



The Hungarian Government requested additional funding under the Recovery and Resilience Facility from the European Commission in the Prime Minister's letter of 18 March 2022.¹ Hungary's Recovery and Resilience Plan is yet to be approved due to serious concerns regarding anti-corruption measures and the rule of law. Per the letter of 18 March, the request for additional funds is justified in part by "We [Hungary] have received more than 450 000 people so far who have fled before the war and from the war. We provide humanitarian assistance to those who come to us and those in need in Transcarpathia."

The Hungarian government seeks additional funding from the RRF citing misleading figures to be poured into an asylum system that in its separate elements and in its entirety is in breach of EU law, all while failing to meet procedural and substantive requirements of how RRFs shall be devised and what concerns it must address.

1. As to the numbers

Per the Hungarian Police, between 24 February 2022 and 27 March 2022, **348 945** incoming crossings were registered at the Hungarian-Ukrainian border section.² The official police database also shows that a further **217 976** crossings were registered at the Hungarian-Romanian border section by people who "stated that they have arrived from Ukraine" between 8 March 2022 and 27 March 2022.³ There is no data available on the number of people who left Hungary (either to another EU member state or to their country of origin in case of non-Ukrainian citizens), but there is data on the number of requests for temporary protection.

7 749 have applied for temporary protection between 24 February 2022 and 27 March.⁴

The Hungarian Helsinki Committee received a high number of requests from those fleeing as well as from Hungarian citizens and Hungarian municipalities hosting people fleeing from Ukraine regarding the possibility to apply for temporary protection. Concerning reports of pre-filled documents showing that the individual "is not requesting protection"; of entire buses of people transferred from border crossing points to registration points being told "not to ask for protection in order to speed up the procedure" remain regular.⁵ A month after the beginning of the war, the Hungarian authorities still fail to provide information on the possibility to seek temporary protection, not even in the form of leaflets distributed during border checks. This lack of information provision can no longer be ascribed to capacity issues or chaotic early days of the crisis.

This means that out of the 566 921 crossings made from Ukraine and from Romania but by individuals stating that they have arrived from Ukraine, a mere 7 749 applied for temporary protection – 1.36%.

2. As to the assistance provided – Hungary is in breach of EU law

The Council Implementing Decision (hereafter: Decision) that triggered the temporary protection establishes that the following categories of people are eligible for this status, while Member States may establish more favourable provisions:

- Ukrainian nationals residing in Ukraine before 24 February 2022
- Stateless persons, and nationals of third countries other than Ukraine, who benefitted from international protection or equivalent national protection in Ukraine before 24 February 2022
- Family members of the persons referred to in the above

¹ See the letter on the government's website:

<https://cdn.kormany.hu/uploads/sheets//8/86/86a/86ade12ca394e1244d5ea5dd51e1b85.pdf>

² <https://www.police.hu/hirek-es-informaciok/hatarinfo/forgalom/ukr%C3%A1n%20hat%C3%A1rszakasz>

³ <https://www.police.hu/hirek-es-informaciok/hatarinfo/forgalom/rom%C3%A1n%20hat%C3%A1rszakasz>

⁴ http://oif.gov.hu/index.php?option=com_k2&view=item&id=1786:az-orszag-os-idegenrendeszeti-foigazgatosag-napi-tajekoztatasa-az-orosz-ukran-konfliktussal-kapcsolatosan&lang=hu

⁵ See all of our updates on the protection situation in Hungary: <https://helsinki.hu/en/ukr/#section-9>

- “Member states shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.”

This Decision was transposed in a way that is in clear breach of the text of the Decision, excluding nationals of third countries other than Ukraine who possessed permanent residence permits in Ukraine and cannot return to their country of origin, e.g. Belarussian and Russian activists, journalists, human rights defenders.⁶

3. As to the available protection outside of temporary protection – Hungary is in breach of EU law

The gravity of the incorrect transposition of the Decision is evident when one looks at the remaining options for those in need of protection but falling outside of the personal scope of temporary protection. The Hungarian asylum system, outside of the scope of temporary protection, rests on two separate provisions: the legalisation of pushbacks from the entire territory of Hungary and the externalization of the asylum system.

a. Legalisation of pushbacks

Since March 2017, any third-country national found on the territory of Hungary without the right to stay are to be removed to the Serbian side of the border fence through one of the gates built into it. These are summary removals: no individualised procedure takes place, neither identification, nor individual documentation is carried out. Those “apprehended and escorted” to the Serbian side of the border fence cannot seek asylum and the measure is carried out regardless of their personal circumstances (age, gender, vulnerability, country of origin, reasons for staying unlawfully).

The European Commission launched an infringement procedure against Hungary because this law and practice breaches both the Return Directive and the Asylum Procedures Directive. In its ruling of 17 December 2020 the Court of Justice of the European Union (CJEU) sided with the European Commission.⁷ As Hungary refuses to implement the judgment, Frontex, in an unprecedented move in the history of the Agency, decided to suspend its ground operations in Hungary.⁸ The Commission decided to refer Hungary back to the CJEU for not implementing the December 2020 judgment and to impose financial penalties on Hungary in November 2021.⁹ **According to official police statistics, only between 1 January and 27 March 2022, 19 691 pushbacks have been carried out.**

b. Externalization through the embassy system¹⁰

In May 2020, following the CJEU’s ruling that placement in the transit zone constitute detention, the government announced the closure of the transit zones.¹¹ Since then, it is practically impossible to seek asylum on the territory or at the borders of Hungary. Those wishing to do so must first

- Secure an appointment at the Hungarian embassy either in Belgrade or Kyiv (!);
- Fill in a statement of intent to seek asylum either in English or in Hungarian;
- Personally hand over the statements at the embassy;
- Wait maximum 60 days while being left to their own devices until the asylum authority in Budapest makes a “recommendation” to the embassy whether to issue a special, one-time entry permit;
- In case the “recommendation” is positive, the person shall travel to Hungary and enter with the one-time permit after which the person is taken to the asylum authority.

⁶ For an unofficial English translation of the Government Decree transposing the Council Implementing Decision, see:

https://helsinki.hu/en/wp-content/uploads/sites/2/2022/03/HUgovdecree_implementing_councildecision_temprotEN.pdf

⁷ See more on the judgment here: <https://helsinki.hu/en/hungarys-legalisation-of-push-backs-in-breach-of-eu-law-according-to-the-court-of-justice-of-the-european-union/>

⁸ <https://euobserver.com/migration/150744>

⁹ See the Commission’s press release: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801

¹⁰ See more on this system: <https://helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>

¹¹ See more on this judgment here: <https://helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>

It is only after these steps that the person can start their asylum procedure. Between May 2020 and 31 December 2021, **only 12 (twelve) people were allowed to seek asylum through this procedure.**¹²

These two rules, the pushbacks and the embassy system, mean that those falling outside the scope of the incorrectly transposed Decision on temporary protection cannot access any other type of protection in Hungary.

4. As to the requirements of the contents of the Recovery and Resilience Plan (RRP) – Hungary fails to meet the procedural and substantive requirements

The Regulation establishing the Recovery and Resilience Facility requires that governments conduct detailed public consultations with relevant stakeholders. Prior to Hungary's submission of the RRP in 2021, a procedure was carried out that somewhat resembled certain elements of a consultation.¹³ This time, even this Potemkin consultation was omitted, thus failing to meet the procedural requirements of the devising of the Plan.¹⁴

Equally important is that Hungary's 2021 RRP is not yet approved as it fails to address relevant country-specific recommendations of the European Semester related to the strengthening of the anti-corruption framework and the rule of law.¹⁵ No steps have been made to address these outstanding concerns when the government requested the allocation of additional funding in the March 2022 letter.

Thus, the Hungarian government seeks additional funding from the RRF citing misleading figures to be poured into an asylum system that in its separate elements and in its entirety is in breach of EU law, all while failing to meet procedural and substantive requirements of how RRFs shall be devised and what concerns it must address.

¹² See more on this: <https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/No-access-to-asylum-1.11.2021.pdf>

¹³ More on the sham consultation and how a completely different plan was submitted to the European Commission than what was „consulted” with the public, see here: https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/RRFassessment_May2021.pdf

¹⁴ Recitals 34, 39, Article 18 (4) q of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility

¹⁵ Article 19 (3) b of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility