



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Comments and Recommendations

Amendments to the Act on Assistance to Citizens of Ukraine in the Context of the Armed Conflict in Ukraine

I. Extension of temporary protection

UNHCR recommends that Article 2.1 of the Act on Assistance to Citizens of Ukraine in the context of the Armed Conflict in Ukraine (“the Special Act”) is immediately amended to extend temporary protection for displaced persons until 4 March 2025.

As indicated in Preamble (7) of the *Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382*, the high number of displaced persons in the Union that benefit from temporary protection is not likely to decrease as long as the war against Ukraine continues. Extending temporary protection is therefore necessary to address the situation of persons that currently benefit from temporary protection in the Union or who will need such protection as of 4 March 2024.¹

In June 2023, in view of the current situation in Ukraine, the United Nations High Commissioner for Refugees reiterated its previous position on returns to Ukraine, noting that UNHCR’s overall assessment of the context in Ukraine is one of prevailing war, uncertainty, insecurity and calling on States to continue protecting refugees from Ukraine.² This position remains unchanged. Given the uncertainty of the trajectory of the war, and the need to provide Ukrainian refugees in Poland with a degree of stability, it is imperative that they continue to benefit from international protection at least through 4 March 2025, congruent with the Council Decision, and not for a shorter period of time.

Therefore, considering that the reasons for temporary protection persist, and given the impact of uncertainties around legal status on the inclusion and well-being of refugees, UNHCR recommends that the Special Act is amended to extend temporary protection until 4 March 2025 in line with the Council Decision.

II. Withdrawal of temporary protection status after 30 days

UNHCR recommends that Article 11.2 of the Special Act is amended to replace “withdrawal” of temporary protection status after 30 days of absence, with a temporary “suspension” of the status after 90 days of absence from the date of departure.

As indicated in the *UNHCR Position on Voluntary Return to Ukraine*, and supported by UNHCR’s systematic border monitoring and other data sources, there is increased mobility among the refugee population in the form of cross-border movements to Ukraine, which include temporary stays for family reasons and to assess security conditions, more sustained visits, and more durable return in some cases.

UNHCR has urged host States to maintain a flexible approach to short-term visits to Ukraine, which can help facilitate fully-informed decisions on longer term return and recommends that an individual’s legal status and associated rights in a host country are not affected by a visit to Ukraine lasting less than three months (paragraphs 16 and 17 of the above-mentioned UNHCR Position). This is without prejudice of the potential discontinuation of social assistance after 30 days of absence from Polish territory.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023D2409>

² UNHCR, *Position on voluntary return to Ukraine, June 2023*, <https://www.refworld.org/pdfid/649a7c744.pdf>

For temporary protection to come to an end, the situation in the country of origin of beneficiaries of temporary protection must permit the safe and durable return of those granted temporary protection, with due respect for human rights and fundamental freedoms — including Member States' obligations regarding *non-refoulement*. Only if those conditions are fulfilled would the revocation of residence permits be justified.³

In UNHCR's view, and considering the above, the "withdrawal" of temporary protection status, as contemplated in the *Special Act*, is not fully aligned with European Commission guidance and has created in some cases obstacles for re-entry at the border. In our judgment, a more calibrated formulation would simply propose to "suspend" the status, thereby facilitating — administratively — the reactivation of temporary protection status when required.

Moreover, it should be recalled that temporary protection holders who have been issued residence permits in accordance with Article 8 of Directive 2001/55/EC (i.e. the digital travel document in Poland) are entitled to travel to other Member States for 90 days within a 180-day period, according to the European Commission's *Operational guidelines for the implementation of Council implementing Decision 2022/382*.

Accordingly, UNHCR recommends that Article 11.2 of the *Special Act* is amended to replace "withdrawal" of temporary protection status after 30 days of absence, with a temporary "suspension" of the status after 90 days of absence from the date of departure, but without prejudice of the possibility to suspend access to social assistance after 30 days of absence from Polish territory.

III. *Foster care arrangements and the situation of evacuated children*

UNHCR recommends amending Article 27.4(a) of the *Special Act* regarding children evacuated from institutions in Ukraine, to ensure that all safeguards applicable to Polish and foreign children under the *Act on Foster Care* are equally extended to this group.

According to Article 27.4(a) of the *Special Act*, Ukrainian children, who were placed in Ukrainian foster care prior to their evacuation, should not be placed in the Polish foster care system, except in cases where the best interests of the child are at stake.

UNHCR and other child protection actors in the EU have called for States to avoid care arrangements outside their national child protection systems, as this would ultimately deprive children of the support and monitoring mechanisms that would be otherwise available to children falling within the scope of the current national legislation, and make them more vulnerable to exploitation, trafficking and other children's rights violations⁴.

DG Home Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care stresses that the registration or referral of unaccompanied and separated children to the national child protection services is a usual requirement under Member States' legislation for children deprived of parental care or in need of protection⁵. In addition, and according to Article 20 of the Convention for the Rights of the Child (CRC), and the UN Guidance on Alternative Care, refugee

³ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0321\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0321(03)&from=EN)

⁴ Advocacy Agenda of UNICEF and UNHCR <https://data.unhcr.org/en/documents/download/92243>

⁵ https://home-affairs.ec.europa.eu/system/files/2022-07/FAQs%20UAMs%20and%20separated%20children%20TPD_en_1.pdf

children deprived of family-based care are entitled to special protection afforded to all such children, which includes the obligation of the State to define their best interest.⁶

It should be noted that there is no systematic determination of the best interest of the child for foreign unaccompanied or separated children in Poland, which makes the application of the exception foreseen in Article 27.4(a) challenging. In addition, Article 5(3) of the Act on Foster Care states that the system of foster care should cover all foreign minors residing in the territory of Poland, which rules out the possibility of excluding a particular group from the scope of the Act.

Lastly, according to the *UNHCR Position on the Voluntary Return to Ukraine of Refugee Children without Parental Care, including Unaccompanied Children and Children Evacuated from Care Institutions in Ukraine*,⁷ the country of asylum has the primary responsibility to protect the rights of refugee children within its territory.

Therefore, UNHCR recommends that Article 27.4(a) of Special Act is amended in a manner that ensures all safeguards outlined in the Act on Foster Care are applicable for unaccompanied and separated children relocated from Ukraine, with the best interest of the child as the primary consideration in all actions relating to children.

IV. Recognition of diplomas of psychologists from Ukraine

UNHCR recommends amending Article 64(a) of the Special Act to allow psychologists from Ukraine to provide psychological services to Ukrainian citizens residing in Poland without the need for an assessment and recognition of their credentials.

According to a countrywide and comprehensive needs assessment which UNHCR carried out in Poland 2023, one in five refugees (20%) experience psychological distress of an intensity which affects their daily functioning. Among refugees in need of support in this regard, 54% of refugees mentioned they have not received any mental health or psychological support.

From 24 February 2022 to 24 August 2023, and based on Article 64(a) of the Special Act, psychologists from Ukraine were able to provide psychological services to Ukrainian citizens residing in Poland, which was crucial to enhance access to mental health and psychosocial support services for refugees.

However, this provision was not extended after August 2023, which has adversely affected the quality and accessibility of psychological support which refugees require in Poland.

Therefore, UNHCR recommends the amendment of Article 64(a) of the Special Act to provide for an extension of the exception for nostrification of psychologists from Ukraine, which we suggest be aligned with the duration of temporary protection in Poland.

V. Financial subsidies to private individuals

UNHCR calls for amendments to Article 13 of the Special Act to replace the current system of financial subsidies to private individuals and entities hosting

⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, <https://www.refworld.org/docid/51a84b5e4.html>, <https://resourcecentre.savethechildren.net/pdf/5416.pdf/>

⁷ [Refworld | Voluntary Return to Ukraine of Refugee Children without Parental Care, including Unaccompanied Children and Children Evacuated from Care Institutions in Ukraine](https://www.refworld.org/docid/51a84b5e4.html)

Ukrainian citizens. Instead, direct financial support (housing subsidies) to refugees should be introduced, allowing them more freedom and flexibility when choosing accommodation options.

UNHCR welcomes the generous support that the Government of Poland has provided to families who have hosted refugees from Ukraine since the onset of the war. The extension of financial support for families hosting vulnerable persons has been crucial to prevent evictions of those most at risk.

According to an inter-agency assessment led by UNHCR in 2023, safe, affordable housing and accommodation is one of the highest priority needs raised by refugees.⁸ While a significant portion of refugees from Ukraine found private accommodation, independently or hosted by family and friends, the rapid increase in demand for housing solutions is occurring in a context of significant pre-existing challenges in the housing market, which constitute an obstacle to accessing independent accommodation outside of collective sites.

Given the potential risks reported in some of the hosting arrangements organized by private hosts, and to prevent potential abuses, UNHCR calls on the Government of Poland to transition to a needs-based system of direct support (housing subsidies) for vulnerable refugees whose accommodation is not provided by the State. Such a system would greatly facilitate the inclusion of refugees in the Polish economy, reduce transaction costs, and mitigate risks of exploitation. Furthermore, this would promote dignity, independence and autonomy, in line with international law obligations on housing.

The EU Commission guidance note on the “Safe Homes Initiative” notes that as support to private hosting schemes are phased out, States should promote access to social benefits and social housing schemes for refugees, securing continued care for vulnerable persons, and providing hosts and refugees hosted with transparent information in order to avoid risks of homelessness and premature return/onward movement decisions.

Pursuant to Article 13 of the Temporary Protection Directive (“TPD”), Member States within the EU have the obligation to provide suitable accommodation to temporary protection holders or, alternatively, to provide temporary protection holders with the means to obtain housing. Article 13 of the Temporary Protection Directive should be interpreted in light of the EU Charter of Fundamental Rights as Member States are required to ensure that the interpretation of the TPD complies with the Charter.

Article 25 of the EU Charter provides for the right of older persons to live with dignity and independence. Similarly, under Article 26 of the EU Charter, Member States shall ensure the right of persons with disabilities to live in the community with dignity and autonomy. Moreover, Article 34 (3) of the Charter provides for the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

VI. *Monitoring and accountability around collective sites*

UNHCR recommends that a system of monitoring and oversight is introduced in Article 12 of the *Special Act*, and that Article 12a is amended to ensure that relevant safety, reception and protection standards (based on Polish, EU and international law) are observed.⁹

⁸ <https://data.unhcr.org/en/documents/details/104584>

⁹ [Document - Poland: Collective Centers standards Checklist \(unhcr.org\)](#)

Approximately 50,000 refugees currently reside in collective sites. Persons residing in this type of accommodation are considered some of the most vulnerable (and predominantly include persons with specific needs, elderly persons and persons from minority groups). They are at a heightened risk of exploitation and trafficking, linked to limited safeguards, as has been reported in some collective shelters. Their right to suitable accommodation and the adequate level of protection which this entails is enshrined in the Temporary Protection Directive.

The right to suitable accommodation under Article 13 of the Directive is elaborated in the Explanatory Memorandum, which states that “Member States’ obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.”

As indicated in the OECD report *Housing Support for Ukrainian refugees in receiving countries*, although private hosting systems were a flexible and agile solution in the initial phases of displacement, they come with clear risks. Acknowledging that these models empower refugees and create linkages with the host community, they need to be accompanied by monitoring and vetting activities to ensure the safety and suitability of accommodations. Little oversight or legal protection raises the scope of an enhanced risk for exploitation and trafficking.

In light of the above, UNHCR recommends that the system of oversight for collective sites hosting refugees from Ukraine is clearly defined in Article 12 of the Special Act and that the derogation provided by article 12(a) is lifted in line with Article 13.1 of the Temporary Protection Directive.