



Temporary protection and EU refugees: stretching protection, testing fragile trust.

The recalibration of EU asylum law from Ukrainian displacement to intra-EU asylum

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1. Introduction.

How far can EU law stretch its protection paradigms before it confronts the structural limits of mutual trust and the Union’s constitutional identity? This is the question we address in this Article. We make two claims. First, the activation of temporary protection in response to displacement from Ukraine has stretched the EU protection system *outward*. By effectively bracketing the ordinary Dublin logic of allocation of responsibility, the Union reconfigured core assumptions of asylum responsibility and trust. Protection became portable across Member States’ territories and solidarity was operationalised through a presumption of mutual trust that each State would uphold equivalent standards. Second, recent – and so far, isolated – instances of “asylum for an EU citizen” stretches the EU system of protection *inward*, interrogating the boundaries of mutual trust. If Member States are presumed safe countries of origin for their

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own nationals, EU citizenship itself operates as a structural guarantee against persecution within the Union. The prospect that a Union citizen might nonetheless qualify for refugee status in another Member State unsettles that constitutional presumption.

In section 2, we retrace how the Union reorganised protection for third-country nationals through the activation (and judicial interpretation) of the Temporary protection directive. Cases such as *Kaduna*, *Krasiliva*, and *Framholm* explore the outer limits of EU protection vis-à-vis displaced third-country nationals¹. In section 3, we reverse the perspective. By analysing a recent decision by the Tribunal of Bologna concerning a Hungarian citizen seeking protection in Italy, we examine whether the EU legal order can also generate refugees from within². In doing so, we expose a threefold tension in EU asylum law between solidarity and mutual trust, discretion and harmonisation, and the complex relationship between temporary protection, international protection and Union citizenship.

2. Temporary protection in EU asylum law.

When the Council activated the Temporary protection directive, on 4 March 2022, it did more than respond to Russia's invasion of Ukraine³. It revived a dormant instrument of EU asylum law since more than twenty years and, in doing so, posed a disruptive challenge to the Union's protection architecture⁴. Originally conceived as an emergency mechanism in the aftermath of the Balkan wars, it has, four years on, become a rather permanent pillar of the Union's response to displacement from Ukraine. The directive was designed to address «mass influx» situations through fast, collective and automatic protection, avoiding the saturation of national asylum systems while promoting solidarity between Member States.

As it is well-known, its activation requires a Council implementing decision establishing the existence of a mass influx of displaced persons, adopted by qualified majority on a proposal from the Commission. As said, for twenty years, that threshold was never reached. Therefore, the unanimity surrounding Council implementing decision 2022/382 marked a political rupture. Following the Russian «invasion, which seeks to undermine European and global security and

¹ Court of Justice of the European Union, 19 December 2024, joint cases C-244/24 et C-290/24, *Kaduna*, EU:C:2024:1038, 27 February 2025, case C-753/23, *Krasiliva*, ECLI:EU:C:2025:133 and 20 November 2025, case C-195/25, *Framholm*, ECLI:EU:C:2025:904.

² Tribunal of Bologna, Special section for immigration, international protection and free movement, decree no. r.g. 8445/2023 of 10 October 2025 (https://www.questionegiustizia.it/data/doc/4387/tribunale-bologna_anonima.pdf).

³ 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, *O.J.* 2022, L 71, p. 1. For early comments on the directive's activation see D. THYM, *Temporary Protection for Ukrainians: the Unexpected Renaissance of 'Free Choice'*, and M. İNELİ CİĞER, *5 Reasons Why: Understanding the reasons behind the activation of the Temporary protection directive in 2022*, in *EU Migration Law Blog*, 2022 and S. PEERS, *Temporary Protection for Ukrainians in the EU? Q and A*, in *EU Law Analysis*, 2022.

⁴ Council Directive 2001/55/EC, of 20 July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, *O.J.* 2001, L 212, p. 12. For comments on the directive, see ODYSSEUS NETWORK, *Temporary Protection Synthesis* (<https://odysseus-network.eu/wp-content/uploads/2015/03/2001-55-Temporary-Protection-Synthesis.pdf>); K. KERBER, *The Temporary protection directive*, in *E.J.M.L.*, 2002, p. 159; J.-Y. CARLIER, *Rapport sur la transposition partielle de la directive sur la protection temporaire*, in J.-Y. CARLIER, Ph. De BRUYCKER (eds.), *Actualité du droit européen de l'immigration et de l'asile*, Bruxelles, 2005, p. 316 (<http://hdl.handle.net/2078.1/88418>).

stability», the Decision established «the existence of a mass influx of displaced persons from Ukraine, [...] having the effect of introducing temporary protection»⁵.

The contrast between 2015 and 2022 – separated by just seven years – is difficult to overlook, despite the scale of displacement during the Syrian humanitarian crisis. At that time, the Directive remained unused, even though the situation was characterised as an asylum “crisis”⁶. Only in 2022 did consensus materialise, unanimously. The explanation is likely socio-political rather than legal. Ukraine’s proximity to the Union in terms of territory, shared identity and values helps account for both the Council’s unanimous activation of temporary protection and the breadth of public support⁷. Equally striking is the dissonance between two instruments adopted scarcely eighteen months apart: the (previous) EU Pact on Migration and Asylum in September 2020, which notably proposed repealing the Temporary protection directive, and the Council Decision of March 2022 activating temporary protection⁸.

As of March 2026, more than 4.3 million people benefit from temporary protection across the Union, the vast majority hosted in Germany, Poland and Czechia⁹. The magnitude of this protection regime rivals – and in some respects exceeds – the cumulative output of international protection afforded under the Common European Asylum System (CEAS) over the past decade¹⁰. Its legal and political implications are therefore significant.

Although still limited, the emerging case law of the Court of Justice of the European Union (CJEU) provides important lessons. In the following sub-sections, we examine the evolving architecture of temporary protection for displaced persons from Ukraine through three key aspects of this regime: the personal scope of protection (2.1), intra-EU mobility rights of

⁵ Council implementing decision (EU) 2022/382, recital 3.

⁶ On this topic, see J.Y. CARLIER, F. CRÉPEAU, A. PURKEY, *From the 2015 European ‘Migration Crisis’ to the 2018 Global Compact for Migration: A Political Transition Short on Legal Standards*, in *McGill International Journal of Sustainable Development Law and Policy*, vol. 16, no. 1, 2020, p. 37.

⁷ For references to the general situation in the EU and studies on the implementation of temporary protection in the Member States see J.-Y. CARLIER, Ch. FLAMAND, *La protection temporaire des personnes fuyant le conflit en Ukraine*, in *La guerre en Ukraine sous l’angle du droit international*, *Journal des tribunaux*, 2022, p. 745; S. GAKIS, *L’activation de la directive “Protection temporaire”: l’apport d’un instrument sui generis à la protection des personnes déplacées*, in *R.T.D.H.*, 2022, p. 771; C. URBANO DE SOUSA, *The Protection of Displaced Persons from Ukraine in Portugal*, in *E.J.M.L.*, vol. 24, no. 3, 2022, p. 313; S. MANTU, K. ZWAAN, T. STRIK (eds.), *The Temporary protection directive: Central Themes, Problem Issues and Implementation in Selected Member States*, Nijmegen, 2023; S. CARRERA, M. INELI CİĞER, *EU responses to the large-scale refugee displacement from Ukraine: An analysis on the Temporary protection directive and its implications for the future EU asylum policy*, Florence, 2023; A. DI PASCALE, *L’attuazione della protezione temporanea a favore degli sfollati dall’Ucraina*, in *Diritto, immigrazione e cittadinanza*, 2023, no. 1, p. 2; E. KÜÇÜK, *Temporary protection directive: Testing New Frontiers?*, in *E.J.M.L.*, 2023, vol. 25, no. 1, p. 1.

⁸ European Commission, proposal for a regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, COM(2020) 613 final, 23 September 2020: «the temporary protection should be repealed» (p. 18), because it «no longer responds to Member States’ current reality» (p. 10). See. F. J. DURÁN RUIZ, *La regulación de la protección temporal de los desplazados por la guerra de Ucrania y su compatibilidad con otras formas de protección internacional en el contexto de una nueva política migratoria de la UE*, in *Revista de Derecho Comunitario Europeo*, vol. 73, 2022, p. 951. The proposal later turned, in the new Pact, into regulation (EU) 2024/1359, of 14 May 2024, addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, *O.J.* 2024, L 1359, p. 1, without any abolition of temporary protection.

⁹ Eurostat, Temporary protection for 4.35 million in December 2025, news article of 10 February 2026.

¹⁰ European Commission, communication of 29 January 2025, European Asylum and Migration Management Strategy, COM(2026)45, p. 2: «between 2015 and 2024, some 3.9 million asylum seekers received a protection status in the EU, in addition to temporary protection beneficiaries».

temporary protection holders (2.2) and the temporal limits of the scheme (2.3). First, we analyse who are the beneficiaries of temporary protection, also in light of the clarifications provided by the CJEU in *Kaduna* (2024). We then situate temporary protection against the structural premises of the CEAS, highlighting divergences in mobility rights for different protection statuses, as partially illustrated by the *Krasilva* case (2025). Finally, we turn to the temporal dimension of protection, reflecting on the broader constitutional and systemic implications for EU asylum law, with particular attention to the teachings of the *Framholm* ruling (2025) and its significance for the future trajectory of the regime.

2.1. Beneficiaries of temporary protection.

A defining feature of the temporary protection regime is the protection's collective and automatic nature. Any person belonging to the group of beneficiaries identified by the Council is entitled, as of *right*, to temporary protection – without any individual examination of the grounds for protection. This feels logical: in the event of a mass influx, the very purpose is to avoid the bottlenecks associated with lengthy and complex asylum procedures. The 2022 Council decision identified three categories of beneficiaries: first, Ukrainian nationals and their family members residing in Ukraine as of 24 February 2022; second, third-country nationals enjoying refugee or long-term residence status in Ukraine who cannot return to their country or region of origin in «safe and durable conditions»¹¹; third and last, on the basis of the same criterion – the impossibility of returning to their country or region of origin in safe and durable conditions –, a residual category of beneficiaries is identified, namely other third-country nationals legally residing in Ukraine as of the same date. However, Member States may decide to extend the scope of beneficiaries to this third, “other” category of foreigners¹². It seems that only a minority of Member States have relied on this option, particularly in relation to the many foreign students who did not hold permanent residence status in Ukraine¹³.

In both scenarios, the meaning of «return in safe and durable conditions» requires clarification. Three criteria are involved. First, the possibility of return as such must be examined. In other words, the feasibility of travel and the accessibility of the country of origin or the relevant region within the country. Second, the safety of return must be established, meaning the absence of risk regarding fundamental rights, in particular the risk of inhuman or degrading treatment. Third and last, the durability of the possibility of resettlement in the country of origin which must be assessed considering the individual's private and family life situation – particularly in connection with the length of time spent living in Ukraine.

It must also be recalled that temporary protection applies to *all* persons concerned – whether Ukrainian nationals or foreign permanent residents – regardless of their region of

¹¹ Council implementing decision (EU) 2022/382, Art. 2, paragraph 2.

¹² *Ibidem*, Art. 2, paragraph 3.

¹³ See French *Conseil d'État*, 27 December 2022, *M.A.B.*, no. 465365, where it held that «the implementation of this option [...] is subject [...] to the adoption of an order [...] designating the categories of persons concerned», which had not occurred, and that «the difference in treatment between third-country nationals [...], depending on whether or not they hold a permanent residence permit [...], is in any event not capable of constituting an infringement» of EU law principles, including the principle of equal treatment, «without there being any need to refer a question to the Court of Justice of the European Union for a preliminary ruling» (§§ 7, 10 and 12, our own translation) (CECHR:2022:465365.20221227).

residence in Ukraine. It therefore also applies, for example, to persons residing in western Ukraine. There is thus no question of examining the existence of an internal protection alternative, as it is done when granting international protection to nationals of other countries (i.e. Afghanistan, Sudan)¹⁴.

2.1.1. Judicial limits to Member State discretion: the *Kaduna* case.

As regards to the third and last group of potential beneficiaries – foreigners who did not hold permanent residence in Ukraine and who encounter the same obstacles in returning to their country of origin – one knows that Member States retain discretion as to whether to extend temporary protection to this category. This optional extension was central to *Kaduna* (C-244/24 and C-290/24), the first case ever referred to the Court of Justice on the interpretation of temporary protection¹⁵. The case concerned the *scope* of this discretionary protection, which Member States may grant to other additional categories of displaced persons from Ukraine who are not covered by the Council Decision, «where they are displaced for the same reasons and from the same country or region of origin»¹⁶. Some States, such as the Netherlands, had nonetheless decided to grant temporary protection to third-country nationals without permanent residence in Ukraine. Following changes in the Dutch government, this optional temporary protection was subsequently withdrawn. The central issue was whether withdrawal was contrary to EU law, in light of the initial decision extending protection for those who met the established criteria. According to Advocate General Richard de la Tour, Member States remain free to terminate this protection «at any time and before the maximum duration of the temporary protection mechanism set at Union level has been reached», while specifying that, after the withdrawal of temporary protection, beneficiaries must have access to the asylum procedure¹⁷.

In agreement with the Advocate General, the Court held that a Member State may withdraw the benefit of optional temporary protection making «an autonomous decision» (§ 111) and even «on a date earlier than that on which mandatory temporary protection [set at Union level] ceases to have effect» (§ 123), since there is «a broad discretion» left to each Member State (§ 109). Prohibiting such freedom would «have the effect of discouraging Member States from making use of the possibility» (§ 114). However, as a counterbalance to the withdrawal of optional temporary protection, the Court set a limit, formulated in the operative part as a prohibition on Member States from undermining the objectives and effectiveness of the Temporary protection directive, in compliance with the general principles of EU law. This means that, once optional temporary protection has ended, third-country nationals must be able to «effectively exercising their right to make an application for international protection» (§ 129). Moreover, no return decision may be issued before that protection has ended, «even where it appears that that protection will cease to have effect on a

¹⁴ On this topic, J. SCHULTZ, *The internal protection alternative and its relation to refugee status*, in S. S. JUSS (ed), *Research Handbook on International Refugee Law*, United Kingdom, 2019, p. 126.

¹⁵ Court of Justice of the European Union, 19 December 2024, joint cases C-244/24 and C-290/24, *Kaduna*, ECLI:EU:C:2024:1038. See the case note of M. ĪNELI CIĢER, *No surprises here! What is discretionary remains discretionary in the CJEU's first judgment on temporary protection*, in *EU Law Analysis*, 2024.

¹⁶ Council Directive 2001/55/EC, of 20 July 2001, Art. 7.

¹⁷ Opinion of advocate general Richard de la Tour, 22 October 2024, joint cases C-244/24 and C-290/24, *Kaduna*, ECLI:EU:C:2024:911, §§ 136 and 137.

date in the near future and where the effects of that decision are suspended until that date» (§ 158 and operative part).

The Grand Chamber judgment in *Kaduna* thus confirms that temporary protection is both an instrument of harmonisation and of differentiation. While minimum standards bind Member States, optional extensions remain controlled at national level. Member States retain broad discretion to grant and withdraw “optional” temporary protection, even before the EU-level mechanism expires. However, the Court’s interpretation ensured that this discretion is not unbounded and does not undermine access to asylum or the effectiveness of EU law.

2.2. Intra-EU mobility and portability of temporary protection status.

Perhaps the most transformative aspect of the Ukrainian temporary protection regime lies in its relationship with the Dublin system. Recital no. 15 of the 2022 Council implementing decision records the agreement of the Member States not to apply Article 11 of the Temporary protection directive, which would otherwise have required them to readmit beneficiaries found to be irregularly present in another Member State¹⁸. This effectively suspends the allocation Dublin logic (one application, one responsible country). As a result, beneficiaries are not assigned to a specific Member State according to pre-determined criteria. By setting aside the application of Article 11 of the Directive, the Council’s decision allows displaced persons from Ukraine may *choose* the Member State in which they seek protection and may move within the Union’s territory once temporary protection is granted. This constitutes a Copernican revolution in relation to the common EU asylum policy, which is traditionally structured around a strict allocation of responsibility among Member States, pursuant to the Dublin Regulation¹⁹. Under that framework, the host State is imposed on the applicant. The protection regime for persons displaced from Ukraine departs from this logic and makes it possible for Ukrainians to choose their country of protection. In our view, this shift reflects a normative commitment to freedom of movement which operates at two stages: prior to access to temporary protection and following its grant.

2.2.1. Before the grant of temporary protection: the *Krasiliva* case.

Prior to the grant of temporary protection status, the entire Dublin mechanism for determining the Member State responsible for the application is effectively set aside. Persons fleeing Ukraine are *free* to choose the Member State in which they apply for temporary protection. They will not be sent back to the country of first entry into the Union. The rationale is clear: applying the ordinary allocation rules would have placed a disproportionate burden on the countries bordering Ukraine, primarily Poland. However, as we have said, this approach departs markedly from the logic of the CEAS. Under the Dublin system, other applicants for

¹⁸ Council Directive 2001/55/EC, Art. 11: «A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State».

¹⁹ Regulation (EU) no. 604/2013, of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), *O.J.* 2013, L 180, p. 31, soon to become regulation (EU) 2024/1351, of 14 May 2024, on asylum and migration management, amending regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) no. 604/2013, *O.J.* 2024, L 1351, p. 1.

international protection are, in principle, returned to the Member States responsible, which in practice often means a State located at the Union's external borders. For land routes, this concerns those same Central and Eastern European countries concerned by displacement from Ukraine, as illustrated by the humanitarian crisis at the Belarus borders²⁰. For maritime routes, it affects the southern countries bordering the Mediterranean²¹.

There is a further explanation justifying this exceptional freedom of movement accorded to applicants for temporary protection: Ukrainian nationals already benefited from visa-free travel to the EU and were therefore entitled to circulate within the territories of the Member States for up to 90 days in conformity with the Schengen Borders Code²². The suspension of Dublin transfers in the context of temporary protection thus aligns with a pre-existing framework of lawful intra-EU mobility. This framework does not apply to most applicants for international protection, who are instead nationals of countries subject to EU visa requirements²³.

The contours of this exceptional configuration were subsequently delineated by the Court of Justice in *Krasiliva* (C-753/23). The Court of Justice confirmed, first, that a Member State may not refuse to grant a residence permit to a person eligible for temporary protection «where that person has already applied for, *but has not yet obtained*, such a permit in another Member State» and second, that the person has a right to a legal remedy against the refusal decision²⁴.

²⁰ We refer here to the humanitarian crisis affecting migrants who are victims of serious violations of fundamental rights at the EU borders with Belarus. The Commission framed the fact that the Belarusian government relaxed its visa procedures to attract migrants who, once on Belarusian territory, are encouraged – or even forced – to engage in irregular migration toward Poland, Lithuania, or Latvia as “instrumentalisation” of migrants for political purposes by the Belarusian government and as a “hybrid attack”. The use of the notion of a “hybrid attack”, described as a «semantic drift» in Vincent Chetail’s words, has been strongly criticized, as has the reference to migrants as “weapons,” thereby contributing to their dehumanisation. See V. CHETAIL, *L’instrumentalisation des migrations et la tentation de l’état d’urgence permanent: le droit européen d’asile en question*, in *Annuaire français de droit international*, LXVII, 2021, p. 437. See, *ex multis*, also: F. PEERBOOM, *Protecting Borders or Individual Rights? A Comparative Due Process Rights Analysis of EU and Member State Responses to “Weaponised” Migration*, in *European Papers*, vol. 7, no. 2, 2022, p. 583. In response to this “mass influx” of migrants, Poland, Lithuania, and Latvia adopted emergency measures and implemented policies aimed at preventing third-country nationals (mainly from Afghanistan, Iraq, and Syria) from accessing their territory. See M. GRZEŚKOWIAK, *The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border*, *Refugee Survey Quarterly*, vol. 42, no. 1, 2023, p. 83. These migrants were subjected to pushbacks, collective expulsions, and acts involving the use of violence, in disregard of their intention to seek international protection. This stands in stark contrast with the treatment that those same countries reserved to Ukrainians.

²¹ On this topic, see V. MORENO-LAX, *Protection at Sea and the Denial of Asylum*, in C. COSTELLO, M. FOSTER, J. MC ADAM (eds.) *The Oxford Handbook of International Refugee Law*, Oxford, 2021, p. 483; G. A. OANTA, B. SÁNCHEZ RAMOS (eds.), *Irregular migrations in Europe: A perspective from the sea basins*, Napoli, 2022 and N. MATZ-LÜCK, Ø. JENSEN, *From fragmentation to interaction? A law of the sea perspective on regime interaction and interdisciplinary interfaces*, in *The Law of the Sea. Normative Context and Interactions with other Legal Regimes*, London, 2022, p. 13; A. PIJENBURG, K. VAN DER PAS, *Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route*, *E.J.M.L.*, vol. 24, no. 3, 2022, p. 401.

²² Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, *O.J.* 2007, L 332, p. 68.

²³ Regulation (EU) 2018/1806, of 14 November 2018, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification), *O.J.* 2018, L 303, p. 39.

²⁴ Court of Justice of the European Union, 27 February 2025, case C-753/23, *Krasiliva*, ECLI:EU:C:2025:133, § 33 and operative part, we emphasise. For case notes, see V. MICHEL, *Protection temporaire et demandes successives*, in *Europe*, no. 4, comm. no. 113, 2025; V. VÍCHOVÁ, *Moving between EU Countries with temporary*

The Court did not have to rule on the more frequent situation of a person who has *already* obtained temporary protection and a residence permit in another Member State, as we will show in the next section. That issue concerns the free movement of beneficiaries of temporary protection and the mutual recognition of that protection.

2.2.2. After the grant of temporary protection: the “backpack” effect.

As we explained, the Temporary protection directive excluded, in its Article 11, such freedom of movement in the following terms: «A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State»²⁵. However, the same provision also stated that «Member States may, on the basis of a bilateral agreement, decide that this Article should not apply»²⁶.

In a declaration annexed to the Council Decision activating temporary protection in 2022 and extended without amendment until March 2027, it is expressly provided that «Member States have agreed that they will not apply» Article 11²⁷. Consequently, it is legally indisputable that a person benefiting from temporary protection in one Member State has the right to move freely throughout the territory of the Union and to reside in another Member State. Again, the *ratio legis* behind this decision is readily understandable: otherwise, the countries bordering Ukraine, in particular Poland, would have been required to bear a far heavier reception burden than other Member States – a burden that they are in fact already shouldering to a significant extent²⁸. Accordingly, unlike refugee status or subsidiary protection status, temporary protection status is like a backpack that its holder can carry while moving from one Member State to another²⁹.

In our view, freedom of movement does not cease once temporary protection has been granted. Recital 15 of the Council decision 2022/382 expressly excludes the application of Article 11, thereby reflecting the unanimous decision of the Council that no Member State would request another to readmit a beneficiary of temporary protection residing on its territory. Temporary protection thus operates as a portable status: the person carries this status like a “backpack” and may choose to move and settle in another Member State. While in *Krasiliva* the Court confirmed this portability, it did not rule directly (yet) on cases of double protection already granted. However, in our opinion, its reasoning confirms that temporary protection departs fundamentally from the CEAS model of single-State responsibility. The judgment can be understood through the lenses of mutual recognition, as developed in relation to matters of personal status. Once temporary protection is granted, its effects extended across the Union

protection status after the Krasiliva decision, in *E.J.M.L.*, vol. 27, nos. 2-3, 2025, p. 312 and M. INELI CIĞER, *The CJEU rules on multiple temporary protection applications but leaves key questions unanswered in Case C-753/23 (Krasiliva)*, in *EU Law Analysis*, 2025.

²⁵ Council Directive 2001/55/EC, Art. 11.

²⁶ *Ibidem*.

²⁷ Council implementing decision (EU) 2022/382, recital 15.

²⁸ As reported by Eurostat, Poland is hosting fewer than one million displaced persons from Ukraine (22.3% of the total)., See: Eurostat, *Temporary protection for 4.35 million in December 2025*, news article of 10 February 2026.

²⁹ On the difference from other forms of international protection status that are not subject to mutual recognition, see J.-Y. CARLIER, E. FRASCA, *Refugee from one Member State to Another: Towards Automatic Mutual Recognition?*, in *EU migration law blog*, 2025.

without the need for a renewed assessment. By contrast, individuals recognised as refugees or granted subsidiary protection do not enjoy a comparable portability of their international protection status under the current state of EU law³⁰. The contrast is stark.

This asymmetry between, on the one hand, applicants for (and beneficiaries of) temporary protection and, on the other, applicants for (and beneficiaries of) an international protection status raises structural questions. Are these enhanced features of temporary protection confined to the specific context of Ukraine, often justified by considerations of geographical proximity and political consensus? Or might elements of this model, particularly its cross-border portability, gradually inform the treatment of other categories of persons seeking protection? Temporary protection has introduced an unprecedented degree of solidarity and mutual trust among Member States – or, at least, of coordinated pragmatism. This development departs significantly from refugee and subsidiary protection statuses, which do not entail automatic mutual recognition or intra-EU mobility rights. The implications are systemic. The trajectory taken will shape not only the legal position of individuals in need of protection, but also the evolution of inter-State relations within the Union: either consolidating solidarity and mutual trust or prompting renewed national retrenchment and reciprocal mistrust.

2.3. Duration of temporary protection: from temporary to permanent?

The third and last feature of temporary protection is its duration. Temporary protection should be *temporary* by definition. Article 4 of the Directive sets a maximum duration of three years: one initial year, two automatic six-month extensions, and – where necessary – an additional year by Council decision³¹. The starting point (*dies a quo*) of this group protection is not the individual decision granting temporary protection to a specific person from a specific date, but rather the general implementing Decision 2022/382 of the Council of 4 March 2022. Yet, as of 4 March 2026, temporary protection has been in place for four years. Successive Council decisions extended the regime beyond its original temporal ceiling³².

We believe that, beyond 4 March 2025, temporary protection should have ceased unless the text of the Temporary protection directive had been amended. Thereafter, the situation of the persons concerned should, where appropriate, have been subject to an individual assessment of international protection within the meaning of Directive 2011/95, potentially leading either

³⁰ This is demonstrated by cases such as Court of Justice of the European Union, 1 August 2022, case C-720/20, *Bundesrepublik Deutschland (Child of refugees born outside the host State)*, ECLI:EU:C:2022:603 and 22 February 2022, case C-483/20, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, ECLI:EU:C:2022:103. For case notes, see: J. SILGA, *Commissaire général aux réfugiés et aux apatrides (C-483/20) and the absence of an effective mutual recognition of positive asylum decisions: The elephant in the room?*, in *EU Law Live*, 2022; S. SALOMON, *Taking asylum seekers rights seriously under the Dublin III regulation (C-720/20 and C-19/21)*, in *EU Law Live*, 2022; A. DI PASCALE, *Quando il fato decide altrimenti. L'unità della famiglia dei titolari di protezione internazionale*, in this *Journal*, 2021; F. FERRI, *Lost in Translation? Recenti spunti della giurisprudenza UE su status di rifugiato, mutua fiducia e diritti fondamentali*, in *BlogDUE*, 2022; A. CAIOLA, *Mouvements secondaires et préservation de la spécificité concernant la position d'un enfant*, in *Revue des affaires européennes*, no. 3, 2022, p. 579.

³¹ Council Directive 2001/55/EC, of 20 July 2001, Art. 4: «1. The duration of temporary protection shall be one year. Unless terminated [...], it may be extended automatically by six monthly periods for a maximum of one year. 2. Where reasons for temporary protection persist, the Council may decide [...] to extend that temporary protection by up to one year».

³² Council decisions 2023/2409, of 19 October 2023, 2024/1836, of 25 June 2024, 2025/1460, of 15 July 2025.

to recognition of refugee status under the 1951 Geneva Convention relating to the Status of Refugees, or to the grant of subsidiary protection pursuant to Articles 2(f) and 15 of that Directive. However, on 13 June 2025, Member States unanimously approved the Commission's proposal to extend temporary protection once again, until 4 March 2027³³.

The legal basis for these extensions raises complex questions. Is the three-year limit a hard cap embedded in secondary law or does the Council retain residual flexibility in light of persistent mass influx? The Directive itself was drafted on the assumption of *short-term* protection. The protracted nature of the war in Ukraine challenges that premise. The practical consequence is a regime that is formally designated as "temporary" yet increasingly structural in operation³⁴.

One can understand the pragmatic nature of this decision, given the hope of bringing the conflict to an end – a hope that has been repeatedly renewed and postponed – and given the need to protect Ukrainians, the majority of whom are single women with children³⁵. However, through this approach, the Commission is struggling to put in place a coherent transition toward the end of temporary protection, thereby creating legal uncertainty.

In September 2025, the Council recommended a «gradual, sustainable and well-coordinated transition» out of temporary protection and reflects growing awareness of this tension³⁶. Yet the transition pathways identified by the Council – «national legal statuses», «residence permits based on employment, self-employment, professional training or education», «family or other grounds», «dedicated residence permits» or «voluntary return programmes» – remain politically sensitive and unevenly developed³⁷. Strikingly, the recommendation reportedly makes no explicit reference to the possibilities (expressly mentioned in the Temporary protection directive) of access to international protection, including subsidiary protection, which makes it possible to protect civilians in situations of armed conflict³⁸. It is true that States are more than reluctant to grant access to *long-term* protection under refugee status or subsidiary protection, as the following case demonstrates.

³³ Council of the EU, *EU member states agree to extend temporary protection for refugees from Ukraine*, press release of 13 June 2025.

³⁴ On this topic, see M. INELI CIĞER, *What happens next ? Scenarios following the end of the temporary protection in the EU*, in *EU Migration Law Blog*, 2023; M. GERBAUDO, *Temporary Protection: Which Future in the EU Migration Policy?*, in *BlogDUE*, 2023; M. BILOUSOV, K. WOOLRYCH, *What will happen to the refugees and asylum seekers that fled Ukraine? Addressing the threat of legal limbo after temporary protection ends*, in *European Law Blog*, 2023.

³⁵ Eurostat reports that women and minors together constituted nearly three quarters of the total displaced population (74.1%), with adult women accounting for 43.6% and minors 30.5%, compared to 25.9% adult men, *Temporary protection for 4.35 million in December 2025*, news article of 10 February 2026.

³⁶ Council of the EU recommendation, of 8 September 2025, on a coordinated approach to the transition out of the temporary protection for displaced persons from Ukraine, doc. no. 12015/25.

³⁷ *Ibidem*, recitals nos. 4 and 9.

³⁸ On this topic, see C. QUERTON, I. HNASEVYCH, *Durable Protection in the European Union: The Case of Persons Fleeing Armed Conflicts*, in *Laws*, vol. 14, no. 5, 2025, p. 70.

2.3.1. The relationship between temporary and international protection: the *Framholm* case.

The Temporary protection directive makes clear that temporary protection does not prejudice recognition of an international protection status³⁹. Beneficiaries must be able to lodge an asylum application at any time. Yet practice has tested these guarantees. In the *Framholm* case (C-195/25), the Court had to clarify the relationship between temporary protection and an application for international protection, particularly its dual components: refugee status and subsidiary protection status⁴⁰. The case originated in a policy of the Swedish asylum authorities consisting of automatically rejecting applications for international protection as *unfounded* where they sought refugee status and declaring them *inadmissible* where they sought subsidiary protection. Sweden justified this policy on the basis of a strictly literal interpretation of Article 17, paragraph 1, of the Temporary protection directive, which refers to the possibility for a beneficiary of such protection to lodge «an asylum application»⁴¹. Admittedly, Article 17, paragraph 2, provides that «The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period»⁴². This makes it possible to “freeze” the examination of applications, but not to reject them automatically. Moreover, according to the Swedish authorities, the wording referring to «asylum applications» concerned only applications for refugee status, thereby allowing applications for subsidiary protection to be declared inadmissible.

The Court’s main answer follows simply from the temporal sequence of adoption of the relevant instruments, namely the Temporary protection directive and the original Qualification directive. It is too often forgotten that the Temporary protection directive was one of the first measures adopted within the framework of EU asylum and migration policy, in 2001, following the war in the former Yugoslavia. The absence of provisions concerning the application of procedures for granting subsidiary protection to persons benefiting from temporary protection «can be explained both by the fact that Directive 2001/55 [Temporary Protection] was adopted prior to Directive 2004/83 [Qualification], which established subsidiary protection status, and by the fact that Directive 2001/55 has never been amended» (§ 46). Relying on its judgments in *Ahmed* and *Torubarov*, the Court recalls that subsidiary protection is intended to «be complementary and additional to the protection of refugees enshrined in the Geneva Convention» (§ 52) and that «Member States are required [...] to grant the international protection status sought, since those Member States have no discretion in that respect» (§ 54)⁴³.

Furthermore, the Court, like the Advocate General in his Opinion, emphasises the need for a strict interpretation of the grounds for inadmissibility of an application for international

³⁹ Council Directive 2001/55/EC, Art. 3: «Temporary protection shall not prejudice recognition of refugee status under the Geneva Convention». See Art. 17 reported below.

⁴⁰ Court of Justice of the European Union, 20 November 2025, case C-195/25, *Framholm*, ECLI:EU:C:2025:904. For a case note see. M. INELI CİĞER, *Misreading the Temporary protection directive? The CJEU sets the record straight on access to subsidiary protection in Framholm (C-195/25)*, in *EU Law Analysis*, 2025.

⁴¹ Council Directive 2001/55/EC, Art. 17: «Persons enjoying temporary protection must be able to lodge an application for asylum at any time».

⁴² *Ibidem*.

⁴³ Court of Justice of the European Union, 13 September 2018, case C-369/17, *Ahmed*, ECLI:EU:C:2018:713 and 29 July 2019, case C-556/17, *Torubarov*, ECLI:EU:C:2019:626, see J.-Y. CARLIER, *Libre circulation des personnes et politique migratoire dans l’Union européenne*, Bruxelles, 2024, p. 584.

protection, which are exhaustively listed and do not include the fact of being a beneficiary of temporary protection (§§ 56-60)⁴⁴. Consequently, by its traditional reasoning, the Court asserts that in light of the primacy of EU law and the direct effect of provisions relating to international protection, including subsidiary protection, «where it is not possible to interpret national legislation in a manner consistent» with EU law, «it is for the national courts to disapply» the Swedish legislation (§ 74)⁴⁵.

The Ukrainian protection experience reveals both the flexibility and the fragility of EU asylum law. Flexibility, because an instrument long considered politically unusable has been deployed swiftly and expansively. Fragility, because its activation appears deeply contingent on geopolitical, societal and identity-based factors. The Temporary protection directive has demonstrated that the Union can overcome the Dublin logic, share responsibility among Member States differently and grant immediate, collective protection. It has also shown that the “temporary” framework may endure far beyond its textual limits, creating legal uncertainty and structural transformation. Whether this experience will recalibrate the EU asylum policy more broadly remains an open question. Will portability and solidarity remain exceptional features reserved for particular crises? Or has the Union inadvertently piloted a more integrated model of protection? What is clear is that, once again, the Court of Justice has taken a central role in stabilising this evolving regime. Through *Kaduna*, *Krasiliva* and *Framholm*, it has delineated the boundaries of State discretion, reinforced access to asylum, and clarified the relationship between temporary and international protection. In doing so, it has ensured that even in times of emergency, the rule of law remains the backbone of EU asylum policy.

Against this background, a further, structural tension within the EU asylum framework comes into focus: one that shifts the lens from third-country nationals protection to intra-EU dynamics and raises the normative question whether EU law can accommodate the figure of an “EU refugee”.

3. International protection and EU citizenship... An EU refugee?

In 2025, in Italy, a court in Bologna granted refugee status to a Hungarian national on the basis of his Roma ethnic origin and transgender identity⁴⁶. According to Eurostat, since 2020 more than 1,500 EU citizens have applied for refugee status in another Member State, most notably from Hungary, Poland, Romania and Bulgaria⁴⁷. These applications lie at the

⁴⁴ Opinion of advocate general Campos Sánchez-Bordona, 11 September 2025, case C-195/25, *Framholm*, ECLI:EU:C:2025:700, §§ 77 onwards.

⁴⁵ For a detailed account of Sweden’s reaction to the *Frahmholm* case, see J. V. STÄMPELFLYKT, *Sweden and the Non-Execution of CJEU Judgment C-195/25 on Asylum and Temporary Protection*, in *Medium*, 2026, which critically examines how national administrative resistance may test the limits of the CJEU’s judicial authority. The author explains that Sweden has failed to execute the judgment nor issued a refusal subject to judicial review, resulting in administrative silence and the absence of an effective remedy.

⁴⁶ Tribunal of Bologna, Special section for immigration, international protection and free movement, decree no. r.g. 8445/2023 of 10 October 2025 (https://www.questionegiustizia.it/data/doc/4387/tribunale-bologna_anonima.pdf). For early comments see C. SCISSA, *Mutual trust does not supersede human rights! Italian judges unprecedentedly recognize the refugee status to an EU citizen*, in *EU Law Analysis*, 2026.

⁴⁷ Eurostat, *Asylum applicants by type, citizenship, age and sex*, annual aggregated data, https://ec.europa.eu/eurostat/databrowser/view/migr_asyappctza_custom_19546983/default/table. Regarding Hungary granting asylum, without specifying the exact status, to a former Polish Deputy Minister of Justice, see

intersection between Union citizenship, fundamental rights protection and the right of residence. Although this issue has arisen before national authorities and courts, it has not yet reached the Court of Justice. The cases concern EU citizens who, alleging persecution in their Member State of origin, mostly on grounds of identity – particularly gender, sexual or ethnic identity –, seeking protection elsewhere in the Union, and claiming in another Member States than that of origin not merely residence rights as EU citizens, but *refugee status* within the meaning of the 1951 Geneva Convention, on the ground of a well-founded fear of persecution, for instance for reasons of membership of a particular social group⁴⁸.

In principle, however, EU law precludes the recognition of refugee status for EU citizens pursuant to Protocol no. 24 to the TFEU. Known as the Aznar Protocol and named after the Spanish Prime Minister of the time, the Protocol was annexed to the Treaty of Amsterdam in 1997 following a dispute between Belgium and Spain. The dispute arose from Belgium's decision to examine asylum applications lodged by Basques suspected of affiliation or involvement with the armed separatist guerrilla Euskadi Ta Askatasuna (ETA)⁴⁹. The protocol establishes a presumption that «any application for asylum made by a national of a Member State may [not] be taken into consideration or declared admissible». This presumption may be rebutted only in narrowly circumscribed situations: *collectively*, where the Union institutions determine the existence of serious human rights violations in the Member State concerned (sole article, points a, b, c)⁵⁰; *individually*, if a Member State decides to examine such an application, but only on the understanding that it is presumed to be «manifestly unfounded» (sole article, point d)⁵¹. This presumption is confirmed by EU secondary asylum law, which consistently limits beneficiaries to «third-country nationals or stateless persons»⁵².

Why does EU law depart from the Geneva Convention, which has been ratified by all Member States? A first justification, stated at the beginning of the sole article, refers to the «level of protection of fundamental rights and fundamental freedoms in the Member States of the Union»⁵³. In essence, all Member States are regarded as safe countries of origin that can no longer “produce” refugees. This reasoning has been criticized in legal scholarship as overly presumptuous, particularly in view of the condemnations issued against every Member State

S. KUCHARSKI, *The Branch That Finally Snapped: Hungary granting asylum to a Polish member of Parliament and the principle of mutual trust*, in *VerfBlog*, 2025.

⁴⁸ Convention Relating to the Status of Refugees, signed at Geneva on 28 July 1951, United Nations Treaty Series, vol. 189, p. 150, No. 2545 (1954), Art. 1.

⁴⁹ Protocol no. 24 on asylum for nationals of Member States of the European Union, *O.J.* 2012, C 326, p. 305 and Protocol no. 6 on asylum for nationals of Member States of the European Union, annexed to the Treaty of Amsterdam of 2 October 1997, *O.J.* 1997, C 340, p. 103.

⁵⁰ In particular, according to points (c) and (d), with reference to the procedure laid down in Art. 7 TEU for determining that there is a clear risk of a serious breach by a Member State of the values referred to in Art. 2 TEU.

⁵¹ In this regard, Belgium made a declaration no. 5, annexed to Protocol no. 6, stating that «In approving the Protocol on asylum for nationals of Member States of the European Union, Belgium declares that, in accordance with its obligations under the 1951 Geneva Convention and the 1967 New York Protocol, it shall, in accordance with the provision set out in point (d) of the sole Article of that Protocol, carry out an individual examination of any asylum request made by a national of another Member State».

⁵² See, for instance, Directive 2011/95/EU, of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, *O.J.* 2011, L 337, p. 9, Arts. 1 and 2, letter i).

⁵³ Protocol no. 24 on asylum for nationals of Member States of the European Union, sole article.

by the European Court of Human Rights⁵⁴. The criticism has its merits. Neither the TEU and TFEU Treaties nor the Charter guarantee *absolute* respect for fundamental rights, even though they establish mechanisms designed to strengthen their protection, especially in the context of free movement of persons.

A second justification appears in the preamble to the Asylum protocol, which recalls that «any national of a Member State, as a citizen of the Union, enjoys a special status and special protection [...] [and in particular] a right to move and reside freely within the territory of the Member States»⁵⁵. Accordingly, a national of a Member State need not seek asylum to escape feared persecution in the country of origin; as a Union citizen, he or she need only exercise the right of free movement and of residence in another Member State and, by virtue of that fundamental status, enjoy rights equal to those of nationals. This situation is similar to the one «applicable to a person who is considered by the competent authorities of the country in which he has established his residence as having the rights and obligations attached to the possession of the nationality of that country». That wording corresponds verbatim to Article 1(E) of the Geneva Convention, which provides that refugee status «shall not apply» to such a person. Union citizenship would thus operate as a ground for exclusion.

Two clarifications remain necessary. The assimilation of a Union citizen to a national of the host State is not complete. First, such a citizen may be subject to a European Arrest Warrant⁵⁶. Second, although a national cannot be expelled from their own state, a Union citizen may still be removed – not only on grounds of public policy, but also, notwithstanding the Court’s clarifications, for failing to fulfil the requirement of sufficient resources⁵⁷. By contrast, a person granted refugee status cannot be returned to the country of origin on those same grounds.

These necessary qualifications largely justify Belgium’s position: each asylum application is examined, even if an application submitted by a Union citizen is subject to a rebuttable presumption (*iuris tantum*) of inadmissibility⁵⁸. They also lend support to the position taken by the Italian court, which relied on the collective exception linked to an «Article 7 TEU procedure» against Hungary – if not concluded, at least initiated by the European Parliament – to deem admissible and, in the present case well founded, an application for refugee status lodged by an EU citizen. Moreover, Italy, like other States, may rely on its constitutional asylum provision to examine any asylum application in the exercise of its sovereignty⁵⁹.

⁵⁴ A. WEYEMBERGH, E. BRIBOSIA, *Le citoyen européen privé du droit d’asile?*, in *J.T.D.E.*, 1997, p. 204.

⁵⁵ Protocol no. 24, recitals 6 and 7.

⁵⁶ See, twenty years after the presence of Basques, the questions raised by the presence of Catalans in Belgium: H. LABAYLE, B. NASCIMBENE, *Refuge ou asile? La situation de Carles Puigdemont en Belgique au regard du droit de l’Union européenne*, in *EU Migration Law Blog*, 2017. For subsequent development, see also Court of Justice of the European Union, 5 February 2026, case C-572/23 P, *Puigdemont i Casamajó e.a./Parliament (Decision to waive a Member’s immunity)*, ECLI:EU:C:2026:70 by which the Court set aside the judgment of the General Court, 5 July 2023, case T-272/21, ECLI:EU:T:2023:373, which had upheld the European Parliament’s decision to waive immunity.

⁵⁷ International Covenant on Civil and Political Rights, Art. 12.4.

⁵⁸ Although Belgium did not reiterate its 1997 declaration in the annex to Protocol no. 24, it did not revoke it either, so that it remains in force.

⁵⁹ Italian Constitution, Art. 10. Provisions on asylum are also included in the German Constitution and in the preamble to the French Constitution.

Refugee or other forms of asylum statuses granted to Union citizens on whichever basis will, in principle, not be recognized by either the Member State of origin or by other Member States, unlike other changes in personal status, such as marriage. In truth, such intra-EU refugee statuses do not differ from refugee statuses granted to third-country nationals, which likewise do not entail mutual recognition across the Union – unlike the temporary protection status granted to Ukrainians examined above⁶⁰.

Presumably, instances in which asylum is granted to EU citizens should remain exceptional. The exercise of free movement rights – illustrated, for example, in the recent *Wojewoda Mazowiecki* (2025) case – largely ensures the effective protection of fundamental rights, including in areas such as gender identity or same-sex marriage, as well as the recognition of public documents lawfully issued in another Member State pursuant to the exercise of those rights⁶¹. Yet exceptional situations can be revealing. These cases demonstrate the importance of a Union founded on the rule of law and common values which, while respecting national identities, requires mutual trust. Situations at the intersection of asylum and EU citizenship paradoxically show that the Union may serve, from the perspective of the Member States, as «an unexpected ally» in safeguarding the «territorial integrity of the Member States» and their properly understood sovereignty, as Henri Labayle and Bruno Nascimbene have observed in relation to the Catalan crisis⁶².

4. Conclusion.

Read together, these developments suggest that the EU reaction to Ukrainian displacement and the nascent phenomenon of intra-EU asylum applications are two facets of the same constitutional question. Temporary protection has operated as a functional alternative to the ordinary logic of the common EU asylum policy: collective rather than individual, portable status rather than territorially confined, grounded in the Union’s capacity to organise solidarity in the face of mass displacement. Union citizenship, by contrast, has long been conceived as the internal functional equivalent of protection: a personal status, anchored in free movement and mutual trust, presumed to render refugee status redundant for nationals of Member States. Protocol no. 24 crystallises that assumption. Yet, under strain, both constructions reveal their limits. The evolving architecture of asylum in the Union simultaneously claims solidarity, mutual trust, and fundamental rights while constantly renegotiating and testing their balance. Portability means that a status granted in one Member

⁶⁰ See J.-Y. CARLIER, E. FRASCA, *Refugee from one Member State to Another: Towards Automatic Mutual Recognition?*, in *EU migration law blog*, 2025 and *Droit européen des migrations, J.D.E.*, 2026, nos. 11 and 12.

⁶¹ Court of Justice of the European Union, 25 November 2025, case C 713/23 *Wojewoda Mazowiecki*, ECLI:EU:C:2025:91. For case notes see Z. NOWICKA, *On the rise of fundamental rights strategic litigation before the CJEU*, in *European Law Blog*, 2025; J. COUDRON, *The EU Internal Market as a Vehicle for LGBTQ+ Rights: Wojewoda Mazowiecki (C-713/23)*, in *EU Law Live*, 2025; T. PAVONE, S. HERMANSEN, L. BOULAZIZ, *Is the European Court of Justice a Protector of the Weak? What New Litigation Data Reveals About a Longstanding Debate*, in *VerfBlog*, 2025; M. ROUY, *Citoyenneté et reconnaissance du mariage entre personnes de même sexe : précisions de l’arrêt Trojan*, in *Revue des affaires européennes, Actualités*, 2026; C. MAGRITTE, *De l’octroi d’un droit de séjour dérivé au droit de ne pas être discriminé en raison de son orientation sexuelle*, in *Cahiers de l’EDEM*, 2026.

⁶² H. LABAYLE, B. NASCIBENE, *Refuge ou asile ? La situation de Carles Puigdemont en Belgique au regard du droit de l’Union européenne*, in *EU Migration Law Blog*, 2017, our own translation.

State is effectively recognised across the Union without renewed substantive examination. That only works if Member States trust the granting State's assessment and its compliance with EU minimum standards. Otherwise, automatic cross-border effects would be unstable. Similarly, when an EU citizen invokes persecution based on ethnicity, sexual orientation or gender identity by its Member States of origin, that presumption of safety is no longer abstract. Either citizenship effectively substitutes for asylum through the robust enjoyment of free movement and equal treatment, or the foundational claim that the Union is a space incapable of "producing" refugees becomes contestable. In both directions of this trajectory – the outer and the inner –, a tension persists: whether the Union remains a homogenous space of safety, where protection is presumed because Member States share values and respect rights, or whether it must be understood as a contingent and differentiated legal order in which the need for protection can still arise across its own internal borders.