commission will keep the situation under constant monitoring and review. At any time, it may propose to the Council to end the temporary protection, based on

the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection, or propose that the Council extend the temporary protection by up to one year.

## Can EU Countries Apply National Law?

This Decision is compatible with, and can be applied in complementarity with, national temporary protection schemes, which can be considered as implementing Directive 2001/55/EC. If the member state has a national scheme that is more favourable than the arrangements set out in Directive 2001/55/EC, the member state should be able to continue applying it, since the Directive provides that member states may adopt or retain more favourable conditions for persons covered by temporary protection. However, should the national scheme be less favourable, the member state should ensure the additional rights provided for in Directive 2001/55/EC.

### Spain

In this vein, on 8 March the Spanish government agreed that the European Temporary Protection Directive be applied in Spain as an exceptional mechanism to attend to people who flee from Ukraine and facilitate the procedures for obtaining a residence and work permit.<sup>7</sup>

Furthermore, considering that the consequences of the war affect many other people, Spain's government has agreed to extend the scope of application of this Directive also to nationals of third countries with effective residence in Ukraine at the time of the invasion. Spanish authorities have stipulated that the rule will apply both to Ukrainian nationals who arrive in Spain as a result of the war and to nationals of third countries and stateless persons who were residing legally in Ukraine and have had to leave. Also the rule applies to those other Ukrainians who were in Spain before February 24 and who cannot return to Ukraine. The protection will be extended to spouses, partners, and minor children.

Lastly, it is expected that Spain's government will be working on a legal instrument that allows the application of this Temporary Protection Directive immediately, so as to simplify procedure in order that displaced persons who arrive in Spain can enjoy the rights granted to them by the Directive as simply and swiftly as possible.

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## KPMG NOTE

Any questions or concerns should be directed to your qualified professional services adviser or a member of the GMS/People Services team with the KPMG International member firm in Spain (see the Contact Us section).

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## FOOTNOTES:

1 See "[Council Implementing Decision \(EU\) 2022/382 of 4 March 2022](#)" in *Official Journal of the European Union*, 4.3.2022. For an earlier stage, in proposal form, plus an explanatory memorandum, click [here](#). For actions taken by the Council of the EU, see "Justice and Home Affairs Council, 3-4 March 2022," at: <https://www.consilium.europa.eu/en/meetings/jha/2022/03/03-04/>.

2 See Commission Communication "Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders" of 5 March (2022/C 104 I/01) at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0304\(10\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0304(10)&from=ES).

## FOOTNOTES (cont'd):

3 UN, "More than half a million have fled Ukraine, UN refugee agency reports," *UN News* at: <https://news.un.org/en/story/2022/02/1112872> .

4 European Commission, "Proposal for a Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection" (Brussels, 2.3.2022) COM(2022) 91 final. *Explanatory Memorandum 1. Context of the Proposal; Reasons for and objectives of the proposal* at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0091&from=EN> .

5 See Commission Communication, "[Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders](#)," 2 March 2022.

6 See Commission Communication "Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders" of 5 March (2022/C 104 I/01) at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0304\(10\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0304(10)&from=ES) .

7 Referencia del Consejo de Ministros, Madrid, martes 8 de marzo de 2022, at: <https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220308.aspx>

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## Contact us

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*\* Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

**The information contained in this newsletter was submitted by the KPMG International member firm in Spain.**

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