

Analysis of the Peculiarities of the Concept of Temporary Protection in the Eu in the Context of Defense against Hybrid Threats

Maryna O. Dei¹, Iryna O. Hrytsai²,
Nataliya O. Davydova³, Nataliia A. Serdiuk⁴
& Viktoriia V. Yurovska⁵

Abstract

Ensuring security has always been an extremely important aspect of its development and existence in every country. In order to ensure internal and external security, it is necessary to clearly understand the threats that may impede the normal functioning of the state. To this end, state so relevant international organizations always identify threats in their security concepts. However, the hybrid threat definition still lacks a clear, unifying definition and its concept acquires a new meaning in the context of the Russian-Ukrainian war. The purpose of the article is to analyse the peculiarities and concept of temporary protection under EU law and the doctrinal approaches of researchers, as well as to analyse hybrid threats in the context of the European countries' borderless policy, considering the current situation. The authors compare the characteristics of temporary protection, as well as changes in the interpretation of hybrid threats until 2022 and after.

Keywords: temporary protection, hybrid threats, the war in Ukraine, European Union law, refugees

1. Introduction

Temporary protection is a rather controversial mechanism in the international refugee protection system, although it has been used several times in international

¹The author is an Associate Professor at the Department of Constitutional and Administrative Law, at the Faculty of Law at the National Aviation University, Kyiv, Ukraine. She can be reached at dei8004-5@acu-edu.cc

²The author is an Adviser of the Rector on Gender Issues at the Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine¹². She can be reached at irinagritsay86@gmail.com¹³

³The author is Doctor of Science of Law, Professor, Leading Researcher at the Department of Private Law at the Academician F.H. Burchak Scientific and Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine. She can be reached at ndavydova11@gmail.com²⁰

⁴The author is Professor at the Department of Political Science and Law and the Faculty of Urban and Spatial Planning at Kyiv National University of Construction and Architecture, Kyiv, Ukraine. She can be reached at natalia.serdyk@gmail.com²⁷

⁵The author is an Associate Professor at the Department of Labor Law at Yaroslav Mudryi National Law University, Kharkiv, Ukraine. She can be reached at yurovskayavictoriya@gmail.com

practice. As a result, in the 1970s, the mechanism of temporary protection was applied to provide international protection to Vietnamese refugees in Hong Kong and Thailand, Afghan refugees in Pakistan and Iran, Iranian refugees in Turkey, and refugees in other Central American and African nations (Kjaerum, 1994; Fitzpatrick, 2000). UNHCR General Conclusion on International Protection No. 14 (XXX), 1979 noted that in cases of mass influx of asylum seekers, they should always receive at least temporary shelter (Executive Committee of the High Commissioner's Programme, 1979). It made reference to the 1967 Protocol to the 1951 Convention Relating to the Status of Refugees, which reaffirmed the principle of non-refoulement in the granting of temporary protection, emphasised the obligations of the international community in aiding the first country of asylum, and stated that temporary protection should be used as a temporary, interim step towards a permanent solution.

Such a system has reportedly been used primarily by industrialised governments as a temporary solution to emergency situations, delaying the decision of eligibility for refugee status, according to UNHCR's 2005 Global Report. Groups of refugees are temporarily admitted and provided with protection in compliance with minimum requirements based on the principles of the 1951 Refugee Convention and its 1967 Protocol (UNHCR, 2005).

As the asylum approach is rather volatile, temporary protection was introduced in the second half of the 1990s as an essential component of the European Union's reaction to refugee problems. Temporary protection in the EU dates back to the war for the break-up of Yugoslavia (Kerber, 1999). After the outbreak of the war in 1992, UNHCR introduced temporary protection as an element of A Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia and called on states to introduce temporary protection regimes for displaced persons (UNHCR, 1992). EU states have implemented the protection mechanism for forced migrants in different ways. For example, the Netherlands and Denmark have developed national schemes to provide temporary protection. Spain provided appropriate protection based on special laws of the state. Greece, Portugal and Italy granted such persons the right to stay in the country on humanitarian grounds.

The former provided all individuals admitted to Ireland with automatic temporary protection, whereas the latter provided the status of exceptional leave to remain (UNHCR, 2008; Genç & Öner, 2019). Member States introduced various mechanisms for the temporary reception of refugees during the conflict in the former Yugoslavia. However, there was no single legal act that would regulate the issue of quotas for temporary protection, the permitted duration of stay, as well as the rights and benefits to be granted to such persons.

The Council Directive 2001/55/EC of July 20, 2001, on minimum requirements for granting temporary protection in the event of a mass influx of displaced persons, and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, was adopted by the EU in 2001, further defining the framework for temporary protection. The adoption of this document provided a common mechanism for Member States to respond to mass arrivals of refugees. Since the adoption of the 2001 Directive, the EU has faced several crises related to the arrival of forced migrants on its territory, namely Libya (2011), Tunisia (2011), Syria (2011 to date). It is important to note that despite the fact that during these influxes of migrants, the EU faced significant pressure on the EU institutions (Genç & Öner, 2019). And only the flow of Ukrainian forced migrants in 2022 forced the EU to apply the mechanism provided by the Directive.

Hybrid threats imply that the enemy can use both traditional and unconventional means to achieve its goals. The comprehensiveness of the approach that has been developed to deal with the multifaceted character of hybrid threats is a significant aspect, as it entails the coordinated use of all available resources, including diplomatic, military, intelligence, and economic ones. In addition, it is necessary to strengthen coordination between international organisations, in particular between the EU and NATO, to deepen partnerships, data exchange, education, training, as well as to fight propaganda more actively. The changing security situation in Eastern and Southern Europe will determine European security for many years to come. The complexity of modern asymmetric threats requires preventive action and coordinated efforts at the regional level.

2. Materials and methods

The comparative method was applied to analyse the advantages and disadvantages of the temporary protection procedure and, based on the comparison of these features. The formal legal method was applied to: analyse legal acts regulating the general aspect of temporary protection and legal mechanisms for its implementation for Ukrainians; analyse EU legislation on the definition of hybrid threats and security strategies in the EU region and cooperation with NATO; analyse international law and national legislation in terms of recognizing Russia as a threat to Europe and recognising it as a terrorist state.

The historical method was applied by the authors of the article to analyse the emergence and formation of temporary protection. In addition, the application of the historical method made it possible to analyse the formation of temporary

protection in the EU before its consolidation in EU law, as well as the application of this mechanism in the past and taking into account the current situation.

The authors of the article also used analytical and synthesis methods. First and foremost, this approach was used to analyse EU and international law in the context of regulating refugee rights, particularly by providing temporary protection for them. In addition, the method of analysis and synthesis was applied in considering the emergence and formation of temporary protection. The relevant method was also used to understand the importance of temporary protection in the context of countering hybrid threats, in particular illegal migration. Moreover, the method of analysis and synthesis was used to examine the development of EU perceptions of Russia's role in creating hybrid threats and disrupting peace on the continent. Furthermore, this method was used to analyse the concepts and terms used in the article, in particular: temporary protection and hybrid threats, as well as the evolution of these concepts due to changes in the objective ground reality.

The systematic method was mainly applied in considering the advantages and disadvantages of temporary protection, as well as in providing the author's definition of the concept of hybrid threats based on the analysis of scientific material. In addition, the authors used the systematic method in the conclusions of the article to identify hybrid threats.

3. Results

3.1 Features of temporary protection under EU law and doctrine

According to Esther Pozo, Head of the European Commission's Asylum Unit on Temporary Protection: it was an unprecedented situation, which started the countdown of a new period of European history (Vlasenko, 2022). In order to understand the features and scope of temporary protection, it is necessary to understand its definition. Temporary protection is an exceptional procedure for granting international protection to a large number of people simultaneously and automatically (i.e. without the need to consider individual applications) (Butchley, 2022; Beschastnyi et al., 2019). This means that granting temporary protection is possible only in case of mass influx or imminent mass influx of displaced persons from third countries who cannot return to their country of origin (UNHCR, 2022).

The right to temporary protection is communal and does not include a process for individual applications or administrative review (Hanziienko, 2022; Yaroshenko et al., 2022). Temporary protection does not affect the possibility of granting refugee status within the meaning of the Geneva Convention. It is a mechanism aimed at allowing displaced persons to enjoy harmonized rights (residence, access to the labour market and housing, medical care, access to education for children) across the EU (Commissioner for Human Rights, 2022;

Kopotun et al., 2019). In general terms, temporary protection is a flexible international protection instrument that offers shelter for a limited time to persons fleeing humanitarian crises (Ineli-Ciger, 2019).

The main regulation governing temporary protection in the EU is Council Directive 2001/55/EC of July 20, 2001, on minimum standards for providing temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The Directive's main purposes are to reduce the burden on national asylum procedures and to grant displaced people living in EU Member States standardised rights, such as: the right to housing, access to the labour market, and health care. It is important to realise that receiving temporary protection does not confer refugee status. Additionally, he or she is not denied the opportunity to do so in line with the process laid out by the law of the country in which they are currently residing (Council Directive No. 2001/55/EC, 2001).

It is important to remember that the launch of the temporary protection mechanism has a number of advantages for IDPs. R. Halpin highlights the following advantages (Halpin, 2022):

1) it saves time. Unlike the procedure for obtaining international protection, temporary protection can be granted immediately to all persons arriving from a certain geographical region (provided that they meet the criteria set out in the relevant Directive);

2) procedure reduces initial administrative burdens on host states. According to the clause 16 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, expect that the implementation of the temporary protection mechanism will also be beneficial for the Member States, as it will reduce the need for forced migrants to immediately apply for international protection thereby preventing the risk of possible overloading of national asylum systems (Council Implementing Decision No. 2022/382, 2022);

3) solidarity. This means that the Temporary Protection Directive was adopted as an instrument of inter-state solidarity in response to protracted political disputes during the 1990s.

The rules provided by the Temporary Protection Directive contribute to balancing the efforts of EU Member States in hosting displaced persons. It is important to note that the provisions of Chapter VI of the Temporary Protection Directive regulate the solidarity clause. The EU Council is required to take necessary action, including suggesting further assistance to the affected country, if

the number of asylum seekers entering a Member State exceeds this capacity (Council Directive No. 2001/55/EC, 2001). That is, the support of IDPs under the Temporary Protection Directive is based on solidarity and mutual assistance of all Member States. However, it should be noted that solidarity in support of IDPs is manifested not only in the context of relations between Member States but can also be applied to non-EU states.

Moldova, as a country that is not a member of the EU but has a border with Ukraine and has taken in a sizable number of refugees since the conflict's start in February 2022, has gotten a lot of support from the EU as part of the solidarity platform. Thus, on April 5, 2022, Germany held an international conference⁶ in Berlin in support of Moldova, where it was announced that, in addition to receiving displaced persons, it intends to support Moldova with loans, budget support and other financial assistance worth 695 million euros (Deutsche Welle, 2022);

4) flexibility for beneficiaries to remain or return. The main advantage of temporary protection is the possibility for beneficiaries to return to their country of origin when it is safe for them to do so. The temporary protection system provides an opportunity to ensure effective and immediate protection of forced migrants during the period of validity of the temporary protection application. At the same time, it leaves such persons the possibility to remain legally in EU Member States after the end of the conflict, if they wish to do so.

Nevertheless, there are certain drawbacks in the procedure of temporary protection. First of all, it is the lack of practice of its application. Although the idea of temporary protection is not new, its scope, restrictions, and legal foundation are still mainly unclear or unresolved (IACBA Webinar, 2022; Mencütek, 2022). As noted by the Centre for European Policy Studies (CEPS), states should take all measures to ensure that after the period of temporary protection forced migrants have mechanisms to meet their needs. Member States are recommended to facilitate migrants' access to individual assessment, which can lead to regular legal status (Carrera et al., 2022). Thus, any large-scale flow of internally displaced persons requires states to take measures to provide them with protection. However, in conditions when the application of such measures is urgent and should be designed for the arrival of a large number of migrants, we believe that temporary protection is an effective way to protect the rights of refugees and avoid unnecessary pressure on the state authorities of the host country.

3.2 General theoretical approaches to the concept of hybrid threats

The conflict in Ukraine not only activated the mechanism of temporary protection, but also forced all states to reconsider their security concepts, in particular in the context of hybrid threats. First of all, let us consider the definition of such threats and peculiarities of protection against them in the context of universal security policy (Bachmann & Gunneriusson, 2015; Gnatenko et al., 2020; Nalyvaiko et al., 2018; Lytvyn et al., 2021).

Thus, R. Thiele emphasises that it was the events of 2014 that made significant adjustments to the security foundations of the world. Russia's aggression in 2014 showed all countries that violence and the use of military force returned to Europe (Thiele, 2016). This threatened the entire region and the entire civilised world, because the existence of a state that completely ignores the norms of law threatens the existence of the entire system of international law. According to S. Fedina, after that a whole range of threatening trends was formed, including: Russia's aggression in Europe, militarisation of the Arctic, migration crisis, instability in the Middle East and North Africa, proliferation of nuclear weapons and weapons of mass destruction, cyberattacks, terrorism, illicit trafficking of prohibited substances (Fedyna, 2017).

Hybrid threats include psychological, economic and other means of influence on the state and public life (Akimova, 2018). M. Saarelainen believes that hybrid threats refer to methods and tools used by individual state or non-state actors to improve their own interests, strategies and goals (Saarelainen, 2017). It is also worth noting that a hybrid threat is any adversary that simultaneously and adaptively uses a combination of conventional weapons, irregular tactics, terrorism and criminal behaviour in the combat zone to achieve its political goals (Hbur, 2018).

Hybrid threats are characterised by ambiguity, as the actors employing them blur the usual boundaries of international politics and operate at the intersections between external and internal, legal and illegal, peace and war. Uncertainty is created by combining traditional and unconventional means. A hybrid threat is cost-effective because it turns the target's vulnerabilities into direct power for the hybrid actor. This makes hybrid actions more difficult to prevent or respond to.

3.3 Hybrid threat in EU legal acts and cooperation with NATO

The issue of hybrid threats was initiated by the EU in a number of legal acts. In 2016, the following was adopted Joint Communication to the European Parliament and the Council Joint Framework on countering hybrid threats a European Union response (European Commission, 2016). It is worth noting that the EU itself was never created to provide security or military power. Therefore, it is not surprising that most of the EU's non-pecuniary documents and projects are

prepared and implemented jointly with NATO. In addition, most EU member states are NATO members.

Communication lists the following areas that should be specially protected, as they may be primarily exposed to hybrid threats: critical infrastructure (including energy and logistics); defense capabilities; cyberspace; public health and food security; countering the financing of hybrid threats; building resilience to radicalization and violent extremism; cooperation with third countries (European Commission, 2016; Levchenko et al., 2021). In the same year, A Global Strategy for the European Union's Foreign and Security Policy was adopted. Its provisions name the main obstacles and threats to the EU's secure prosperity: terrorism, hybrid threats, economic instability, climate change and energy instability. It should be noted that the document does not directly define hybrid threats (European Union, 2016).

It is worth noting the Joint Report to the European Parliament and the Council on the implementation of the Joint Framework on countering hybrid threats - a European Union response, 2017. It states that hybrid threats are becoming a frequent feature of the European security environment. Hybrid threats require a coordinated response also at the EU and NATO levels. Furthermore, the document provides concrete recommendations to Member States on how to counter certain threats and measures to be taken in this context. However, this document also does not contain a definition of hybrid threats (European Commission, 2017).

In 2019, the EU prepared the report "A Europe that protects: good progress on tackling hybrid threats on its achievements in countering hybrid threats". Measures were identified in 22 areas that enhance the ability to counter hybrid threats, ranging from information sharing to critical infrastructure protection, cyber security, and societal resilience to radicalism and extremism. The response to hybrid threats has been successfully tested in several exercises conducted in parallel and in coordination with NATO. The EU has addressed hybrid threats in several ways. These include strengthening strategic communications and countering disinformation. A key element of this system was the Action Plan against Disinformation, 2018, which involved global media platforms, especially before the European elections, as well as the Rapid Disinformation Alert System, which facilitated information exchange between the European institutions and the governments of the EU member states. (European Commission, 2018).

Another area is countering threats in cyberspace. Cyber Defense, developed in the EU, provides for deterrence and response measures to cyber-attacks, in particular, the introduction of a regime of new sanctions against organisations or countries that violate the Declaration by the High Representative on behalf of the

EU on respect for the rules-based order in cyberspace (Council of the EU, 2019). The third main area is the reduction of risks associated with chemical, biological, radiological and nuclear threats. Together with the Member States, the European Commission has developed an identification list of hazardous chemicals. In October 2018, the European Council adopted a system of sanctions against the use of chemical weapons, and in January 2019, nine individuals and one organization were sanctioned.

In the field of critical infrastructure protection, the European Commission, in cooperation with the Member States, has developed a system of indicators of potential vulnerability of facilities to hybrid threats and measures to address such shortcomings. At the same time, the European Commission continued its efforts to diversify energy sources, in particular by developing energy relations with the United States and building the appropriate infrastructure for importing liquefied natural gas (European Commission, 2019). Therefore, interaction with NATO, as the main force of the European region in the context of peacekeeping and protection, is important for the EU (Yaroshenko et al., 2021; Antoniuk et al., 2018).

The Strategic Compass for Security and Defence 2022 states that the war against Ukraine proves that Europe is in even greater danger than we thought a few months ago, when the first draft of this Strategic Compass was presented. The very principles on which international relations are built, not least those enshrined in the UN Charter and the Helsinki Final Act, are at stake. This crisis has shown even more clearly that we live in a world shaped by brute force politics, where everything is armed and where we face a fierce battle of narratives. All these trends were already in place before the war in Ukraine, but now they are gaining momentum (European Union, 2022).

4. Discussion

While writing the article the authors analysed many legal sources and scientific works on the relevant subject. Thus, M. Kjaerum focuses on the refugee problems that Europe has faced in the past and continues to face today and analyses how temporary protection helps to solve this problem and affects the security of states. In addition, he emphasises that the specifics of incorporating the right to asylum into the national legislation of countries is their right. They determine independently the framework for its adoption. In general, the importance of M. Kjaerum's research is manifested precisely in the historical analysis of the emergence and formation of the mechanism of temporary protection in Europe (Kjaerum, 1994).

Halpin R. considers the definitions of temporary protection and the peculiarities of its legal regulation, but also analyses the application of the mechanism of its implementation as a result of military actions in Ukraine. The authors stress that temporary protection has a number of benefits, such as immediate access to employment and self-employment, education, housing, health care, and family unity; a reduction in the administrative burden on host states dealing with the significant influx of displaced persons; and mechanisms for burden sharing among European states. At the same time, the authors emphasise that the procedure of temporary protection has certain drawbacks. The authors concluded about the relevant shortcomings based on the research of other scholars and statements of the UNHCR (Halpin, 2022).

S. Fedyna emphasises that it was the events of 2014 in Ukraine that became one of the impetuses to revise the foundations of security at the international level. The authors also note that the world was not ready to confront the realities called hybrid threats and began to search for ways to effectively counter them (Fedyna, 2017). By activating the mechanism of temporary protection, the EU facilitated the protection of the fundamental rights of internally displaced persons, reduced the burden on the system of relevant state bodies, and legitimised the stay of Ukrainian refugees in the EU. The procedure for the introduction of temporary protection has led to a decrease in the growth of illegal migration, thus ensuring the avoidance of one of the modern hybrid threats in the form of illegal migration.

A. Motyl believes that Russia fell under the criteria of a terrorist state back in 2014. Thus, for example, Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and repealing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, 2017 exhaustively enumerates a number of serious crimes, such as assaults on human life, as intentional acts that may qualify as terrorist crimes if and insofar as they are committed for a specific terrorist purpose, namely to seriously intimidate a population, to forcibly compel a government or an international organisation to do or refrain from doing any act or to seriously destabilise or disrupt the fundamental political, constitutional, economic, or social structures of a country (Directive No. 2017/541, 2017; Motyl, 2022). According to the definition provided in the U.S. Code (6 USCS para 101), terrorism is defined as any activity that involves committing an act, poses a threat to human life, has the potential to destroy vital infrastructure, uses up important resources, violates federal, state, or local laws, and is intended to intimidate or coerce civilians; influence the policies of government by intimidation or coercion; or influence the conduct of government by mass destruction, killing, or kidnapping (Office of the Law Revision Counsel, 1926). Despite some differences, both definitions boil

down to several essential characteristics: terrorism is criminal and violent, and its purpose is to intimidate, coerce or destroy (Motyl, 2022).

Consequently, among the EU states that have recognised Russia as a terrorist or sponsor of terrorism are the following: Latvia, Estonia, Poland, the Netherlands, Czech Republic. The PACE, following the urgent debate on the new aggravation of the Russian Federation's aggression against Ukraine, adopted Resolution 2463 (2022), in which it declared the Russian regime terrorist. PACE became the first influential international organization to recognise Russia as a terrorist state (Parliamentary Assembly, 2022). In addition, the NATO Parliamentary Committee adopted a relevant decision recognising Russia as a terrorist state and calling for the establishment of a special International Tribunal for Russian aggression (Moller-Nielsen, 2022; European Parliament, 2022).

It can be stated that all threats that are commonly referred to as hybrid can and do originate from Russia. Now, after the military aggression, violation of international law and nuclear blackmail, as well as after the recognition of Russia as a terrorist, the world and especially the European countries should take into account the threat from the Russian Federation in their Security Strategies, as well as to take effective mechanisms to punish it and prevent such actions in the future neither by Russia nor by any other state.

5. Conclusions

The provision of urgent and temporary protection to displaced people from non-EU nations who are unable to return to their home countries owing to a genuine fear for their life is known as temporary protection. The Council Directive 2001/55/EC of July 20, 2001, on minimum requirements for granting temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between the Member States in receiving such persons and bearing the consequences thereof, is the primary legal document governing temporary protection in the EU. Additionally, the Council Implementing Decision (EU) 2022/382 of March 4, 2022, which establishes the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and has the effect of introducing temporary protection, 2022, specifies the pertinent procedure for launching temporary protection for Ukrainians.

Cooperation within and between EU structures - institutions, services and agencies - is a key factor for sustainable progress in combating hybrid threats. Cooperation with partner countries in this area has been intensified: hybrid risk studies have been launched in 7 partner countries in the EU's neighbourhood. The same applies to cooperation with strategic international partners, such as NATO.

There is almost no clear definition of hybrid threats in the documents. In EU acts, this is explained by the need for a flexible approach and adaptability to the challenges of our time. Based on the analysed material, it can be stated that hybrid threats are atypical threats that cannot come from the enemy simultaneously using an adapted ratio of conventional weapons, irregular tactics, terrorism and criminal behavior to achieve their goals. Hybrid threats concentrate on different modes of warfare, including conventional weapons, irregular tactics and formations, terrorist acts (including violence and coercion) and criminal disorder. Among the main sensitive areas that should be primarily protected from the EU are the following energy and logistics (on the example of Russia's energy terror of refusing to supply energy resources and destruction of Ukraine's energy infrastructure); proliferation trends ("nuclear" threats by Russia, Iran's involvement in the development of nuclear weapons) cyber security; protection of public health; illegal migration; militarisation and use and development of weapons of mass destruction (including viral and bacteriological); disinformation and propaganda, manipulation of public opinion; terrorism; corruption.

Although the EU has tried to take a comprehensive approach to tackle hybrid threats, this area of security is still viewed as a collection of tactical measures to counter individual dangers, namely those with a terrorist and cyber-information bent. Although the EU has acknowledged the rise of hybrid threats as a result of Russia's aggression against Ukraine, it has not yet pinpointed a single comprehensive source of such hybrid threats, despite the fact that the Russian Federation is already posing a real threat to security in Europe. This occurred as a result of the EU's lack of unity. Every NATO summit since the start of the Ukrainian crisis has made the creation of a coordinated plan to counter hybrid threats a primary priority. Serious efforts have been made in this case to create a legal framework and identify actionable solutions. In general, the Ukrainian crisis has fundamentally altered Europe's security paradigm.

The EU Member States showed unprecedented unity in implementing the temporary protection mechanism for Ukrainian refugees. Effective counteraction to hybrid threats is possible only under the condition of unity, comprehensive and systematic analysis of the external and internal environment by an independent and professional body without political or economic influence of any interested parties. Temporary protection in the context of hybrid threats has played an important role for both Ukrainian forced migrants and EU Member States. For Ukrainians, it provided an opportunity to stay safe, obtain legal status in the EU and access to all necessary functions (education, work, medical care, housing and assistance). For the EU, it has reduced the pressure on the system of state authorities responsible for assisting refugees, as the consideration of each

individual case would have created huge waiting periods. Also, temporary protection provided an opportunity to provide legal grounds for stay to a large number of Ukrainians at once, thus preventing illegal migration of these persons. In addition, highly qualified specialists who can fill work gaps in areas where there was a shortage of such specialists have left for the EU.

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