

# Temporary Protection Germany

2023 Update

This annex on temporary protection complements and should be read together with the [AIDA Country Report on Germany](#).

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# Temporary Protection Procedure

## A. General

The Council Directive 2001/55/EC (Temporary Protection Directive) is formally implemented into the German legal framework in Section 24 of the Residence Act. Section 24 defines the status (para. 1), includes exceptions to the status (para. 2), details the rules on the distribution of protection seekers between the Federal States (para. 3, 4) and includes the rights and obligations of the protection seeker on housing and regarding information on the status (para. 5, 7). Paragraph 6 of Section 24, which originally included conditions on the right to work was repealed in May 2022 due to its non-conformity with Art. 12 of the Temporary Protection Directive.<sup>1</sup>

Following the EU Council decision on the activation of the Temporary Protection Directive on 7<sup>th</sup> March 2022, the German Federal Government introduced the “Ukraine-Residence-Transitional Regulation” (*Ukraine-Aufenthalts-Übergangsverordnung*, subsequently cited as *Ukraine-Aufenthalts-VO*) which was prolonged and amended by the regulations from 26<sup>th</sup> April, 24<sup>th</sup> August and 28<sup>th</sup> November 2022, 24 May 2023 and 24 November 2023.<sup>2</sup> The regulation and its successors mainly cover rules on legal entry and stay of Ukrainian nationals and foreigners residing in Ukraine until 24<sup>th</sup> February 2022. The initial Ukraine-Aufenthalts-VO introduced an exemption to the need for a residence permit and guaranteed legal entry and stay. With the amended regulation of August, as of 1<sup>st</sup> September legal stay is only awarded for the first 90 days after arrival, a residence permit is required afterwards. Additionally, in the amended regulation of August 2023, a cessation clause was included following which the legal stay ends once a negative final decision on the application for a residence permit has been issued.

In addition, the Federal Ministry of the Interior circulated several letters and recommendations to the Ministries of the Interior of the Federal States regarding the scope, the procedures and further rights awarded to those seeking and afforded temporary protection fleeing from Ukraine.<sup>3</sup> Whereas some Federal States contested the legal nature of these circulations (See [Registration under temporary protection](#)), others forwarded the circulation letters to the local central immigration authority (ZAB)<sup>4</sup> and others included or amended the content in their state decrees. There is no information available on whether all of the recommendations from the circulation letters have been implemented in all Federal States, however regarding the claim of persons with disabilities, a Court followed the circulation letter of the Ministry (See [Health Care](#)). The Federal States which introduced state decrees are for example **Baden-Wuerttemberg** on the distribution of people from Ukraine,<sup>5</sup> **Berlin** on the distribution and on the scope of temporary protection,<sup>6</sup> **Lower Saxony** on the distribution, social benefits and scope of temporary

<sup>1</sup> Deutscher Bundestag, *Beschlussempfehlung und Bericht des Ausschusses für Arbeit und Soziales zu dem Gesetzentwurf der Bundesregierung, Drucksache 20/1768*, available in German at: <https://bit.ly/3JmVZTm>, 33.

<sup>2</sup> For the currently enforced “Ukraine-Residence-Transitional Regulation” and the previous versions see: buzer.de, *Änderungen an Ukraine-Aufenthalts-Übergangsverordnung (UkraineAufenthÜV)*, available in German at: <https://bit.ly/3Hbvizl>.

<sup>3</sup> Overview accessible via Informationsverbund Asyl & Migration, *Informationen zu Schutzsuchenden aus der Ukraine*, lastly updated 16 January 2023, available in German at: <http://bit.ly/3QMRvXY>.

<sup>4</sup> See e.g. an overview on the forwarded recommendations by Thuringia: Refugee Council Thuringia, *Gesetze, Verordnungen und Erlasse*, available in German at: <https://bit.ly/3iQtcvR>.

<sup>5</sup> Ministry of Justice Baden-Wuerttemberg, *Allgemeinverfügung zur landesinternen Verteilung von Vertriebenen aus der Ukraine im Sinne des Durchführungsbeschlusses (EU) 2022/382 des Rates vom 4. März 2022 zur Feststellung des Bestehens eines Massenzustroms von Vertriebenen aus der Ukraine im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines vorübergehenden Schutzes*, 12 May 2022, available in German at: <https://bit.ly/3XFYAMs>.

<sup>6</sup> Senate Berlin, *Senatsbeschluss vom 05.04.2022 zur Zuweisung von Kriegsflüchtlingen nach Berlin*, 05 April 2022; Senate Berlin, *Berliner Senatsbeschluss vom 16.08.2022 zur Unterstützung von nicht-ukrainischen Drittstaatsangehörigen, die in der Ukraine vor Ausbruch des Krieges studiert haben, infolge des Krieges nach Deutschland geflohen sind und ihr Studium in Berlin fortsetzen möchten*, 16 August 2022, available in German at: <https://bit.ly/3QSeMI7>.

protection,<sup>7</sup> **Schleswig-Holstein** on the distribution, social benefits and scope of temporary protection.<sup>8</sup> The Federal State decrees do vary in detail, as they are adjusted to different Federal States' administrative systems.

On the scope for those eligible to temporary protection, the Federal Government distinguishes in its circulation letters between three groups, namely (1) Ukrainian citizens, persons granted international protection in Ukraine and their family members, (2) non-Ukrainian nationals with permanent residency in Ukraine and (3) non-Ukrainian nationals with a temporary residence in Ukraine.<sup>9</sup> The criteria for obtaining temporary protection vary accordingly. Ukraine nationals and international protection holders shall be awarded temporary protection, for the other two groups additional criteria apply (see [Qualification for temporary protection](#)).

Concerning the entitlement to social benefits, the legal framework has been reformed comprehensively since the activation of temporary protection. Prior to the legal reforms, applicants as well as beneficiaries of temporary protection were granted social benefits under the Asylum Seeker's Benefits Act.<sup>10</sup> As of 1<sup>st</sup> June 2022 applicants for temporary protection if they fulfil additional criteria (see [Qualification for temporary protection](#)), as well as beneficiaries for temporary protection are entitled to Social benefits under the regular Social Code.<sup>11</sup> Thereby they receive the same benefits as German nationals regarding unemployment benefits, housing allowances, health care, access to the job market, support measures such as language courses, child and parental benefits, and educational support programs.<sup>12</sup> These are higher than those under the Asylum Seeker Benefits Act (see [Social Welfare](#)). In practice, the implementation of the legal framework concerning applicants for temporary protection is contested, especially if they are third-country nationals (see [Qualification for temporary protection](#)).

### Main legislative acts relevant to procedure for and content of temporary protection

Title (EN)	Original Title (DE)	Web Link
Ukraine-Residence-Transitional Regulation	<i>Ukraine-Aufenthalts-Übergangsverordnung</i>	<a href="https://bit.ly/3Hbvizl">https://bit.ly/3Hbvizl</a> (DE)
Executive decree on the Acceptance of foreign passports and alternative identity documents	Allgemeinverfügung über die Anerkennung ausländischer Pässe und Passersatzpapiere	<a href="https://bit.ly/3kp7pvE">https://bit.ly/3kp7pvE</a> (DE)

<sup>7</sup> For an overview see: Refugee Council of Lower Saxony, *Erlasse und Informationen der Niedersächsischen Landesregierung*, available in German at: <http://bit.ly/3QN7gOC>.

<sup>8</sup> Ministry of Interior Schleswig-Holstein, published by Refugee Council Schleswig-Holstein, *Zusammengefasste Erlassregelung zur Aufnahme von Kriegsvertriebenen aus der Ukraine*, 17 June 2022, available in German at: <http://bit.ly/3QRGIMw>.

<sup>9</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>10</sup> For the social benefits granted under the Asylum Seeker's Benefits Act, see [General Report - Reception Conditions](#).

<sup>11</sup> For the amended legal framework see: buzer.de, *Änderungen durch Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze*, last amended 01 November 2022, available in German at: <http://bit.ly/3WC1vaF>; Federal Ministry of the Interior, *Neuregelungen im Aufenthaltsgesetz zum 01.06.2022 aufgrund des „Gesetzes zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze“*, 27 May 2022, available in German at: <https://bit.ly/3wfWU0q>.

<sup>12</sup> For an overview see: GGUA, *Sozialrechtliche Rahmenbedingungen mit Aufenthaltserlaubnis nach § 24 AufenthG bzw. nach Antrag auf vorübergehenden Schutz*, 01 September 2022, available in German: <https://bit.ly/3QN3G7r>.

## Main implementing legislative guidelines relevant to procedure for and content of temporary protection

Title (EN)	Original Title (DE)	Web Link
Circulation letters on the implementation of the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government	Rundschreiben zur Umsetzung des EU-Ratsbeschlusses zur Einführung eines vorübergehenden Schutzes	earliest version 14 March 2022: <a href="https://bit.ly/3HbUKoW">https://bit.ly/3HbUKoW</a> (DE), amended by the version of 14 April 2022: <a href="https://bit.ly/3QQei5b">https://bit.ly/3QQei5b</a> (DE), amended by version of 05 September 2022: <a href="https://bit.ly/3IXm4by">https://bit.ly/3IXm4by</a> (DE)
Recommendation on onward migration of Ukrainians and the handling of the European Registration Platform	Rundschreiben zum Umgang mit Treffermeldung in der Europäischen Registrierungsplattform im Zusammenhang mit der Fluchtbewegung aus der Ukraine	<a href="https://bit.ly/3weUvD4">https://bit.ly/3weUvD4</a> (DE)
Circulation letter on the change of applicable legal framework for social benefits	Rundschreiben zur Registrierung von Kriegsgeflüchteten aus der Ukraine ab dem 1. Juni 2022	<a href="https://bit.ly/3XEtHla">https://bit.ly/3XEtHla</a> (DE)

Besides the legal framework on temporary protection, the German government introduced a special procedure for Jewish Ukrainians. Following Section 23 (2) Residence Act in conjunction with the circulation of the Federal Ministry of Interior,<sup>13</sup> Ukrainian nationals, stateless or third-country nationals with a legal residence permit for more than 90 days in Ukraine, who are Jewish and were legally staying in Ukraine before 24<sup>th</sup> February 2022, who speak a certain level of German (A1) and who are welcomed by a local Jewish community<sup>14</sup> directly qualify for a long term residence permit 'settlement permit' (Niederlassungserlaubnis). Their family members qualify for a short-term residence permit.

### Statistics

Temporary protection statistics		
	Until March 2023	Until February 2024
Number of persons registered in the Central Register of Foreigners ( <i>Ausländerzentralregister</i> (AZR))	1,072,248	1,139,689
Holders of a residence permit for temporary protection under Section 24 Residence Act	778,799	941,559
Persons having received a fictional approval (i.e. application is currently being assessed)	123,898	75,929
Persons having applied for temporary protection but having not yet received fictional approval	127,713	35,248

<sup>13</sup> Federal Ministry of Interior, *Anordnung des Bundesministeriums des Innern gemäß § 23 Abs. 2 des Aufenthaltsgesetzes über die Aufnahme jüdischer Zuwanderer aus der ehemaligen Sowjetunion mit Ausnahme der Baltischen Staaten*, last amended 18 March 2022, available in German at: <http://bit.ly/3wfl8lk>.

<sup>14</sup> This criterion does not need to be proven by the applicant. Instead, the Central Jewish Welfare Office checks whether the applicant may enter a local Jewish community. Access to the local Jewish community is usually granted if the applicant is of Jewish decent. See: Bundesamt für Migration und Flüchtlinge, *Jüdische Zuwandernde - Guide to the Special Acceptance Procedure Ukraine*, available at: <http://bit.ly/3J1F8Ws>.

Have not applied for temporary protection and do not possess a residence permit	41,838	No numbers available
Persons who have been deregistered from the Central Register of Foreigners (AZR), due to permanent departure or death	-	307,526

Source: Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended February 2024, available in German at: <http://bit.ly/3D0Jvgr>.

As of January 2024, among those registered, 97% are of Ukrainian nationality, around 65% percent of the registered persons are female, about 30.7% are under 18 years old.<sup>15</sup> As of November 2023, among those who fled Ukraine who do not possess Ukrainian nationality, were mainly Russians (4,697), Azerbaijani (3,326), Vietnamese (2,324), Georgian (2,261), Armenian (2,235) and Nigerian (2,231) nationality.<sup>16</sup> In November 2023, 59% of those who permanently departed from Germany were between 18 and 60 years old, 61.5% of those who departed were women.<sup>17</sup>

## B. Qualification for temporary protection

### Eligibility for Temporary Protection

Implementing the Council Decision 2022/382, the Federal Government defined in its circulation letters three groups for which temporary protection shall or can be granted.<sup>18</sup> While the legal nature of the circulation letters is contested, the applicability of the criteria set out in the Council Decision 2022/382 to these three groups and is not disputed in Germany.

To the first group temporary protection shall be granted without further criteria. This group includes:

- ❖ Ukrainian citizens, who were residing in Ukraine before 24<sup>th</sup> February 2022
- ❖ Stateless persons and foreign citizens who obtained international protection in Ukraine<sup>19</sup>
- ❖ Family members of these groups

Family members include:

- ❖ The spouse. There have been differing court rulings on if permanent partners are considered as family members as well. The administrative court of Cologne, **North-Rhine** Westphalia decided that, the permanence of a partnership is determined in the same way as permanent partnership of EU citizens under the German Freedom of Movement Act, implementing the Citizens Rights Directive 2004/38/EC, following which it must be made plausible that the partnership is exclusive

<sup>15</sup> Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended February 2024, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>16</sup> Federal government, *response to parliamentary request, Drucksache 20/9973*, available in German at: <https://bit.ly/3UMA9yq>.

<sup>17</sup> Statistisches Bundesamt, *Starker Zuwachs an ukrainischen Staatsbürgern seit Ende Februar 2022*, lastly amended 2024, available in German at: <https://bit.ly/3SB8VYZ>.

<sup>18</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>19</sup> International protection meaning under the GFK, subsidiary protection under Directive 2011/95/EU or other national equal protection status, according to Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.



and be of such a nature that the partners are willing to support each other financially and emotionally in life.<sup>20</sup> This interpretation is in line with the Recommendation letters by the Federal Ministry of Interior.<sup>21</sup> In contrast, the administrative court of Munich, **Bavaria**, decided that, in German national law, permanent partners are not considered equivalent to married couples, which in turn makes Council Decision 2022/382 not applicable for permanent partners in Germany.<sup>22</sup>

- ❖ Minor children and close relatives who were living within the family before 24<sup>th</sup> February 2022 and are dependent on the original protection seeker. Dependence requires financial or actual physical or psychological full or at least prevailing dependence. In this last category also children who turned 18 shortly before the application for temporary protection may be included.

According to the Administrative Court of Greifswald, Mecklenburg-Western Pomerania, family members are eligible for temporary protection irrespective of whether they themselves were residing in Ukraine before 24<sup>th</sup> February, except for those close relatives who are dependent on a Ukrainian family member.<sup>23</sup>

Secondly, temporary protection shall also be awarded to foreigners with a permanent residence permit in Ukraine, if the *prima facie* presumption that they cannot return to their home country is not revoked. This includes cases where a custodian of a minor Ukrainian child is a third country national, and holder of a permanent residence permit in Ukraine. The *prima facie* presumption is revoked if the country of origin information suggests that the home country is generally safe.<sup>24</sup> The Higher Administrative Court of Berlin-Brandenburg decided that the *prima facie* presumption can regularly be revoked for Vietnamese nationals.<sup>25</sup> . If the *prima facie* assumption is revoked, the local authorities would then need to assess whether the person can return safely under the criteria set out below. In the case of family members in Germany, family ties constitute a prevailing reason over the criteria of safe return.<sup>26</sup>

The third group consists of all other persons who were legally residing (more than 90 days) in Ukraine before 24<sup>th</sup> February but without a permanent residence permit. They may also be awarded temporary protection under additional criteria. They need to prove their legal residence in Ukraine and establish that they cannot return safely to their home country. In defining “safe and durable return” and the procedures to establish whether a person can return safely, the Federal Government relies on the Communication of the Commission from 21<sup>st</sup> March 2022.<sup>27</sup> Accordingly, the procedure to establish whether a person can return safely constitutes a *sui generis* procedure where factors such as armed conflict, systemic human rights violations, ongoing violence, risk of persecution or inhumane and degrading treatment in the home country need to be evaluated. As set forth in the Communication from the Commission, the Federal government underlines in their circulation letters that not only factors of safety shall be evaluated but also

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<sup>20</sup> Administrative court Cologne, Decision 12 L 662/23, 12 July 2023, available in German at: <https://bit.ly/3wa7OrG>.

<sup>21</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>22</sup> Administrative court Munich, Decision M 4 S 23.2442, 1 September 2023, available in German at: <https://bit.ly/4bA6G0N>.

<sup>23</sup> Administrative Court Greifswald, Decision 2 A 404/23 HGW, 1 August 2023, available in German at: <https://bit.ly/49g2SjH>.

<sup>24</sup> Sebastian Klaus, *Aufenthaltsrechtliche Situation ukrainischer Geflüchteter*, Asylmagazin Vol. 6, 2023, 188 – 194, 192, available in German at: <https://bit.ly/49gf2sL>.

<sup>25</sup> Higher Administrative Court Berlin-Brandenburg, Decision 11 S 8/23, 23 March 2023, available in German at: <https://bit.ly/42F7Fc0>.

<sup>26</sup> Informationsverbund Asyl & Migration, *Fragen und Antworten: Perspektiven für nicht-ukrainische Staatsangehörige, die aus der Ukraine geflüchtet sind*, 3 February 2023, available in German at: <http://bit.ly/40woweP>.

<sup>27</sup> European Commission, *Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 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*, 21 June 2022, available at: <http://bit.ly/3CTTQuM>.

whether the applicants still have special ties to their home country or whether they are rather alienated.<sup>28</sup> This criterion of 'alienation' or ties to the home country does not exist in the German law for the assessment of 'safe return' in the asylum procedure and therefore constitutes a sui generis assessment of 'safe return' for applicants for temporary protection. Additionally, the local authorities (*Ausländerbehörde der Länder*) may use Section 60 para. 5 of the Residence Act as criterion which references the ECHR and paragraph 7, where a concrete threat to life, body or freedom precludes extradition to the home country. Generally, this sui generis procedure needs to be applied individually. In the case of a Libyan national, the Higher Administrative Court of Saxony, decided that, due to the relatively privileged position as medical practitioner, it is proven that the applicant would be able to sustain his living and therefore can return safely to Libya.<sup>29</sup> The Federal Government decided that, for people fleeing Ukraine who are of Eritrean, Syrian and Afghan nationality, it is generally established that they cannot return safely to their home countries.<sup>30</sup> From January 2023, North-Rhine Westphalia decided to extend the list to Iranian nationals, in line with the removal ban (see [General report – Differential treatment of specific nationalities – Iran](#)).<sup>31</sup>

Temporary protection is awarded to the respective groups if they arrived in Germany on 24<sup>th</sup> February or afterwards. For those falling under group one and two the eligibility for temporary protection is also extended to those who arrived shortly before 24<sup>th</sup> February 2022 (max. 90 days) for various reasons (e.g., holidays, work, fleeing because of aggravating conflict).<sup>32</sup>

Additionally, the possibility to apply for temporary protection is extended to those Ukrainians who are already holders of any other residence permit in Germany or where their stay was formerly tolerated (see [General Report – Residence Permit](#)). They may apply for temporary protection in case the former residence permit expires and cannot be prolonged or in cases where the original residence permit or toleration ceases due to other reasons.

Temporary protection is awarded retrospectively from the day of arrival to 4<sup>th</sup> March 2025, following the Council decision of 19 September 2023 to extend temporary protection for one year until 4 March 2025.<sup>33</sup>

### **Other forms of protection available to people who fled Ukraine**

In addition to temporary protection under Section 24 Residence Act, people fleeing Ukraine can apply for several other residence permits. First, there is the possibility to apply for asylum following the regular asylum procedure (see [General Report – Regular Procedure](#)). As of November 2023, 2.4% of those registered in the Central Registry of Foreigners applied for Refugee Protection, only 0.005% persons have been granted Refugee Protection.<sup>34</sup> NGOs and legal practitioners do not advise to apply for asylum in

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<sup>28</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>29</sup> Higher Administrative Court Saxony, Decision 3 B 141/23, 6 September 2023, available in German at: <https://bit.ly/49D0NhJ>.

<sup>30</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>31</sup> Asyl.net, *Iranische Staatsangehörige aus der Ukraine erhalten vorübergehenden Schutz*, 19 January 2023, extracts available in German at: <https://bit.ly/3SEPFKb>.

<sup>32</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, earliest version 14 March 2022, available in German at: <https://bit.ly/3HbUKoW>, amended by the version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, amended by version of 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>33</sup> Ibid.

<sup>34</sup> Federal government, *response to parliamentary request, Drucksache 20/9973*, available in German at: <https://bit.ly/3UMA9yq>.



most cases, due to the restrictions in the freedom of choosing a place to live, restrictions in access to the job market and the length of the procedure (see [General Report – Reception Conditions](#)).

Secondly, people fleeing Ukraine can apply for any other residence permits from within Germany.<sup>35</sup> In November 2023, most people still had different provisional residence permits, which are awarded during the time of the application for the different residence permits. Among those who received a non-provisional residence permit, 0.2% received a residence permit due to being born in Germany and having at least one parent who possesses a residence permit in Germany following Section 33 Residence Act. 0.13% received the status of tolerated stay ('Duldung'), 0.09% received a residence permit as family members of EU citizens following Section 5 Freedom of Movement Act (Freizügigkeitsgesetz/EU) which implements Directive 2004/58/EC.<sup>36</sup> Usually applicants need to fulfil undergo a visa procedure before entering Germany, but following Section 3 Ukraine-Aufenthalts-VO people fleeing Ukraine are not only allowed to the territory for the first 90 days but also exempted from this procedure. However, difficulties in obtaining these residence permits stem from (a) possible conflicts with an application for temporary protection and (b) material preconditions of the residence permits.

*a. conflicts of applications for temporary protection with other residence permits*

Section 19f para 1 no. 2 and para 2 no. 1 Residence Act entail conflict clauses for several residence permits, following which simultaneous applications for temporary protection and e.g., residence permits for students under Section 16b Residence Act, residence permits for academic qualified workers under Section 18b Residence Act and residence permits for European Voluntary Service under Section 19e Residence Act are mutually exclusive. However, it is contested when these collusion clauses are applicable. Applicants for temporary protection are not per se excluded from applying for other residence permits, if the application for the other residence permit was lodged within the 90 days of legal stay before or without applying for temporary protection. Applicants for temporary protection are also not excluded from applying for other residence permits if they apply for other residence permits after their application for temporary protection has been declined. However, in this case applicants may be required to undergo the visa procedure since their stay is no longer legal following the cessation clause in Section 2 para. 3 Ukraine-Aufenthalts-VO.<sup>37</sup> The conflict clauses may apply in situations where an application for temporary protection has been lodged, is not yet decided upon and an application for one of the other residence permits listed above has been filed subsequently. But even in these cases it has been argued that at least for some of the above listed residence permits the exemption clause shall not apply because it would violate EU law.<sup>38</sup> There is no information available how this issue has been settled in practice. However, in literature, the view prevails, that the application for temporary protection is mutually exclusive to the other applications for residence permits listed above.<sup>39</sup>

In sum, applications for other residence permits are in most cases possible before lodging an application or after receiving a negative decision for an application for temporary protection. Even if an application

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<sup>35</sup> E.g., student or vocational training visa Section 16 a, b Residence Act; skilled worker Section 18 a, b Residence Act; humanitarian visa Section 25 Residence Act; family reunification visa Section 27 Residence Act.

<sup>36</sup> Federal government, *response to parliamentary request, Drucksache 20/9973*, available in German at: <https://bit.ly/3UMA9yq>.

<sup>37</sup> The Ministry of Interior is aware that obliging people to undergo a visa procedure in Ukraine is currently unreasonable and that therefore exceptions to this obligation can be made, see: Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, 13.

<sup>38</sup> It has been argued that the scope of Directive (EU) 2016/801 of 11. May 2016 also includes applicants for temporary protection. For the argumentation see: Informationsverbund Asyl & Migration, *Fragen und Antworten: Perspektiven für nicht-ukrainische Staatsangehörige, die aus der Ukraine geflüchtet sind*, last amended 3 January 2023, available in German at: <https://bit.ly/3ZLYgh6>.

<sup>39</sup> Sebastian Klaus, *Aufenthaltsrechtliche Situation ukrainischer Geflüchteter*, *Asylmagazin* Vol. 6, 2023, 188 – 194, 193, available in German at: <https://bit.ly/49gf2sL>.

for a residence permit is made parallel to an application for temporary protection it is argued that the applications can be processed at the same time.

#### *b. material preconditions for other residence permits*

It may though be difficult for people fleeing Ukraine to fulfil the requirements for residence permits during their 90 days of legal stay in Germany. For most of the residence permits a proof of economic self-reliance is required and a valid passport.<sup>40</sup> Additionally, often language certificates are required.<sup>41</sup> In cases where people apply for residence permits for work the Federal Employment Agency needs to give their permission.<sup>42</sup> This involves for some residence permits the evaluation whether there are German workers who have precedence over foreign workers (*Vorrangprüfung*).

## C. Access to temporary protection and registration

### 1. Admission to territory

#### Entry conditions

Following the Ukraine-Aufenthalts-VO people fleeing Ukraine are exempted from visa requirements, their entry and stay is legal for the first 90 days of arrival.

Additionally, people fleeing Ukraine are exempted from pass holding requirements. Usually, third country nationals are required to hold a passport or a substitute to enter and stay in Germany.<sup>43</sup> This does not apply for those who fall under the scope of Section 24 Residence Act. According to the decree of the Ministry of Interior, not only passports but also Ukrainian-ID cards are regarded as equivalent proof of identity.<sup>44</sup> Furthermore, people falling under the scope of Section 24 of the Residence act are generally exempted from passport holding requirements and cannot be punished for not having any identity documents.<sup>45</sup> The exemption only applies as long as the acquisition of a passport or equivalent identity card constitutes an unreasonable burden. This exemption of the pass holding requirement is justified by Federal Ministry of Interior with the fact that the situation of people fleeing from Ukraine is comparable to those who flee a natural disaster and are therefore not able to obtain identity documents.<sup>46</sup>

However, those entering Germany without any identity documents may be hindered in practice to enter Germany. NGOs active in the border region to Poland continue to raise allegations against the federal police of racial profiling.<sup>47</sup> The allegations are not new, in 2022 it has already been criticised that the police checks amount to racial profiling since mostly black people are being checked.<sup>48</sup> Although not specifically designed to border regions, for the first time data confirms these allegations. A study from 2023 confirms that people with external characteristics suggesting a non-German descent are being checked by the police more often than those not possession these characteristics.<sup>49</sup> The federal police justify the checks, stating that they are necessary to prevent that people who do not fall under the scope of temporary

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<sup>40</sup> Section 5 (1) Residence Act.

<sup>41</sup> See e.g., student residence permit Section 16b (5) Residence Act.

<sup>42</sup> Section 18 (2) Residence Act.

<sup>43</sup> Section 3 (1) Residence Act.

<sup>44</sup> Federal Ministry of Interior, *Allgemeinverfügung über die Anerkennung ausländischer Pässe und Passersatzpapiere*, 18 March 2022, available in German at: <https://bit.ly/3kp7pvE>.

<sup>45</sup> Federal Ministry of Interior, *Ausländerrechtliches Pass- und Dokumentenwesen*, 18 March 2022, available in German at: <https://bit.ly/3WIHmTI>.

<sup>46</sup> Ibid.

<sup>47</sup> Rbb.de, *Oberbürgermeister René Wilke lehnt stationäre Grenzkontrollen weiter ab*, 16 August 2023, available in German at: <https://bit.ly/49glb8j>.

<sup>48</sup> Hendrik Lasch, *Dauerkontrolle am Dresdner Bahnhof*, 29 August 2022, available in German at: <http://bit.ly/3D0mpXd>.

<sup>49</sup> Maximilian, Müller; Alex, Wittlif, *Racial Profiling bei Polizeikontrollen. Indizien aus dem SVR-Integrationsbarometer*, SVR-Policy Brief, March 2023, available in German at: <https://bit.ly/3w9e4jp>.

protection do not take advantage of the facilitated entry requirements.<sup>50</sup> However, the European Commission against Racism and Intolerance maintains its critique from earlier years, that Germany does not put enough effort in the elimination of racial profiling of the police.<sup>51</sup>

## Other measures which facilitate travelling to Germany

The German federal railway company (Deutsche Bahn) provided long distance trains from Poland to Berlin, Dresden, Nuremberg and Munich where people fleeing Ukraine could travel without a ticket. According to the press, in February 2023 around 80 people arrive daily via these trains from Poland.<sup>52</sup> This extraordinary trains were discontinued on 15 April 2023, when the last train arrived still carrying 180 passengers from Ukraine.<sup>53</sup> Persons solely needed to carry a passport or proof of former residence permit from Ukraine. If they want to continue their journey, since 1<sup>st</sup> March 2022, people who fled from Ukraine further receive tickets free of charge, which are distributed at Arrival centres.<sup>54</sup> According to the Deutsche Bahn 550,000 free tickets were distributed between March 2022 and February 2023.<sup>55</sup>

## 2. Freedom of movement

Since people fleeing from Ukraine are exempted from any passport holding requirements, in theory they may move freely within the territory. In order to facilitate mobility to other European countries, the Federal governments instructs the local immigration authorities to award travel documents to Ukrainian nationals where their identity can be established through other means.<sup>56</sup> Third country nationals shall contact the embassies of their home countries in Germany if that is not considered unreasonable.<sup>57</sup> What is considered unreasonable is not conclusively defined or listed in the law but must be determined based on the facts of the individual case.<sup>58</sup> The burden of proof lies with the third country national.<sup>59</sup> However, the German authorities need to inform third country nationals about the extent of proofs third country nationals need to provide and the necessary steps to be taken by third country nationals.<sup>60</sup> Examples for cases where contacting the embassies of their home countries have been considered unreasonable include *inter alia*: possible threats to family members who remained in the home country by authorities of the third country; if the embassy requires declarations of 'repentance' and 'voluntary return' and if the visit to the embassy and the application for a passport exceed the financial means of third country nationals and cannot be covered otherwise.<sup>61</sup>

During the assessment of the eligibility criteria for temporary protection, applicants for temporary protection are obliged to reside in the municipality to which they have been allocated.<sup>62</sup> Following Section

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<sup>50</sup> Federal government, *Response to parliamentary question by The Left, 20/3753*, 28 September 2022, available in German at: <https://bit.ly/3ZKJiy>.; Rbb.de, *Oberbürgermeister René Wilke lehnt stationäre Grenzkontrollen weiter ab*, 16 August 2023, available in German at: <https://bit.ly/49glb8j>.

<sup>51</sup> European Commission against Racism and Intolerance, *ECRI Conclusions on the implementation of the Recommendations in respect of Germany subject to interim follow-up*, 29 June 2022, available at: <https://bit.ly/3GU3cHQ>.

<sup>52</sup> Merkur.de, *Deutsche Bahn: 550.000 kostenlose Tickets für Ukraine-Flüchtlinge vergeben*, 21 February 2023, available in German at: <http://bit.ly/3mLvNJg>.

<sup>53</sup> Zeit.de, *Letzter Sonderzug aus Ukraine am Messebahnhof angekommen*, 16 April 2023, available in German at: <https://bit.ly/3uy6VZA>.

<sup>54</sup> Deutsche Bahn, *Help for refugees from Ukraine*, available at: <http://bit.ly/3iKFZA3>. The ticket was introduced on the 1st of March and was still available in January 2023.

<sup>55</sup> Merkur.de, *Deutsche Bahn: 550.000 kostenlose Tickets für Ukraine-Flüchtlinge vergeben*, 21 February 2023, available in German at: <http://bit.ly/3mLvNJg>.

<sup>56</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 14 April 2022, available in German at: <https://bit.ly/3QQei5b>.

<sup>57</sup> Ibid.

<sup>58</sup> Federal government, *response to parliamentary request, Drucksache 18/9133*, available in German at: <https://bit.ly/3Yqr909>.

<sup>59</sup> Kerstin Becker, Nadja Sabrowski, *Die Unzumutbarkeit der Passbeschaffung*, *Asylmagazin* 1-2/2018, at 18f.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Section 24 (5) Residence Act

24 (3) Residence Act applicants are allocated throughout Germany according to the “Königsteiner Schlüssel”.<sup>63</sup> In contrast to the distribution of applicants for international protection, for applicants for temporary protection the place of residence of extended family members is taken into account in the distribution process.<sup>64</sup> In order to adequately respond to the amended distribution criteria the Federal Office for Migration and Refugees designed a new platform (named *FREE*), through which the distribution of people who fled Ukraine is managed.<sup>65</sup> This system is completely independent from the distribution system for applicants of international protection (*EASY*) and should - according to the Federal Agency of Migration and Refugees – enable faster and uncomplicated proceedings.<sup>66</sup> However, bigger cities such as Berlin and Hamburg record a higher number of people from Ukraine and demand a change in the distribution system.<sup>67</sup>

### 3. Registration under temporary protection

#### Registration procedure and responsible authorities

From 1<sup>st</sup> September 2022 applications for temporary protection need to be made de facto within 90 days of arrival. Within these 90 days people fleeing Ukraine may stay without a residence permit in Germany. Despite the fact that applications may in law be lodged at any time, the 90 days restriction for legal stay without a residence permit in combination with the fact that applications for other residence permits may bar the possibility to apply for temporary protection under Section 24 entail that an application for temporary status needs to be made within these 90 days of arrival. If no application for temporary protection is made within this time period, applicants can however apply for other residence permits e.g. asylum (see [General Report – Residence Permit](#)). In order to receive temporary protection, social benefits and housing, prompt registration and an application is necessary.

The procedure to receive temporary protection in Germany requires registration, the collection of personal data (taking fingerprints, saving in the AZR) and a formal application for temporary protection. These steps may be merged or done in a different order depending on the local administrative proceedings.

##### *a. registration*

The responsible authorities for registration are the local immigration authorities. As for asylum seekers (see [General Report – Short overview of the asylum procedure](#)) applicants for temporary protection may generally apply at reception facilities, local immigration authorities and the police at the border and in every city. In for example **Berlin, Hamburg and Munich**, registration is centralised in certain Reception centres.<sup>68</sup> Subsequently, applicants are allocated to the responsible state and city under the so called “Königsteiner Schlüssel”.<sup>69</sup> E.g., in **Berlin** since 1<sup>st</sup> June 2022 people arriving need to register first at a welcome centre, where a first decision on their local distribution is taken. Only if the applicants are allocated to Berlin, they can book an appointment with the foreigner’s office (LEA) to apply for Temporary Protection. As proof of registration a “proof of arrival” is issued.

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<sup>63</sup> See [General Report – Asylum Procedure](#).

<sup>64</sup> ProAsyl, *Information for refugees from Ukraine*, 4 March 2022, available at: <http://bit.ly/3iL3qct>.

<sup>65</sup> Federal Office for Migration and Refugees, *IT-Fachanwendung: "FREE" im Einsatz*, 01 June 2022, available in German at: <http://bit.ly/3XFeQNJ>.

<sup>66</sup> Ibid.

<sup>67</sup> Mdr.de, *So werden Ukraine-Flüchtlinge in Deutschland verteilt*, 01 June 2023, available in German at: <https://tinyurl.com/3wjnvyyw>.

<sup>68</sup> Berlin Administration, *Aufenthaltsgewährung zum vorübergehenden Schutz für Geflüchtete aus der Ukraine – Zuweisungsentscheidung*, available in German at: <http://bit.ly/3HdOkW9>; Hamburg Administration, *FAQ: Informationen für Schutzsuchende aus der Ukraine*, last amended 3 January 2023, available in German at: <http://bit.ly/3Wm1Hry>. Munich Administration: *Solidarität mit der Ukraine*, available at: <http://bit.ly/3ZHxO3g>.

<sup>69</sup> See [General Report –Asylum Procedure](#).

## b. collection of fingerprints and personal data

Since 1<sup>st</sup> June 2022 the collection of fingerprints and personal data (photos and corporal details) in the AZR is mandatory not only for the application process but also as a prerequisite in order to receive social benefits.<sup>70</sup> For all applicants above the age of fourteen years the collection of fingerprints is mandatory, for those between six and fourteen years it should be made, only for those under six years old no fingerprints are taken. A derogation from the obligation concerning children between six and fourteen years is possible, but there are no official indications as to in which cases. The city of Berlin for example only carries out the collection of personal data if there are any doubts about the age.<sup>71</sup> Vulnerable applicants may be excluded from the requirement. In these cases, the local authority ZAB is required to assess individually if the collection of fingerprints is reasonable and adequate.<sup>72</sup>

Making the collection of personal data a prerequisite for receiving social benefits has been criticised by civil society organisations and by the press. While the government justifies the amended Section 49 para 4a with security concerns, it has been argued that first personal data is already submitted to the authorities due to the biometric pass requirement. Additionally, civil society organisations fear that the extensive collection of data may reinforce existing prejudices of protection seekers as criminals, since the collection of data for applicants resembles the collection of data for criminals and for those who illegally crossed the border to Germany.<sup>73</sup>

## c. Application and “Fictional approval”

The application itself can be done online or at the corresponding reception centre or immigration authority after or in parallel to the registration. It is sufficient to claim temporary protection orally in order to enter the application procedure. As people fleeing Ukraine are exempted from visa and passport requirements the lack of a passport is not regarded as an exclusion ground. However, applicants need to substantiate their claim in a reasonable manner and need to present proof of Ukrainian citizenship or proof of legal residence in Ukraine.<sup>74</sup> As proof for Ukrainian citizenship, a Ukrainian passport and Ukrainian ID-card (those delivered from 2015 onwards) are accepted. Additionally, the stateless persons travel document, a refugee travel document, travel documents for children and diplomatic passports are accepted.<sup>75</sup> If persons lack proof of identity they may be required to obtain a substitute from the Ukrainian embassy or in the case of third country nationals from the embassy of their home country if this is not considered unreasonable.<sup>76</sup> The local immigration authorities may also exceptionally accept expired identity documents.<sup>77</sup>

It has been observed that third country nationals’ access to apply for temporary protection is often hindered and they are instead pressured to apply for asylum. In the beginning the local immigration authorities often interpreted the applications of third country nationals as asylum claims and not as

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<sup>70</sup> Section 49 para 4a Residence Act and Section 81 para 7. See also: Federal Ministry of Interior, *Registrierung von Kriegsgeflüchteten aus der Ukraine ab dem 1. Juni 2022*, 25 April 2022, available in German at: <https://bit.ly/3XIOZfL>.

<sup>71</sup> Flüchtlingsrat Berlin, *Kriegsflüchtlinge Ukraine*, 8 December 2022, available in German at: <https://tinyurl.com/5t5chr94>.

<sup>72</sup> Ibid.

<sup>73</sup> Marie, Frank, *Diskriminierung von Geflüchteten: Schutz und Vorurteil*, taz, 14 May 2022, available in German at: <https://bit.ly/3XcTLKF>; GGUA, *Änderungen ab 1. Juni 2022 für Geflüchtete aus der Ukraine mit Aufenthaltserlaubnis nach § 24 AufenthG oder nach Antrag auf § 24 AufenthG*, 27 May 2022, available in German at: <https://bit.ly/3ZCO7TE>.

<sup>74</sup> Federal Ministry of Interior, *Allgemeinverfügung über die Anerkennung ausländischer Pässe und Passersatzpapiere*, 18 March 2022, available in German at: <https://bit.ly/3kp7pvE>.

<sup>75</sup> Berlin Administration, *Verfahrenshinweise zur Erfassung von Flüchtlingen aus der Ukraine im Melderegister*, 14 April 2022, available in German at: <https://bit.ly/3J5scil>.

<sup>76</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, version of 14 April 2022, available in German at: <https://bit.ly/3QQei5b>, 15.

<sup>77</sup> Berlin Administration, *Verfahrenshinweise zur Erfassung von Flüchtlingen aus der Ukraine im Melderegister*, 14 April 2022, available in German at: <https://bit.ly/3J5scil>.



applications for temporary protection. In other cases, applicants have been impeded by the immigration authorities in lodging their application with the justification that they must claim asylum.<sup>78</sup> As such in many cases no access to the procedure under Section 24 of the Residence Act is granted. This practice of the immigration authorities does not follow the recommendations in the circulation letters. And at least the first practice, where an application has been interpreted autonomously by the immigration authorities as an asylum claim, has been condemned by several courts.<sup>79</sup> According to the civil society organisation ProAsyl this practice is still, however, pursued in some cases.<sup>80</sup> Although they can help in the aftermath to change the application towards a temporary protection permit, this practice has consequences for the persons affected as it leads to lesser material reception conditions or more insecurities concerning permit of residence.

Even if access to the procedure under Section 24 of the Residence act is granted for third country nationals, some ZAB further argue that if parallel applications for temporary protection and international protection are filed, the legal regime of the asylum procedure supersedes the procedure under Section 24 of the Residence act.<sup>81</sup> This is, however, not reflected in law. Section 32a Asylum Act states that the asylum procedure has to be on hold as long as the applicant is beneficiary of temporary protection. The legal regime of the asylum procedure is though disadvantageous (on the general procedure see [General Report – Asylum Procedure](#)). The “Fictional approval” which is usually to be granted upon application for temporary protection and grants access to social benefits (see Qualification for temporary protection) may be revoked following Section 55 of the Asylum Act (AsylG). This may give rise to a Dublin procedure. Additionally, restrictions to the freedom of movement “residence obligation” (*Residenzpflicht*) under Section 47 AsylG and to access to the labour market under Section 61 AsylG may be imposed. Whereas applicants may apply and be granted other residence permits while the application for temporary protection is assessed due to fictional approval, no other residence permit may be awarded during an asylum procedure.<sup>82</sup> Consequently, for example third country nationals who were formerly studying in Ukraine may not receive a study permit under 16b of the Residence Act even though they were accepted at a German university in the meantime and as such qualify for a study residence permit if they applied for asylum or were pressured into the asylum procedure in parallel to their application for temporary protection. At least for these cases where students are concerned **Berlin, Hamburg, Bremen and North Rhine-Westphalia** have decided that third country nationals fleeing Ukraine should generally be awarded a “Fictional approval” and be allowed to work and continue their studies in Germany.<sup>83</sup> Another possible disadvantage stems from the differing assessment of ‘safe return’ under the different regimes.

The view that the asylum procedure supersedes the procedure under Section 24 of the Residence is not reflected in the law. Instead, the circulation letters explain that an application for asylum can be made in parallel to the application for temporary protection.<sup>84</sup> If temporary protection is granted under Section 24

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<sup>78</sup> Dorothee Frings, *Sozialleistungen für Geflüchtete aus der Ukraine ab dem 1. Juni 2022*, Asylmagazin 6/22, 206, available in German at: <https://tinyurl.com/59h4hze5>.

<sup>79</sup> Higher Administrative Court of Baden-Wuerttemberg, Decision 11 S 1469/22, 02.08.2022, available in German at: <http://bit.ly/3QTdCvS>.

<sup>80</sup> Information provided by ProAsyl, 14 March 2024.

<sup>81</sup> Dorothee Frings, *Sozialleistungen für Geflüchtete aus der Ukraine ab dem 1. Juni 2022*, Asylmagazin 6/22, 206, available in German at: <https://tinyurl.com/59h4hze5>.

<sup>82</sup> Section 10 of the Residence Act.

<sup>83</sup> Berlin Senate, *Berliner Senat beschließt vorläufiges Aufenthaltsrecht für nicht-ukrainische Drittstaatsangehörige, die wegen des Krieges in der Ukraine geflohen sind und ihr Studium in Berlin fortsetzen wollen*, press release 16 August 2022, available in German at: <http://bit.ly/3CWw5SP>; Bremen Senate for Interior, Senate for economy and ports: *Studenten aus Drittstaaten aus der Ukraine erhalten eine reelle Perspektive*, press release 17 May 2022, available in German at: <http://bit.ly/3HeWu0l>; Authorities for Interior, Sports, Science, Research, Equality and municipalities, *Welcome to Hamburg*, 19 August 2022, available at: <https://bit.ly/3XHn2wM>; Ministry of Interior, Children, Youth, Family, Equality, Migration and Integration North Rhine-Westphalia, *Verfahren bei nicht-ukrainischen drittstaatsangehörigen Studierenden aus der Ukraine*, 17 October 2022, available in German at: <https://bit.ly/3kjLlgp>.

<sup>84</sup> Federal Ministry of the Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>, 13.



of the Residence Act, the asylum procedure shall be suspended.<sup>85</sup> NGOs and legal practitioners argue that because an application for asylum under Section 13 AsylG requires an individual persecution for one of the persecution grounds, the local ZAB can only refer applicants to the asylum procedure if the applicants explicitly claimed individual persecution. If general protection is claimed by those who fall under the scope of Section 24 of the Residence Act, it is to be understood primarily as a claim for temporary protection under Section 24.<sup>86</sup> Secondly, it is argued that because the grounds for protection under Section 24 Residence Act are overlapping but wider than those under Section 13 AsylG, the asylum procedure cannot supersede the procedure for temporary protection. Under Section 24 the assessment of safe return to the home country includes not only an assessment of risks and the living conditions in the home country but also examine the ties to Ukraine and alienation of the home country.

Once all necessary steps for the application are completed, a “Fictional approval” (*Fiktionsbescheinigung*) shall be granted under Section 81 paragraph 3 of the Residence Act. As to the scope of entitlements under “Fictional approval” the circulation letters instruct to include the annotation “Access to labour market granted” on the “Fictional approval” document, which grants immediate access and unrestricted to the job market. Additionally, a reference to the application for temporary protection under Section 24 of the Residence Act shall be made to facilitate access to integration measures and social benefits.

The legislative framework on social benefits for applicants was amended by the Federal Government in May 2022 (See General). As of 1<sup>st</sup> June 2022, holders of a “Fictional approval” document on which the reference to Section 24 is made and whose personal data has been registered in the AZR are by law entitled to receive social benefits under the regular Social Code.<sup>87</sup>

Despite these instructions in the circulation letter and the amended legal framework, in practice the scope of entitlements under “Fictional approval” is contested. In the beginning, some local authorities did not grant “Fictional approval” automatically upon application for temporary protection, which hindered access to social benefits and housing. Recently several courts have confirmed already existing case law that “Fictional approval” is to be granted automatically for applicants for all kinds of protection.<sup>88</sup> In reaction to these court rulings the local authorities and the Federal States have adapted their practices.<sup>89</sup>

Additionally, it has been noted by many non-governmental organisations that for applicants who are non-Ukrainians (group 2 and 3 in categories of applicants, see [Admission to territory](#)) a reference to Section 24 of the Residence Act is not made on the “Fictional approval” document and access to the job market is not granted.<sup>90</sup> Neither the law, nor the circulation letters or the instruction of the Federal Employment Office<sup>91</sup>, who is the responsible authority to grant social benefits, distinguish in the scope of entitlements between the different groups who may qualify for temporary protection. The conflicting interpretations of the authorities and courts on the Federal, state and local level lead to a legal black hole in which applicants for temporary protection who are third country nationals do not receive any social benefits during the application procedure and are not granted access to the job market either.<sup>92</sup> Some administrative courts

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<sup>85</sup> Section 32a AsylG.

<sup>86</sup> Rainer Hofmann (Ed.), *Ausländerrecht*, Section 24, para. 39.

<sup>87</sup> Federal Ministry of the Interior, *Registrierung von Kriegsgeflüchteten aus der Ukraine ab dem 1. Juni 2022*, 25 May 2022, available in German at: <https://bit.ly/3XEthIa>.

<sup>88</sup> Administrative Court of Aachen, Decision 8 L 527/22, 26 August 2022, available in German at: <http://bit.ly/3IUmNdB>; Higher Administrative Court of Baden-Wuerttemberg, Decision 11 S 1467/22, available in German at: <http://bit.ly/3keGGBR>.

<sup>89</sup> Ministry of Justice and Migration Baden-Wuerttemberg, *Geflüchtete aus der Ukraine: weitere Informationen und Hinweise*, 28 September 2022, <https://bit.ly/3HhfhZj>, 6.

<sup>90</sup> Flüchtlingsrat NRW, *Drittstaatsangehörige aus der Ukraine: SGB-II-Anspruch auch mit Fiktionsbescheinigung*, 20 February 2023, <https://tinyurl.com/vn7nfmmr>.

<sup>91</sup> Federal Employment Office, *Fachliche Weisungen „Bearbeitung von Fällen mit Aufenthaltstitel nach § 24 AufenthG oder entsprechender Fiktionsbescheinigung“*, 23 May 2022, available in German at: <https://bit.ly/3iPAP5K>.

<sup>92</sup> Dorothee Frings, *Sozialleistungen für Geflüchtete aus der Ukraine ab dem 1. Juni 2022*, *Asylmagazin* 6/22, 205f.

have ruled in favour of the second interpretation,<sup>93</sup> following which a distinction between the different applicants can be made. They argue that the circulation letters of the Federal government are not legally binding and that there is no legal basis which obliges the ZAB to add a reference to Section 24 or to grant immediate access to the job market. Consequently, the ZAB may decide within a margin of discretion. Some NGOs and advocates argue though that the circulation letter is legally binding because it is to be understood as executive order from the Federal Ministry of Interior (*Bundesministerium des Inneren, und für Heimat (BMI)*).<sup>94</sup> In another case concerning health benefits of people with disabilities, the Social Court of Nuremberg has understood such a letter as strong indication (See [Health Care](#)).

In sum, despite the extended scope of those eligible for temporary protection (see [Qualification for temporary protection](#)) access to the procedure and to the rights awarded during the procedure is in practice often restricted for third country nationals by the ZAB, leading to situations where third country nationals do not receive any social benefits, neither under the Social Code nor under the Asylum Seeker's Benefits Act and are not allowed to work.

Lastly, according to the ECRE update of November 2022, there have been cases where Ukrainian nationals were refused access to the application procedure for temporary protection in Germany because they had received a registration certificate in Poland.<sup>95</sup> According to the civil society organisation ProAsyl, such refusals are increasingly happening.<sup>96</sup> This practice would go hand in hand with a tenser climate towards refugees in general but also specifically against people fleeing from Ukraine, as a growing narrative accuses refugees of coming to Germany solely because of its material reception conditions. These refusals, however, would not be legal. If the person fleeing from Ukraine has an entitlement to temporary protection, the German authorities have to grant it, no matter if the person has already been registered – and not already been granted – a permit of residence in another European country. The issuance of temporary protection in Germany might however lead to a refusal in another European country.<sup>97</sup>

## Appeal procedure

Applicants whose application for temporary protection has been rejected can appeal at the regular local administrative court following Section 42 Code of Administrative Court Procedure (VwGO). In contrast to the shorter period to appeal in the asylum procedure (see [General Report – Regular procedure - Appeal](#)), applicants have one month to appeal.<sup>98</sup> The appeal has no automatic suspensive effect though.<sup>99</sup> Consequently, if the 90 days of legal stay under the Ukraine-AufenthaltsVO have been exceeded, a request for interim measures must be filed in order to guarantee that the stay in Germany remains legal.<sup>100</sup>

## 4. Legal assistance

In general, provisions on free legal assistance for protection seekers are rare in Germany ([General Report – Regular Procedure - Legal Assistance](#)). No rules on access to (free) legal assistance exist for applicants for temporary protection. Therefore, there is no centralised system where applicants for temporary protection can seek legal aid.

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<sup>93</sup> Administrative Court of Aachen, Decision 8 L 527/22, 26 August 2022, available in German at: <http://bit.ly/3IUmNdB>; Higher Administrative Court of Baden-Wuerttemberg, Decision 11 S 1467/22, 26 October 2022, available in German at: <http://bit.ly/3keGGBR>.

<sup>94</sup> Feedback from NGOs obtained at the conference "Netzwerktagung Migrationsrecht", November 2022.

<sup>95</sup> European Council for Refugees and Exiles (ECRE), Information Sheet – Measures in response to the arrival of displaced people fleeing the war in Ukraine, November 2022, available at: <https://bit.ly/3kj82qu>, 20.

<sup>96</sup> Information provided by ProAsyl, 14 March 2024.

<sup>97</sup> Informationsverbund Asyl & Migration, *Informationen zu Schutzsuchenden aus der Ukraine*, available in German at: <https://tinyurl.com/mw4x4vfn>.

<sup>98</sup> Section 74 VwGO.

<sup>99</sup> Section 84 Residence Act.

<sup>100</sup> Section 80 paragraph 5 VwGO.

In practice legal assistance is provided by the various civil society and welfare associations (such as Caritas e.V., Paritaetischer, AWO, PRO ASYL, Refugee Law Clinics) and the regional refugee councils. These organisations usually provide the legal assistance free of charge.

Despite the lack of general rules on the provision of legal assistance, the German authorities do cooperate with civil society organisations. Especially the main welfare associations such as the Caritas e.V., Paritaetischer and AWO are often present in first reception centres. Additionally, the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, (BAMF)*) provides an online platform where applicants can search for the nearest advice opportunities.<sup>101</sup> It seems that at least the access to information on where legal advice can be sought is easier for temporary protection seekers, compared to the situation of international protection seekers.

## 5. Information provision and access to NGOs

According to Section 24 paragraph 7 Residence Act applicants need to be informed about their rights and duties in written and in a language, they are able to understand. No further rules exist which specify in what form information needs to be provided.

In practice, it seems that the German Government is putting effort in publishing and centralising as much information on the situation as possible and in various languages. The German Federal Ministry of Interior has launched a web portal accompanied by an app where information on entry, stay and return, accommodation, health, work and social benefits, integration, mobility, education, family issues and vulnerable groups are gathered.<sup>102</sup> Through the web portal people can apply online for temporary protection. Even regional Ukrainian community telegram channels are listed. The website and the app are available in German, English, Ukrainian and Russian and a version in easy language and sign language is provided.<sup>103</sup> This web portal is regularly updated and thus also informs about the extension of the Temporary Protection Directive and its impact on German regulations. Although it provides some information on the possibility of vocational training or work, it does not particularly aim to inform about different options for long-term stay after the end of the Temporary Protection Directive.

Additionally, the Federal Office for Migration and Refugees has published a Q&A section and a video on the first steps in German, English, Russian and Ukrainian on mainly integration and entry issues.<sup>104</sup> In cities close to the border and in cities where there are high numbers of arrivals, welcome centres have been set up directly in train stations. Here people are provided with information, interpretation, snacks and first assistance and in some cases they may already register.<sup>105</sup> Due to the decreased numbers of arrivals, some of these welcome centres closed in the course of 2022.<sup>106</sup> It has been criticised though that the available information sur place was often not tailored to the needs of vulnerable individuals.<sup>107</sup>

Alongside the information channels of the state, civil society organisations and refugee councils are active in distributing information. One main source of information is the platform “handbook Germany”.<sup>108</sup> There

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<sup>101</sup> Bundesamt für Migration und Flüchtlinge, *BAMF Navigation in the Fields of Asylum Procedure and Integration*, available at: <http://bit.ly/3ZOKUQX>; Bundesamt für Migration und Flüchtlinge, *The Germany4Ukraine Informational Guide*, available at: <http://bit.ly/3ZCUeY6>.

<sup>102</sup> Bundesamt für Migration und Flüchtlinge, *The Germany4Ukraine Informational Guide*, available at: <http://bit.ly/3ZCUeY6>.

<sup>103</sup> Ibid.

<sup>104</sup> Bundesamt für Migration und Flüchtlinge, ‘Information for refugees from Ukraine’, available at: <http://bit.ly/3ZM87DC>.

<sup>105</sup> See e.g. Cologne, *Neues Ankunftszenrum am Breslauer Platz eröffnet*, press release 13 March 2022, available in German at: <http://bit.ly/3HgFjvv>;

<sup>106</sup> See e.g. Diakonie Dresden, *Ukraine-Hilfe am Hauptbahnhof: Diakonie Dresden zieht Bilanz*, 25 July 2022, available in German at: <http://bit.ly/3XGB8hZ>.

<sup>107</sup> Sonja Smolenski, *Geflüchtete aus Ukraine mit Behinderung: Voller Barrieren*, taz, 06 April 2022, available in German at: <http://bit.ly/3Wf8pzO>.

<sup>108</sup> Handbook Germany, *Important information on entry and residence for people fleeing Ukraine*, last amended 18 January 2023, available at: <http://bit.ly/3CX5GV0>.

is a section specifically tailored to people fleeing Ukraine, made available in Ukrainian, Russian, English and German. Applicants can access official information but also reach out to local communities and explore hidden hints of people who have already established a new life in Germany. Another main provider of information is PRO ASYL. They regularly update a comprehensive information sheet especially focusing on the practical problems in the application process, such as the difficulties for third country nationals mentioned above (See section [Qualification for temporary protection](#)).<sup>109</sup> Information on regional specifics is mostly gathered and published by the refugee councils.<sup>110</sup> Information for social workers and legal practitioners who assist people fleeing Ukraine is made available by the network "Informationsverbund Asyl und Migration".<sup>111</sup> Information of civil society organisations seems to be more comprehensive in relation to integration issues, especially on a regional level. They do not solely inform about the administrative process but also about possibilities to integrate further into German society and other possible, more long-term residence permits.

## D. Guarantees for vulnerable groups

### Identification of individuals who need specific procedural guarantees

As stated in the AIDA report 2023 on Germany, there is no systematic identification mechanism for individuals with specific needs in place (see [General Report – Identification](#)). The identification of people with specific needs is generally the remit of the Federal States and varies accordingly. Already in March a delegation of the commissioners for people with disabilities from the Federal States and the federal commissioner urged the government to include the identification of disabilities and special needs in the arrival procedure for Ukrainians.<sup>112</sup>

The Federal government did though initiate a federal coordination and contact platform (*Bundeskontaktstelle für geflüchtete mit Behinderung und Pflegebedürftige*), which aims at identifying reception and care needs prior to the flight from Ukraine in order to facilitate quick distribution to the Federal States and to reception centres which comply with the needs identified. As of January 2024, 1,494 inquiries have been processed and 295 people have been distributed in this manner since May 2022.<sup>113</sup> No information was provided as to why this number is so low and how the distribution system exactly works. Additionally, the Federal platform serves to disseminate information on social welfare and support measures for people with specific needs and to coordinate volunteer run initiatives and state actors which are working with people with specific needs.

The press and the opposition criticise that the platform does not remedy the fact that no systemic identification mechanism exists. Firstly, it has been criticised that those who are already on German territory are not coordinated by the federal platform. Instead, they are remitted to the Federal States' facilities. Berlin acknowledged its responsibility for the identification of persons with special needs. In its decree the city of Berlin intended to established a transfer zone where in a pre-screening special needs for individuals with mental, physical and care needs shall be identified and the distribution process shall

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<sup>109</sup> ProAsyl, Information for refugees from Ukraine, last amended 10 January 2023, available at: <https://bit.ly/3iL3qct>.

<sup>110</sup> See e.g. Refugee Council Berlin, *Antrag auf Aufenthaltserlaubnis beim Berliner Landesamt für Einwanderung LEA*, 08 December 2022, available at: <https://bit.ly/3Xmgwfi>; Refugee Council Bavaria, *Ukraine: Einreise und Schutz in Deutschland*, 20 November 2022, available in German and Ukrainian at: <http://bit.ly/3IXGi57>; Refugee Council Lower-Saxony, *Aktualisierte Informationen für Geflüchtete aus der Ukraine*, available at: <http://bit.ly/3CZ4qk6>.

<sup>111</sup> Informationsverbund Asyl & Migration, *Informationen zu Schutzsuchenden aus der Ukraine*, last updated 16 January 2023, available in German at: <http://bit.ly/3QMRvXY>.

<sup>112</sup> Federal Government Commissioner for Matters relating to Persons with Disabilities, 'Ukrainekrise: Appell der Behindertenbeauftragten von Bund und Ländern', 08 March 2022, available at: <http://bit.ly/3HfncUJ>.

<sup>113</sup> Federal Government, *Response to parliamentary question by The Left, 20/4642*, 24 November 2022, available in German at: <https://bit.ly/3IWovSc>.

be adopted accordingly.<sup>114</sup> Additionally, in the pre-screening procedure persons who identify as LGBTIQ+ and/or show other vulnerabilities shall be allocated only to Federal States where the infrastructure for the special needs regarding guidance and/or care is well developed. It is though not specified which Federal States are deemed to have a good infrastructure. However, Berlin seems to be a best practice example since most Federal States did not introduce screening procedures. According to the press, the dispersion of responsibility between the Federal government and the Federal States often leads to a situation where no information or guidance is accessible for people with specific needs at highly frequented points of arrival.<sup>115</sup> Additionally, advisory service is mainly run by voluntary initiatives and lacks financial and organisational resources.<sup>116</sup>

### **Procedure for unaccompanied minors**

The procedure for non-accompanied minors who fled Ukraine is the same as for any unaccompanied foreign minor arriving in Germany (see [General Report – Legal representation of unaccompanied children](#)). Following Section 42a Social Code VIII, unaccompanied children are taken into the provisional care of the youth welfare office (Jugendamt). This procedure is also adopted for children who arrived in Germany alone but who have relatives in Germany. In that case, in the stage of ‘provisional care taking’ the youth welfare office reviews whether the relatives are “suitable” for the caretaking of the child. During the procedure the child may stay with their relatives.<sup>117</sup> Unaccompanied minors who fled Ukraine have access to the same benefits as German and foreign children legally residing in Germany.<sup>118</sup>

### **Assistance for victims of torture or traumatised people**

From 1<sup>st</sup> June 2022 people who applied for temporary protection are supposed to have the same access to social welfare and healthcare as Germans. In this regard those who are in need of specialised treatment may access existing psychological, medical and psychiatric services provided for traumatised people and/or victims of sexualised crimes and war crimes in Germany. A specific hotline where initial counselling is offered and through which other programmes may be contacted was initiated by the Federal Ministry of Family, Seniors, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ)*).<sup>119</sup>

However, in practice, access to these services varies between Ukrainian nationals and third country nationals who fled Ukraine stemming from the differentiated wording on the Fictional approval. As this is not only the case for mental health services but more general for access to all sorts of social welfare and healthcare, the issues arising in connection with the different references on the “Fictional approvals” are discussed under [Registration under temporary protection](#).

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<sup>114</sup> Berlin Senate, *Senat beschließt Verfahren zur Unterstützung für besonders schutzbedürftige Geflüchtete aus der Ukraine*, press release 05 April 2022.

<sup>115</sup> Sonja Smolenski, *Geflüchtete aus Ukraine mit Behinderung: Voller Barrieren*, taz, 06 April 2022, available in German at: <http://bit.ly/3Wf8pzO>.

<sup>116</sup> Ibid.

<sup>117</sup> Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, *Unbegleitet und begleitet nach Deutschland einreisende Kinder und Jugendliche aus der Ukraine in der Kinder- und Jugendhilfe*, 4 April 2022, available in German at: <https://bit.ly/3WqxbNf>.

<sup>118</sup> Section 6 (2) Social Code VIII.

<sup>119</sup> Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, *Helpline Ukraine unterstützt geflüchtete Familien bei Sorgen und Problemen*, press release, 06 June 2022, available in German at: <http://bit.ly/3kpt2Mm>.



### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence permit

1. What is the duration of residence permits granted to beneficiaries of temporary protection?  
Until 4<sup>th</sup> March 2025
2. How many residence permits were issued to beneficiaries from the activation of the Temporary Protection Directive until 3 February 2024?  
941,559<sup>120</sup>

The residence permit under Section 24 Residence Act is to be awarded retrospectively from the day of arrival until the 4<sup>th</sup> March 2025. The German government has adopted the so-called *Ukraine-residence permit-continued validity-regulation* (Ukraine-Aufenthaltsurlaubnis-Fortgeltungsverordnung) in December 2023, which prolongs the validity of the residence permits for one year.<sup>121</sup> This prolongation happens automatically; the beneficiaries do not have to do anything. Thereby the German government extends the validity date foreseen in the EU Council decision and in operational guidelines. The German government argues that possible prolongations of temporary protection under subsequent EU Council decision shall already be covered by the initial decision on the duration of the residence permit. A response to an Ad-hoc Query on the extension of residence permits for beneficiaries of temporary protection shows however that the permits will be withdrawn if the EU Council does not prolong the Council decision.<sup>122</sup>

The responsible authority for the assessment of the eligibility criteria and for granting the residence permit are the local ZAB.<sup>123</sup> After all the relevant steps for registration and application have been completed, the local ZAB assesses whether a residence permit will be awarded. If a positive decision is issued by the local authorities, the electronic residence permit will be printed by the Federal Printing Office (*Bundesdruckerei*) in Berlin. According to an informational letter of the Federal Ministry of Interior for the local ZAB, the electronic function of the residence permits ends with the validity of the initial residence permit. Hence, according to the Ministry, “it cannot be ruled out”, that people will apply for a new card.<sup>124</sup> Applying for a new card can take quite some time as most of the local authorities are overburdened. This is, however, not solely due to a high number of applications for residence permits from Ukraine but a general problem of the immigration authorities.<sup>125</sup> There is no specific data on the waiting times for applicants for a residence permit under Section 24 for the approval. In general, some local authorities estimate the waiting times for the processing of requests and applications between six and eight months, others estimate up to twelve months (see [General Report – Content of international protection](#)).<sup>126</sup> However, from the high number of beneficiaries of temporary protection among those who arrived in Germany from Ukraine,<sup>127</sup> it can be deduced that the processing times for applicants for temporary protection do not regularly exceed one year.

<sup>120</sup> In addition to those beneficiaries, 111,493 applications concerning the temporary protection residence permits are pending, see: Mediendienst Integration, *Ukrainische Flüchtlinge*, available in German at: <https://tinyurl.com/5anxbp79>.

<sup>121</sup> Flüchtlingsrat Niedersachsen, *Aufenthaltsrecht in Deutschland (Ukraine)*, available in German at: <https://tinyurl.com/jrzzj83a>.

<sup>122</sup> European Migration Network, Ad-Hoc Query on 2022.55, *Extension of certificates/residence permits for beneficiaries of temporary protection*, 4 December 2022, available at: <http://bit.ly/3kUTf62>, 11/12.

<sup>123</sup> Federal Government, *Zuständigkeit des Bundes und der Länder im Bereich Asyl- und Aufenthaltsrecht - Gesetzgebungskompetenzen und Verwaltungszuständigkeit*, 29 August 2022, available in German at: <https://bit.ly/3CYrlqg>, 5.

<sup>124</sup> Federal Ministry of Interior, Informational letter, 24 November 2023, available in German at: <https://tinyurl.com/y7hcm8d6>.

<sup>125</sup> Tagesschau.de, *Bis zu 15 Stunden warten für einen Termin*, 8 September 2023, available in German at: <https://tinyurl.com/2s3haady>.

<sup>126</sup> Tagesschau, *Ausländerbehörden beklagen Überlastung*, 25 August 2022, available in German at: <http://bit.ly/3ZEO5Lb>.

<sup>127</sup> Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.



The residence permit entitles beneficiaries to the same social benefits as German nationals under the regular Social Code (see [Social welfare](#)).

## Freedom of movement for temporary protection beneficiaries across the EU

Germany generally acknowledges the non-application of Art. 11 of Directive 2001/55/EC thereby awarding freedom of movement for temporary protection beneficiaries. In order to facilitate freedom of movement and to guarantee that beneficiaries do not receive social benefits in several Member States at the same time, the local authorities shall make use of the EU Temporary Protection Directive Platform (TPD Platform). Since applicants for temporary protection are systematically subject to the collection of personal data and fingerprints in the process of registration (See [Registration under temporary protection](#)) these sets of data shall also be used automatically for the TPD Platform upon registration.<sup>128</sup>

In cases where beneficiaries of temporary protection in Germany transfer their permanent residence to another member state, the temporary protection status ceases along with the entitlement to social benefits and the above-mentioned rights.<sup>129</sup> The local ZAB is required to confirm that the emigration to another member state is of permanent nature.<sup>130</sup> There are several factors by which the ZAB may assume a permanent emigration. If a new application for temporary protection is lodged in another member state, the TPD Platform produces a notification received by the BAMF. The BAMF then contacts the responsible ZAB which considers the notification as proof of permanent emigration.<sup>131</sup> The ZAB then informs the Social Welfare Office and/or the Federal Employment Office to order the cessation of any social benefits. Permanent emigration is further supposed if the person emigrated for more than six months without prior consultation and justification with the ZAB.<sup>132</sup>

Beneficiaries of temporary protection who immigrated from other Member States are entitled to receive temporary protection in Germany. Upon registration in Germany, the local authorities consult the TPD platform.<sup>133</sup> This serves to guarantee that the other member state ceases their disbursement of social benefits. With the conferral of temporary protection in Germany, the protection holder is entitled to comprehensive social benefits in Germany (see [Social welfare](#)).

## 2. Access to asylum

Applicants and beneficiaries for temporary protection may apply for asylum. However, their application is suspended for the time of validity of the temporary protection residence permit.<sup>134</sup> This applies as well for those who were seeking asylum before 2022. Those asylum requests are now 'on hold' while they are provided temporary protection. Thus, there are no Court decisions or positioning by the authorities on how the war affects the possibility of international protection. However, the recognition rate for asylum seekers after the war started in the Crimea region in 2014 was relatively low and until now there seem to be still some 'protected' parts in Ukraine. According to a study concerning the long-term perspective of

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<sup>128</sup> Federal government, *Response to parliamentary question by The Left*, 20/2495, 27 June 2022, available in German at: <https://tinyurl.com/ynax5xvu>.

<sup>129</sup> Federal Ministry of Interior, *Umgang mit Treffermeldung in der Europäischen Registrierungsplattform im Zusammenhang mit der Fluchtbewegung aus der Ukraine*, 08 August 2022, available in German at: <https://bit.ly/3weUvD4>.

<sup>130</sup> Section 51 (1) no. 6 Residence Act.

<sup>131</sup> Federal Ministry of Interior, *Umgang mit Treffermeldung in der Europäischen Registrierungsplattform im Zusammenhang mit der Fluchtbewegung aus der Ukraine*, 08 August 2022, available in German at: <https://bit.ly/3weUvD4>.

<sup>132</sup> Section 51 (1) no. 7

<sup>133</sup> Federal Ministry of Interior, *Umgang mit Treffermeldung in der Europäischen Registrierungsplattform im Zusammenhang mit der Fluchtbewegung aus der Ukraine*, 08 August 2022, available in German at: <https://bit.ly/3weUvD4>.

<sup>134</sup> Section 32a (1) AsylG; Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

Ukrainian refugees in Germany, this indicates to a small possibility that refugees from Ukraine would be granted international protection after the temporary protection mechanism expires.<sup>135</sup> If the residence permit under temporary protection expires, former temporary protection holders have one month to notify the authorities that they want the asylum procedure to continue, otherwise the asylum application is regarded as withdrawn.<sup>136</sup>

## B. Family reunification

### 1. Family reunification as provided under the Temporary Protection Directive

In Germany, family members present on German territory fall under the scope of Section 24 Residence Act and may therefore apply for temporary protection themselves. As such, they do not need to go through a family reunification procedure (see [Qualification for temporary protection](#)). Family members thus only need to apply for family reunification if they are currently residing in another member state or in a third country.<sup>137</sup>

The procedure for family reunification of family members of temporary protection holders differs from the family reunification procedure for refugees (see [General Report – Family Reunification](#)) and other foreigners. As for refugees, family reunification is facilitated under the temporary protection regime. Temporary protection beneficiaries neither need to prove that they can cover the cost of livelihood for their family members, nor that they provide sufficient living space for their family members.<sup>138</sup> Differing from the family reunification procedure for refugees, there is no time limit for the application for family reunification.<sup>139</sup> For family reunification under the temporary protection framework, it is required that the family ties have been disrupted as a consequence from the war in Ukraine or the flight.<sup>140</sup> For those family members who are present in another EU member state, no additional criteria apply. For those family members who are present in a third country, the person needs to be “in need for protection”. Following the considerations in paragraph 14 of the EU Council decision, a family member is deemed to be “in need for protection” if the person fled Ukraine for the same reasons as the temporary protection beneficiary.<sup>141</sup> Family reunification is generally only connected to family ties and does not vary by nationality.

Persons eligible for family reunification are:

- ❖ Spouse or registered partner
- ❖ Minor unmarried children
- ❖ Minor unmarried children of the spouse or registered partner

Those who successfully went through the family reunification procedure will obtain temporary protection under Section 24 Residence Act as their family sponsor. They are thereby entitled to the same rights and will be awarded a residence permit which is irrespective of the family members status. However, those

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<sup>135</sup> Schneider, Jan, Daueraufenthalt, Rückkehr oder zirkuläre Mobilität? Optionen für ukrainische Kriegsflüchtlinge nach dem vorübergehenden Schutz, Sachverständigenrat für Integration und Migration, 2024, available in German at: <https://tinyurl.com/zc7eytn7>.

<sup>136</sup> Section 32a (2) AsylG.

<sup>137</sup> Section 29 (4) no. 2 Residence Act.

<sup>138</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>139</sup> Section 29 (4) Residence Act.

<sup>140</sup> Section 29 (4) no. 1; Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, available in German at: <https://bit.ly/3IXm4by>.

<sup>141</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

who received temporary protection following family reunification are not entitled to further family reunification.<sup>142</sup>

## 2. Family reunification beyond the Temporary Protection Directive

Other family members who do not fall under the scope of Section 29 paragraph 4 Residence Act may qualify for family reunification under Section 36 paragraph 2 Residence Act. They need to prove that their non residence with the family members would constitute undue hardship. In these cases, again, no proof of secured livelihood and living space is required.<sup>143</sup> Their residence permit is then linked to the residence permit of the family member until a minor family member turns 18 or unless the family sponsor dies.<sup>144</sup>

### C. Movement and mobility

Beneficiaries of temporary protection generally enjoy freedom of movement within Germany and the EU. They may travel to any destination in Germany and travel to another EU member state for 90 days within 180 days.<sup>145</sup> Additionally, beneficiaries of temporary protection may also travel to other countries, including Ukraine.<sup>146</sup> For travelling outside of the EU temporary protection beneficiaries only need to comply with the visa requirements of the country they want to travel to. This often requires a biometric passport. Due to the facilitated entry conditions in Germany (see [Admission to territory](#)) some of the temporary protection beneficiaries may not have a biometric passport. In these cases, “travel documents for aliens” shall be issued (see [General Report – Travel documents](#)).<sup>147</sup> In cases where beneficiaries of temporary protection do not possess travel documents and need “travel documents for aliens” problems may though arise from the currently prolonged waiting times for the issuance of documents by the local authorities.<sup>148</sup> Travelling abroad only influences the validity of the residence permit if the absence from Germany exceeds six months or if the absence is deemed to be permanent (see [Residence permit](#)).

However, as of 1<sup>st</sup> June 2022, beneficiaries of temporary protection are generally obliged to reside for three years in the municipality to which they have been allocated in the determination procedure.<sup>149</sup> According to Section 12a (9) the Federal States have the right to implement regional rules specifying or adopting the legal framework on the restrictions of the place of residence. **North Rhine-Westphalia** decided to suspend the obligation of the place of residence for temporary protection holders.<sup>150</sup> Consequently, temporary protection holders who have been granted a residence permit in North Rhine-Westphalia are free in choosing their place of residence within North Rhine-Westphalia. But if they want to move to another state, temporary protection beneficiaries have to apply for a lift of the restriction of the

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<sup>142</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>. This is based on the considerations in Section 27 and Section 30 (4) Residence Act.

<sup>143</sup> For minor family members Section 34 Residence Act, for family members above 18 years Section 30 (3) and Section 31 Residence Act.

<sup>144</sup> Ibid.

<sup>145</sup> Bundesamt für Migration und Flüchtlinge, *Fragen und Antworten zur Einreise aus der Ukraine und zum Aufenthalt in Deutschland*, 01 December 2022, available at: <http://bit.ly/3wi5mMs>.

<sup>146</sup> Bundesamt für Migration und Flüchtlinge, *Fragen und Antworten zur Einreise aus der Ukraine und zum Aufenthalt in Deutschland*, 01 December 2022, available at: <http://bit.ly/3wi5mMs>.

<sup>147</sup> Federal Ministry of Interior, *Circulation letters on the implementation of the the EU Council decision on the activation of the Temporary Protection Directive the German Federal Government*, 05 September 2022, available in German at: <https://bit.ly/3IXm4by>.

<sup>148</sup> Tagesschau, *Ausländerbehörden beklagen Überlastung*, 25 August 2022, available in German at: <http://bit.ly/3ZEO5Lb>.

<sup>149</sup> Section 12a (1) Residence Act (last amended 23.5.2022). The obligation to reside already applied for beneficiaries of international protection (see [General Report - Content of International Protection, Freedom of movement](#)), only the scope has been extended to beneficiaries of temporary protection. For former versions of Section 12a (1) Residence Act see: <http://bit.ly/3WfWv8V>.

<sup>150</sup> Ministry of Children, Youth, Family Affairs, Equalit, Migration and Integration North Rhine-Westphalia, *Zuweisung nach dem Flüchtlingsaufnahmegesetz (FlüAG)*, 30 August 2022, available in German at: <https://bit.ly/3WqxcAW>.

place to reside at the local authorities.<sup>151</sup> NGOs have criticised that the suspension of the obligation to live in a specific municipality has been lifted only for beneficiaries of temporary protection and not for beneficiaries of refugee status or subsidiary protection. The “Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender” (GGUA) claims that thereby a two-tier system among residence permits is introduced which hinders integration of those with other residence permits.<sup>152</sup>

## Return to Ukraine and Re-entrance to Germany

Applicants for temporary protection and beneficiaries of temporary protection may return to Ukraine for short stays. Their non-permanent return does not have an influence on their application for temporary protection. Permanent return is assumed if the person is absent for more than six months or if the return is by nature permanent.<sup>153</sup> The return is assumed to be of permanent nature if third country nationals have *inter alia* resigned from working and housing contracts and if they are taking all their possessions with them.<sup>154</sup> In October 2022, the party leader of the Christian-Union Friedrich Merz claimed that many Ukrainians were exploiting the social welfare system in Germany through this possibility of travelling back and forth.<sup>155</sup> According to him many Ukrainians travelled to Germany, applied for temporary protection and consequently receive social benefits, even though they are residing in Ukraine.<sup>156</sup> No evidence proves these allegations; to the contrary, a study by the Federal Ministry of Interior shows that 42% of interviewed people who fled from Ukraine plan to stay in Germany.<sup>157</sup> According to media investigations, the allegations were based on pro-Russian Social-Media accounts.<sup>158</sup>

## D. Housing

### Indicators: Housing

1. For how long are temporary protection beneficiaries entitled to stay in reception centres?	No fixed date
2. Number of beneficiaries staying in reception centres	Not available
3. Number of beneficiaries staying in private accommodation as of 12/2023	Not available

### Accommodation model and practice

Temporary protection beneficiaries are not obliged to stay in accommodation centres. They can freely take any housing opportunities on the regular housing market. As beneficiaries of temporary protection are eligible for regular social benefits under the Social Code, they are eligible for the same housing allowances as German nationals (see [Social welfare](#)).

Nevertheless, in practice beneficiaries of temporary protection have access to reception facilities. Access to reception centres and emergency centres is awarded from the moment of arrival until the temporary protection beneficiaries find regular accommodation.<sup>159</sup> According to a study, published in October 2022,

<sup>151</sup> Section 12a (5) Residence Act.

<sup>152</sup> GGUA, *Keine kommunale Wohnsitzauflage in NRW für Geflüchtete aus der Ukraine mit Aufenthaltserlaubnis nach §24 AufenthG*, 26 November 2022, available in German at: <http://bit.ly/3kkaME1>.

<sup>153</sup> Section 51 (1 Nr. 6,7) Residence Act.

<sup>154</sup> Federal Ministry of Internal Affairs, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*, available in German at: <https://bit.ly/3L62MSH>, at 51.1.5.

<sup>155</sup> Herbert Kordes, Lara Straatmann, *Wie Merz Kreml-Propaganda verbreitete*, tagesschau.de 06 October 2022, available in German at: <http://bit.ly/3CZgEsW>.

<sup>156</sup> Ibid.

<sup>157</sup> Federal Ministry of Interior, *Befragung ukrainischer Kriegsflüchtlinge*, 04 April 2022, available in German at: <http://bit.ly/3QT54oV>.

<sup>158</sup> Herbert Kordes, Lara Straatmann, *Wie Merz Kreml-Propaganda verbreitete*, tagesschau.de 06 October 2022, available in German at: <http://bit.ly/3CZgEsW>.

<sup>159</sup> Bundesamt für Migration und Flüchtlinge, *Unterbringung und Wohnraum für Geflüchtete aus der Ukraine*, , available at: <http://bit.ly/3K4dW9y>.

74% percent of the 11,225 interviewees lived in private accommodation, 17% in hotels and 9% in reception centres.<sup>160</sup> Since accommodation is organised mainly by the Federal States and municipalities, no conclusive data exist on the reception capacities which are reserved for beneficiaries of temporary protection. Upon request by the “Migration Media Service” (*Mediendienst Integration*), Bavaria responded in February 2024 that they accommodated 49,000 people who fled Ukraine in state owned reception facilities.<sup>161</sup> Hamburg accommodated 17,000 and Berlin 3,000, as of November 2022.<sup>162</sup>

Especially in the beginning of the war, many cities did not have enough reception capacities and introduced emergency shelters and rented hotel rooms for Ukrainians. The solutions provided by the Federal States heavily differ. Whereas some Federal States try to avoid mass accommodations, the district government Arnsberg in North Rhine Westphalia focuses on bigger emergency shelters.<sup>163</sup> Hamburg, as of 5<sup>th</sup> January 2023 rented rooms in 83 hotels with an overall capacity for 6,876 people.<sup>164</sup> For those staying in hotels mobile social workers are available for assistance and guidance.<sup>165</sup> In Cologne the municipality rather used public areas such as exhibition grounds and the parking slots of a stadium for emergency shelters. The municipality seems to react according to the demands: the emergency shelters on the exhibition grounds and in the stadium were first used in March where 1,100 places for people from Ukraine were provided on exhibition grounds, 600 next to the stadium.<sup>166</sup> After the closure of both emergency shelters in summer 2022, in November and December 2022 the same places were used again and the infrastructure of tents and containers had to be rebuilt, this time with less capacities, 480 places next to the stadium,<sup>167</sup> 800 on exhibition grounds.<sup>168</sup> According to the municipality social workers will be on the ground for guidance and assistance.<sup>169</sup> In emergency shelters sometimes the distribution of food and clothing is centralised but there is no unified system on the available support in reception facilities.

Usually the reception facilities are run by one of the main welfare associations such as “Caritas”, “Arbeiterwohlfahrt (AWO)”, “Paritätischer Wohlfahrtsverband” and “Diakonie”. The situation has not changed in 2023. The accommodation centres are used for both temporary protection beneficiaries and people seeking asylum coming from different countries independently of the Ukraine war. Thus, the German government and the Federal States are still providing overcrowded emergency shelters. The former airport Tegel in Berlin is for example still used as a reception centre, as all other centres in Berlin are completely full. It has capacities for approximately 3000 people and its usage has been prolonged until December 2024.<sup>170</sup> Conditions in these shelters are quite hostile (for more detailed information see [General Report](#)).<sup>171</sup>

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<sup>160</sup> Federal Institut for Population Research, *Geflüchtete aus der Ukraine in Deutschland - Flucht, Ankunft und Leben*, December 2022, available in German at: <http://bit.ly/3IZldQ>, 8.

<sup>161</sup> Br24.de, *Geflüchtete aus der Ukraine: So ist die Lage in Bayern*, 22 February 2024, <https://tinyurl.com/yn6s6xee>.

<sup>162</sup> Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>163</sup> Bezirksregierung Arnsberg, *Ukraine-Krieg, Informationen für Kommunen*, last revised 01.10.2022, available in German at: <http://bit.ly/3ZIMCDr>.

<sup>164</sup> Hamburg, *Interim Facilities – Overview on hotels, version 05.01.2023*, available at: <http://bit.ly/3QMvxEF>.

<sup>165</sup> Hamburg, *Foerdern und Wohnen: Geflüchtete aus der Ukraine, FAQs*, 18 January 2023, available at: <http://bit.ly/3HcET9C>.

<sup>166</sup> 24Rhein, *Ukraine-Flüchtlinge in Köln: Zeltstadt am Südstadion wird aufgebaut*, newspaper article, 05.04.2022, available in German at: <http://bit.ly/3GNS9zX>. Kölner Express, *Ukraine W-Lan, Feldbetten, hohe Sicherheit: So sieht die neue Notunterkunft in der Köln-Messe aus*, 15 March 2022, available in German at: <http://bit.ly/3iH8K0B>.

<sup>167</sup> Rhein24, *Container statt Party-Festzelt: Erneut Unterkunft für Geflüchtete am Südstadion geplant*, newspaper article, 02 November 2022, available in German at: <http://bit.ly/3wbSo2X>.

<sup>168</sup> Rhein24, *Stadt Köln mietet Messehalle für Ukraine-Geflüchtete an*, 29 November 2022, available in German at: <http://bit.ly/3WfEgQQ>.

<sup>169</sup> Municipality of Cologne, *Stadt Köln schafft neue Plätze auf Gelände am Südstadion*, press release, 02 November 2022, available in German at: <http://bit.ly/3ZlqKrU>.

<sup>170</sup> Tagesspiegel.de, *Notunterkunft in Berlin-Tegel: Geflüchtete müssen bis Ende 2024 aus ehemaligen Flughäfen raus*, 11 July 2023, available in German at: <https://bit.ly/49aKrMW>.

<sup>171</sup> Sz.de, *Gelandet in Tegel: Die größte Flüchtlingsunterkunft Deutschlands*, available in German at: <https://bit.ly/3uG9KI6>.



In addition to the emergency shelters and rented hotels, Germany heavily relies on private accommodations. Amongst the 8,300 people from Ukraine interviewed who are living in private flats, 60% were living alone or with the people they fled with, 15% moved to already in Germany residing family members or friends and 4% lived with other people.<sup>172</sup> 16% of the interviewed persons stated that they have been allocated to their current accommodation by the authorities. The study only interviewed persons with Ukrainian nationality, no general statistics on the accommodation scheme for temporary protection holders are available. While there is no uniform organisation of the distribution to private accommodation, the Federal Government refers to and cooperates with the private initiative “#Unterkunft Ukraine”<sup>173</sup> for housing. A link to the initiative can be found on the Federal website for the assistance of people who fled Ukraine.<sup>174</sup> Because the organisation of private housing is decentralised no details on profiles of hosts and types of private accommodations are available. Portraits of some hosts have been published by the initiative “#Unterkunft Ukraine”.<sup>175</sup> Besides private initiatives such as “#Unterkunft Ukraine” and “Warmes Bett”,<sup>176</sup> some Federal States and municipalities directly assist with the placement of people who fled Ukraine with private hosts through their own online portals.<sup>177</sup> There is no direct financial compensation by the Federal government or States for hosts of private accommodations. As beneficiaries of temporary protection, as well as applicants are generally entitled to housing allowances, private hosts and beneficiaries of temporary protection or applicants need to negotiate compensation models privately.

### Risks of human trafficking

While the number of registered suspected cases for human trafficking are below ten,<sup>178</sup> according to the Federal Police and the Federal States’ Police, evidence points to an increase in human trafficking of women and children coming from Ukraine. Especially at the Berlin main station where many people from Ukraine arrive, the Federal Police observed men who offer money for accommodation and sweets to children.<sup>179</sup> The Federal Police therefore published a leaflet to warn Ukrainian women and children.<sup>180</sup> The Federal government formally acknowledges the risks stemming from private accommodation and extended its funding for projects against human trafficking.<sup>181</sup> A specific project for the prevention of human trafficking of people fleeing Ukraine, funded by the Federal government was set up in August by the association “Federal Coordination Circle against Human Trafficking” (*Bundesweiter Koordinationskreis gegen Menschenhandel e.V.*). In a first report on the new project, the association criticises that no systematic support is available for those accommodated in private households.<sup>182</sup> The association further criticises that the existing concepts and standards for the prevention of violence in public reception facilities are often not adhered to and that therefore there is an increased risk especially

<sup>172</sup> Federal Institut for Population Research, *Geflüchtete aus der Ukraine in Deutschland - Flucht, Ankunft und Leben*, December 2022, available in German at: <http://bit.ly/3IZildQ>, 8.

<sup>173</sup> #Unterkunft Ukraine, available at: <http://bit.ly/3QQRS47>.

<sup>174</sup> Bundesamt für Migration und Flüchtlinge, *Unterbringung und Wohnraum für Geflüchtete aus der Ukraine*, available at: <http://bit.ly/3K4dW9y>.

<sup>175</sup> #Unterkunft Ukraine, available at: <http://bit.ly/3QQRS47>.

<sup>176</sup> Warmes Bett, available at: <https://bit.ly/3QND1Hs>.

<sup>177</sup> See e.g. Bonn, *Kontaktformular – Ukraine-Krise Aufnahme von Bürger\*innen*, available in German at: <https://bit.ly/3XpmDzA>.

<sup>178</sup> Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., *Menschenhandel und Ausbeutung im Kontext des Ukrainekriegs – Eine Untersuchung aus Sicht spezialisierter Fachberatungsstellen zur Situation in Deutschland*, report, 14 December 2022, available in German at: <http://bit.ly/3GOYGus>, 21.

<sup>179</sup> Rbb24, *Deutschland ist eines der Hauptzielländer des Menschenhandels*, newspaper article, 16 March 2022, available in German at: <http://bit.ly/3ZmkoaP>.

<sup>180</sup> Federal Police, *Schutz vor Menschenhandel und Ausbeutung*, lastly updated 07 April 2022, available at: <http://bit.ly/3WmgZwJ>.

<sup>181</sup> Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, *Geflüchtete Frauen und Kinder aus der Ukraine vor Menschenhandel schützen*, press release, 29 July 2022, available in German at: <http://bit.ly/3Hbruyt>.

<sup>182</sup> Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., *Menschenhandel und Ausbeutung im Kontext des Ukrainekriegs – Eine Untersuchung aus Sicht spezialisierter Fachberatungsstellen zur Situation in Deutschland*, report, 14 December 2022, available in German at: <http://bit.ly/3GOYGus>, 13f.



for women and children to become victims of violence in public mass reception facilities.<sup>183</sup> The Federal Commissioner for Antiziganism claims that especially Sinti and Roma faced discrimination in accommodation centres in Germany.<sup>184</sup>

### Issues accessing housing in practice

There are no reports of cases where beneficiaries of temporary protection have been denied access to reception facilities. However, for applicants for temporary protection, there seems to be a discrepancy between Ukrainian nationals and third country nationals. Alongside the fact that applicants for temporary protection who are third country nationals in some cases do not receive social benefits (see [Registration under temporary protection](#)), incidents of expulsions of third country nationals from reception centres have been reported.<sup>185</sup>

Similar to what has been reported for international protection beneficiaries (see [General Report – Content of International Protection – Freedom of Movement](#)) problems arise from the fact that in the law beneficiaries of temporary protection are responsible for finding accommodation themselves,<sup>186</sup> whereas in practice it is difficult for temporary protection holders to find apartments on their own. Therefore, many temporary protection holders are forced to stay in the reception centres or emergency shelters for longer periods. Additionally, people who were first accommodated in private flats report that they had to move to reception centres after several months, since the private accommodation were only meant as emergency measures and are not suitable for longer periods.<sup>187</sup> The lack of long-term housing opportunities alongside with the continued high numbers of arrivals from Ukraine lead to a dense situation especially in bigger cities. In Berlin and Hamburg, around 99% percent of the reception capacities were occupied at the end of September 2022.<sup>188</sup> In Brandenburg, Mecklenburg-Vorpommern and Lower Saxony 80% are currently occupied.<sup>189</sup> According to the administration of Berlin 10,000 additional places are required, 3,200 shall be built as emergency shelters in tents on the territory of the former airport Berlin-Tegel.<sup>190</sup> The local administration of Augsburg claims that nearly all of the 67 accommodation centres are occupied and that the city is considering using sports facilities of local schools as emergency shelters.<sup>191</sup> The authorities on the local, state and federal level blame each other for the shortcomings. While the local authorities are by law responsible for the accommodation of applicants for temporary protection,<sup>192</sup> they claim that they do not have enough financial and housing resources to fulfil the current need. They therefore ask the Federal States to vacate more housing properties.<sup>193</sup> The Federal States in turn urge the Federal government to strengthen their efforts and to take up a coordinating role.<sup>194</sup> According to the Minister of North Rhine-

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<sup>183</sup> Ibid, p. 15f.

<sup>184</sup> Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, *Antiziganismusbeauftragter fordert diskriminierungsfreien Umgang mit geflüchteten Roma aus der Ukraine*, press release, 29 September 2022, available in German at: <http://bit.ly/3HhD6jH>.

<sup>185</sup> Anna-Elisa Jakob, *Geflüchtete in Obdachlosigkeit geschickt*, Hinz&Kunzt, 16 August 2022, available in German at: <https://bit.ly/3HbYZ3N>.

<sup>186</sup> Section 22 Social Code II

<sup>187</sup> Maria Fischer, *Ukrainer\*innen in Privatunterkünften: Immer noch prekäres Wohnen*, taz, 22 September 2022, available in German at: <http://bit.ly/3IYWLpJ>.

<sup>188</sup> Silke Mehring, *Leichtbauhallen in Tegel geplant Unterbringung von Ukraine-Flüchtlingen in Berlin wird immer komplizierter*, rbb24, 02 December 2022, available in German at: <http://bit.ly/3wdFPUT>; Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>189</sup> Migration Media Service, *Flüchtlinge aus der Ukraine*, last amended 10 January 2023, available in German at: <http://bit.ly/3D0Jvgr>.

<sup>190</sup> Thomas Frey, *Ukraine-Ankunfts-zentrum wird um 3200 Plätze erweitert*, Berliner Woche, 06 January 2023, available in German at: <http://bit.ly/3CY9Jjy>.

<sup>191</sup> Aichacher Zeitung, *Bald wieder Notunterkünfte in Turnhallen?*, 16 January 2023, available in German at: <http://bit.ly/3z29fH0>.

<sup>192</sup> §44 AsylG in conjunction with the different Federal state's Reception laws: e.g. §1 Landesaufnahmegesetz Hesse; §4 Landesaufnahmegesetz Brandenburg; §2 Flüchtlingsaufnahmegesetz North Rhine-Westphalia.

<sup>193</sup> The Federal Network of Municipalities (Städtetag) already asked for financial assistance in June and September 2022, see: Deutscher Städtetag, *Städtetag fordert neuen Flüchtlingsgipfel*, press release of 09 June 2022 and 13 September 2022, available in German at: <http://bit.ly/3kvk8gw> and <http://bit.ly/3ZLsgto>.

<sup>194</sup> Zeit online, *Länder und Kommunen fordern mehr Abstimmung bei der Aufnahme*, 17 March 2022, available in German at: <http://bit.ly/3WhSbG8>.

Westphalia, the statement of the Federal government that 4,000 federal properties shall be made available for additional accommodation facilities is misleading, since most of these properties are farmland and thus not suitable for quick usage.<sup>195</sup> In North Rhine-Westphalia, only 3 out of 39 proposed facilities by the Federal government are suitable for accommodating people.<sup>196</sup>

## E. Employment and education

### 1. Access to the labour market

Since 1<sup>st</sup> June 2022 temporary protection beneficiaries have unrestricted access to the labour market. No limitation or further requirements apply for self-employment and for employees. The residence permit for temporary protection must include the annotation that access to the labour market is granted but this is merely of declaratory nature. Temporary protection beneficiaries are consequently treated equally compared to German nationals. They may for example make the same use of general support programmes (e.g., workshops on how to draft applications, search and information portals) or specific support programmes tailored to the needs of foreign workers (e.g. integration courses, vocational trainings). The Federal Employment agency created a website for those who fled Ukraine where all the information on access to labour market and available support programmes is provided in different languages.<sup>197</sup>

In some sectors foreigners, irrespective of the type of residence permit, need to recognise their qualifications in order to work in their former profession. Recognition is only necessary for legally regulated professions such as nursing or in education.<sup>198</sup> However, a recognition of qualifications is always useful as it leads to more chances on the labour market. As stated in the general report (see [General Report – Content of International Protection – Access to the labour market](#)), this may constitute a practical hurdle to access the labour market.

There are no official statistics on the labour market available which distinguish between the type of residence status. Available data only distinguishes between different nationalities and is only available until August 2023. Regarding Ukrainian nationals in Germany, the number of those employed rose from 65,450 to 197,660 between February 2022 and August 2023.<sup>199</sup> Amongst those, 27,640 are without professional degree, 35,540 with a vocational training degree and 41,940 with an academic background. No data exists for 92,540 employees.<sup>200</sup>

The Federal State of Berlin has initiated a counselling centre for ‘Migration and Good Work’ that, in general, shall help immigrants in precarious working situations exercising their labour and social rights. In this context they have published specific informational sheets for people fleeing from Ukraine concerning German labour law and the protection against undocumented and exploiting labour.<sup>201</sup>

Also, the Federal Government maintains a service centre against labour exploitation, forced labour and human trafficking which that, however, is not specifically focused on temporary protection beneficiaries.

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<sup>195</sup> Deutschlandfunk, NRW-Ministerpräsident Wüst fordert bei Unterbringung mehr Unterstützung vom Bund, 16 January 2023, available in German at: <http://bit.ly/3QPVaUY>.

<sup>196</sup> Westfälische Nachrichten, Notunterkünfte in NRW fallen durch - nur drei geeignete Bundes-Immobilien, 04 January 2023, available in German at: <http://bit.ly/3kiPzdG>.

<sup>197</sup> Federal Employment Office, *Unterstützung für Geflüchtete aus der Ukraine*, available at: <http://bit.ly/3QP4rNb>.

<sup>198</sup> More detailed information can be found on the official Federal Government website concerning professional recognition, available at: <https://tinyurl.com/9kwyybcs>.

<sup>199</sup> Federal Employment Office, *Migration und Arbeitsmarkt*, last updated December 2022, available in German at: <http://bit.ly/3ZPGp8Y>.

<sup>200</sup> Ibid.

<sup>201</sup> Berliner Beratungszentrum für Migration und Gute Arbeit, *Flyer zum Schutz vor undokumentierter Arbeit*, available at: <https://tinyurl.com/mvmjmt8a>; Berliner Beratungszentrum für Migration und Gute Arbeit, *Flyer zum Arbeitsrecht für neuankommende Menschen aus der Ukraine*, available at: <https://tinyurl.com/y9fbkup3>.

Nonetheless, they have also published two informational sheets with regards to people coming from Ukraine.

## 2. Access to education

### Education for children

Since education is governed by the Federal States, the legal framework slightly differs.<sup>202</sup> In general, children, irrespective of their nationality and residence permit, are entitled and obliged to education from the age of 5-7 years and for a period of at least 9 years. For children who fled from Ukraine, access to education is guaranteed but the timeline differs depending on the Federal State: from the moment of arrival in Berlin, 3 months after arrival in Bavaria and Thuringia, in Baden-Württemberg 6 months after arrival, or from the moment when the child has been allocated to a municipality as in North Rhine-Westphalia.<sup>203</sup> Foreign children enter the same school system as German nationals. Children are obliged to follow elementary school for four years and subsequently attend different forms of High schools.

From 24 February 2022 until 18 February 2024 218,914 children who fled from Ukraine accessed education.<sup>204</sup> The data is slightly vague, since no unified definition of who is counted as child exists. For example, Hesse only counts children with Ukrainian nationality.<sup>205</sup> Further vagueness stems from the fact that some Federal States only enregister children who attend public schools, while others collect data also from private schools.<sup>206</sup>

Different programmes exist for foreign children to facilitate their integration in the German school system. In several Federal States “Welcome Classes” or “Preparation classes” exist where the schedule is tailored to the need of children whose mother tongue is not German. In other Federal States children are directly integrated in regular classes and attend German language courses on the side.<sup>207</sup>

In addition to the already existing programmes for foreign children, the German network of ministers of education (Kultusministerkonferenz, KMK) acknowledges that there are specific challenges stemming from the increased number of children who fled Ukraine. According to a study published in May 2022 the main challenge stems from the lack of teachers. According to the study 13,500 – 19,400 additional teachers are required to react to the rising number of children who fled Ukraine.<sup>208</sup> To address the lack of teachers, a task force of the network of Ministries of education envisages to facilitate the recognition of degrees of Ukrainian teachers and several Federal States have assured that additional money will be provided for the employment of teachers.<sup>209</sup> Until September 2022, only 2,700 teachers from Ukraine were working in German schools.<sup>210</sup> However, the lack of teachers still seems to be a big issue. In the

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<sup>202</sup> E.g., Para. 73-77 School Act Baden-Wuerttemberg, Para 37,38 School Act North Rhine Westphalia or Para 28 School Act Saxony.

<sup>203</sup> Deutsches Schulportal, ‘Wie Schulen geflüchtete Kinder aus der Ukraine aufnehmen’, 11 March 2022, available in German at: <http://bit.ly/3D068Sk>.

<sup>204</sup> Kultusministerkonferenz, Geflüchtete Kinder/Jugendliche aus der Ukraine, last available data from week 12-18 December 2022, available in German at: <http://bit.ly/3XKPVZg>.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Deutschlandfunk, *Wie geflüchtete Kinder aus der Ukraine in Detuschland beschult werden*, 7 June 2023, available in German at: <https://tinyurl.com/3rttjsrd>.

<sup>208</sup> Institut der deutschen Wirtschaft (IW), *Mögliche Auswirkungen des Krieges in der Ukraine im deutschen Bildungssystem*, 29 May 2022, available in German at: <http://bit.ly/3XKuXJK>.

<sup>209</sup> Kultusministerkonferenz, *Beschulung der schutzsuchenden Kinder und Jugendlichen aus der Ukraine im Schuljahr 2022/2023*, 23 June 2022, available in German at: <https://bit.ly/3CZx44H>.

<sup>210</sup> Deutschlandfunk, *Wie geflüchtete Kinder aus der Ukraine in Detuschland beschult werden*, 7 June 2023, available in German at: <https://tinyurl.com/3rttjsrd>.

Federal State of North Rhine Westphalia for example, around 6,700 educational jobs remained vacant in June 2023.<sup>211</sup> The KMK predicted in December 2023 that up to 68,000 teachers will lack until 2035.<sup>212</sup>

The task force further acknowledges that children coming from Ukraine may be present in Germany only for a limited period depending on how long the war lasts and that currently there are many Ukrainian schools which continue to provide remote classes for their pupils. While unity exists to the point that children may not generally be exempted from the obligation to attend school in Germany, the opinions on how the material provided by Ukrainian schools may be integrated in German classes differ.<sup>213</sup> The material provided by Ukrainian schools may be used by the teachers in Germany or families may be required to educate their children with the Ukrainian school materials privately. In Saxonia children from the 9<sup>th</sup> grade have the possibility to be exempted from the obligation to attend school in order to acquire the Ukrainian degrees. They need to apply for the exemption and prove that they attend online classes from Ukrainian schools.<sup>214</sup>

Equal access to education for children with special needs is regulated under the Social Code and is guaranteed irrespectively of the residence permit.<sup>215</sup> The procedure to identify specific needs and the measures introduced to address specific needs vary in the different Federal States. In general support programmes exist for specific needs in relation to emotional and social development, physical and motoric development, learning difficulties, mental disabilities and language barriers. Support programmes may consist of *inter alia* adjusted material and schedules, individual or group-based assistance in class and alternative schooling systems. Despite the intention of the Federal States ministers and the plea by the UNESCO Commission to strengthen efforts for a more inclusionary schooling system, in Germany the quota of children with specific needs who attend specific schools remains high.<sup>216</sup>

### **(Higher) Education for young people and adults**

The network of Ministries of education intends to facilitate access to education beyond the mandatory 9 years of schooling. In a decree, the ministers recognised that young adults above 16 shall also have access to the regular schooling system.<sup>217</sup> The ministers further acknowledge that due to the war in 2022 Ukrainian children were not able to pass the final exams which qualify for access to universities and higher education. Therefore, the ministers decided that access to higher education will be provided despite the lack of a diploma, if according to the earlier records the children generally qualify for higher education.<sup>218</sup> The German Academic Exchange Service (DAAD) together with the Federal Foreign Office initiated a scholarship programme for people who fled Ukraine. The funding will be awarded to different universities where then people who fled Ukraine and want to attend a German university may apply for language and technical support and for full scholarships to obtain a degree (bachelor, master or doctorate).<sup>219</sup> The universities decide individually about the amount of money granted and the eligibility criteria. The DAAD lists all partaking universities on their website.<sup>220</sup> The Viadrina University of Frankfurt (Oder) provides a Master Scholarship for Graduates from Ukraine granting 861 € per month and offers students that are still

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<sup>211</sup> Tagesspiegel, *Man kann die Lage nicht aushalten – Viele Schulden sind überfordert durch die enorme Zahl geflüchteter Kinder*, 16 June 2023, available in German at: <https://tinyurl.com/ye26ewwa>.

<sup>212</sup> Deutsches Schulportal, *Lehrermangel verschärft sich weiter – bis 2035 fehlen 68,000 Lehrkräfte*, 6 March 2024, available in German at: <https://tinyurl.com/25nkxj2j>.

<sup>213</sup> Deutsches Schulportal, *Wie Schulen geflüchtete Kinder aus der Ukraine aufnehmen*, 11 March 2022, available in German at: <http://bit.ly/3D068Sk>.

<sup>214</sup> Sachsen, *Kinder und Schule*, press release 01 November 2022, available in German at: <http://bit.ly/3QVRvFs>.

<sup>215</sup> Section 112 SGB IX.

<sup>216</sup> Deutsche UNESCO-Kommission, *Empfehlungen Inklusives Bildungssystem*, available in German at: <https://bit.ly/3XpUBDT>, 3.

<sup>217</sup> Kultusministerkonferenz, *Beschulung der schutzsuchenden Kinder und Jugendlichen aus der Ukraine im Schuljahr 2022/2023*, 23 June 2022, available in German at: <https://bit.ly/3CZx44H>.

<sup>218</sup> Kultusministerkonferenz, *Hochschulzugang mit ukrainischen Bildungsnachweisen*, 05 April 2022, available in German at: <https://bit.ly/3DnTTPN>.

<sup>219</sup> German Academic Exchange Service (DAAD), 'Future Ukraine - Scholarship Program for Refugees from Ukraine at German Universities', available at: <https://bit.ly/43b3kxm>.

<sup>220</sup> DAAD, *Future Ukraine – Scholarship programme for refugees from Ukraine at German universities*, available in German at: <https://tinyurl.com/y6j9293d>.

in Ukraine the possibility to come to Germany.<sup>221</sup> On the contrary, the Justus-Liebig Universität Giessen offers scholarships for beneficiaries of temporary protection, granting 934€ per month.<sup>222</sup>

In addition to the regular educational system the Federal Employment Office in cooperation with the BAMF offers different consulting services including preparatory classes for vocational trainings, integration classes, language courses, support in applications for jobs and educational programs and search platforms for universities and vocational training programs. Since June 2022 these programmes are accessible to temporary protection beneficiaries.<sup>223</sup>

## F. Social welfare

From 1 June 2022 temporary protection beneficiaries as well as applicants for temporary protection who have received a fictional approval and have been registered in the AZR have access to social welfare under the Social Code.<sup>224</sup> Beneficiaries of temporary protection now have access to the same social benefits as German nationals. Prior to the encompassing legal reforms, applicants for, as well as beneficiaries of temporary protection received the same benefits as applicants for international protection under the Asylum Seeker Benefits Act (see [General Report – Forms and levels of material reception conditions](#)).<sup>225</sup> As the table shows, the basic financial benefits under the Regular Social Code are higher compared to those under the Asylum Seeker Benefits Act.

Basic benefits for Temporary Protection applicants and beneficiaries							
	Single adult	Single adult in accommodation centre	Adult partners (each)	Member of household 18-24	Member of household 14-17	Member of household 6-13	Member of household 0-5
Regular Social Benefits	€563	-	€506	€451	€471	€390	€357
Benefits under Asylum Seekers Benefits Act	€460	€460	€413	€368	€408	€341	€312

Sources: Federal Ministry of Labour and Social Affairs, *Neue Leistungssätze nach dem Asylbewerberleistungsgesetz*, 21 December 2023, available in German at: <https://tinyurl.com/32ws558b>; and Federal Employment Office, *Bürgergeld steigt: Jobcenter passen Regelbedarfe zum 01. Januar 2024 an*, press release nr. 53, 01 December 2023, available at: <https://tinyurl.com/4xwzafwa>.

<sup>221</sup> Europa-Universität Viadrina Frankfurt (Oder), *Masterstipendien für Graduierte aus der Ukraine*, available in German at: <https://tinyurl.com/4y8kn53j>.

<sup>222</sup> Justus-Liebig-Universität, *MA Scholarship for Ukrainian Refugee Students at the University of Giessen for 2024*, available in German at: <https://tinyurl.com/mryv2zn8>.

<sup>223</sup> Section 7 (1) Social Code II.

<sup>224</sup> Federal Government, *Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze*, 23 May 2022, available at: <http://bit.ly/3kvHKSh>.

<sup>225</sup> Section 1 (3a) Asylum Seekers Benefits Act (old version of 31 May 2022).



Besides the benefits to secure livelihood listed above, the social benefits under the regular Social Code include *inter alia*:

- ❖ Access to public health insurances
- ❖ Care benefits
- ❖ Access to support programs for facilitation of access to the labour market
- ❖ Access to educational support programs (financial aid and trainings)
- ❖ Child and parental benefits
- ❖ Language and integration classes

In addition to the change of the applicable legal regime for beneficiaries of temporary protection, there have been extensive reforms in the general legal framework on social benefits which consequently also apply for beneficiaries of temporary protection.<sup>226</sup>

As stated in the general report (see [General Report – Social Welfare](#)), the responsible authority for beneficiaries of temporary protection and beneficiaries of International Protection who are unemployed but available for the job market is the Job Centre or Employment Office. For those who are available for the job market, sanctions may be imposed in case of a breach of duties to the state. Such breaches of duties include *inter alia* the rejection of a reasonable and in practice available job offer by the Employment Office, the rejection of a job market integration measure by the Employment Office and a breach of cooperation agreements between the person and the Job Centre.<sup>227</sup> Following Section 31a social benefits may be cut by ten percent for one month when a breach of duties occurs for the first time, by twenty percent for two months for the second time a breach of duties occurs and by thirty percent for three months a third breach of duties occurs. For 2024 the Federal government announced that social benefits may be cut in total for a maximum of two months in cases where persons persistently reject job offers by the Employment Office.<sup>228</sup> This has been heavily criticised by legal scholars and human rights associations.<sup>229</sup> For those who are registered as unemployable (due to the reached age of retirement or e.g., disabilities) the Social Welfare Office is responsible. Due to the obligation to reside in the municipality to which the beneficiaries have been allocated (see [Movement and mobility](#)), a beneficiary for temporary protection may only receive social benefits by the authority of the allocated municipality.<sup>230</sup>

The available statistics on the number of beneficiaries of social benefits do not differentiate on the type of residence permit but by nationality. Thus, the number of those who have accessed social welfare is only available for Ukrainian nationals irrespective of whether they are beneficiaries of temporary protection. In November 2023 707,258 Ukrainians received benefits to secure livelihood in comparison to 662,854 in November 2022. 490,779 of those were available for the job market in November 2023, compared to 442,898 in November 2022. 216,479 were not employable in November 2023, compared to 219,956 in November 2022.<sup>231</sup>

It has been reported that problems arise especially in connection to the requirement of mandatory registration in the AZR.<sup>232</sup> Since the registration in the AZR became mandatory only in June 2022, there are persons who have already received a residence permit for temporary protection and therefore are

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<sup>226</sup> See [General Report – Content of International Protection](#).

<sup>227</sup> Section 31 Social Code II.

<sup>228</sup> Federal Government, *Mehr Chancen und mehr Respekt*, 2 February 2024, available in German at: <https://bit.ly/4ccdEJO>.

<sup>229</sup> See e.g. Andrea Kiessling, *Totalverweigerung des Existenzminimums?*, 22 January 2024, available in German at: <https://bit.ly/43thp9T>.

<sup>230</sup> Federal Ministry of the Interior, *Neuregelungen im Aufenthaltsgesetz zum 01.06.2022 aufgrund des „Gesetzes zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze“*, 27 May 2022, available in German at: <https://bit.ly/3wfWU0q>.

<sup>231</sup> Federal Employment Office, *Berichterstattung zu den Auswirkungen der Fluchtmigration aus der Ukraine auf den deutschen Arbeitsmarkt und die Grundsicherung für Arbeitsuchende*, December 2022, available in German at: <https://bit.ly/3XJzA72>.

<sup>232</sup> Dorothee Frings, *Sozialleistungen für Geflüchtete aus der Ukraine ab dem 1. Juni 2022*, *Asylmagazin* 6/22, 204.

eligible for social benefits under the Social Code. However, they may not be registered in the AZR because they applied for temporary protection prior to the 1<sup>st</sup> of June. Registration in the AZR is though a requirement in order to receive social benefits under the Social Code. In order to remedy the lack of registration, a transitional period until October 2022 was introduced, where beneficiaries of temporary protection were able to register.<sup>233</sup> A late registration has, according to an instruction by the Federal Ministry of Labour and Social Affairs, no effect on the general entitlement to the social benefits.<sup>234</sup> In the meantime until registration beneficiaries still receive benefits under the Asylum Seekers Benefits Act.<sup>235</sup> People that arrived after 01 June 2022 are directly registered in the AZR in the respective reception centres.

Additionally, several NGOs criticise that the legal reforms of June 2022 did not include access to inclusionary measures for people with disabilities. German nationals with disabilities have access to benefits guaranteeing *inter alia* prevention of disabilities or prevention of aggravation, inclusion in the job market and participation in society. The reforms of June 2022 did not explicitly extent the scope of these measures to beneficiaries of temporary protection. As a consequence, confusion exists as to whether inclusionary measures are awarded only by discretion or whether individuals have a right to claim those measures despite the lack of an explicit wording. Usually, foreign nationals only receive those benefits upon discretion of the local authorities. The only ones exempted from this discretion are those foreigners who have a permanent residence permit or a short-term residence permit but are expected to reside permanently in Germany.<sup>236</sup> In a circulation letter the ministry of labour and social affairs argued that the lack of an explicit regulation is remedied by the fact that temporary protection may be interpreted as a short-term residence permit where permanent residence is assumed and therefore guarantee access to these benefits without discretion.<sup>237</sup> However, civil society organisations fear that local authorities may disregard the instructions in the circulation letter since the circulation letter may not be regarded as legally binding by some authorities. It was feared that legal vagueness might therefore cause lengthy administrative procedures and negative first instance decisions.<sup>238</sup> In March 2023, however, the Social Court of Nuremberg clarified that these extra benefits do also apply to temporary protection beneficiaries, emphasizing the binding effect of the circulation letters.<sup>239</sup>

## G. Health care

Since 1<sup>st</sup> June 2022 beneficiaries of temporary protection have the same access to health care as German nationals. Accordingly, temporary protection holders who do not receive social benefits may within six months after arrival voluntarily choose a provider of statutory health insurances.<sup>240</sup> If they do not choose a health insurance provider within the first six months, they will automatically be insured by the job centre.<sup>241</sup> Beneficiaries of temporary protection who receive social benefits e.g. unemployment benefits, receive health insurance by the job centre or social welfare office which guarantees the same treatment.<sup>242</sup>

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<sup>233</sup> Ibid.

<sup>234</sup> Federal Ministry of Labour and Social Affairs, *Informationsschreiben zum "Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze"*, 25 May 2022, available in German at: <https://tinyurl.com/ywy596z7>.

<sup>235</sup> Section 1 (8a) Asylum Seekers Benefits Act (AsylBLG).

<sup>236</sup> Section 100 (1) Social Code IX.

<sup>237</sup> Federal Ministry of Labour and Social Affairs, *Informationsschreiben zur Anwendung des §100 Absatz 1 SGB IX bei geflüchteten Menschen mit Behinderungen aus der Ukraine*, 29 April 2022, available at: <https://bit.ly/3CYI0jS>.

<sup>238</sup> Lebenshilfe e.V., *Neue Rechtslage für Geflüchtete aus der Ukraine vergisst Menschen mit Behinderung*, 02 June 2022, available in German at: <http://bit.ly/3J1BU5k>.

<sup>239</sup> Social Court Nuremberg, Decision S 5 SO 25/23 ER, 9 March 2023, available in German at: <https://tinyurl.com/yemz7t7x>.

<sup>240</sup> Section 417 (1) Social Code V.

<sup>241</sup> Section 5 (1)(Nr.13) Social Code V.

<sup>242</sup> Section 5 (1)(Nr.2a) Social Code V or Section 264 (2) Social Code V.

The treatment provided for under the public health insurance system include *inter alia*:<sup>243</sup>

- ❖ Treatment for pregnancy and motherhood
- ❖ Prevention of illnesses and their aggravation;
- ❖ In specific circumstances contraception control, sterilisation and abortion
- ❖ Treatment of illnesses
- ❖ Health education and early screening programs

Again, the access to health care is made conditional upon the registration in the 'Central Register of Foreigners' (AZR) (for criticism of this conditionality, see [Registration under temporary protection](#)).

Statistics on the access to health care show that overall Ukrainians are satisfied with their health status. Only ten percent of the 11,225 interviewed Ukrainians between August 2022 and October 2022 rate that their health status is bad and half of them state that they need further medical aid.<sup>244</sup> However, those who live in public accommodations rate their health status lower than those who live in private accommodations.<sup>245</sup> Among the 11,225 interviewed Ukrainians, 33% stated that they need support for medical aid.<sup>246</sup> The available data is though biased since only people with Ukrainian nationality were interviewed and only 76% of the interviewed persons were beneficiaries of temporary protection at the time of the interview.<sup>247</sup>

It has been reported that in practices access to health insurances is sometimes hindered for minor children. The practical obstacle stems from the fact that in many cases the father stayed in Ukraine and is regarded as privately insured. A private insurance of one parent however may provoke an exemption from the family insurance.<sup>248</sup> The child is exempted from the family insurance if the privately insured parent exceeds a certain level of income.<sup>249</sup> The income of the privately insured parent must be proven. In the current situation in Ukraine, it is difficult for the remaining parent to prove their income situation. In the reported cases the health insurance provider assumed by the lack of documents that the privately insured parent reached the level of income and applied the exception clause. However, it is argued by civil society organisations that the level of income necessary for the application of the exception clause is usually not reached since even a well-paid job in Ukraine does not reach the level.<sup>250</sup>

Civil society organisations further fear that the same argumentation might be used for temporary protection holders who are over 55 years. Under the German law persons above 55 who become eligible for public health insurance for the first time in Germany are exempted from the public health insurance if they have been privately insured in the last five years. Since the public health insurance in Ukraine is not well equipped many employers grant private insurance for their employees. Civil society organisations warn insurers to not count these insurances as grounds for exceptions. The Federation of Public Health insurance providers has though assured that the exception will not be used for these cases.<sup>251</sup>

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<sup>243</sup> Chapter III SGB V, overview of the measures see: Section 11 Social Code V.

<sup>244</sup> Federal Institut for Population Research, *Geflüchtete aus der Ukraine in Deutschland - Flucht, Ankunft und Leben*, December 2022, available in German at: <http://bit.ly/3IZildQ>, 5.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid 12.

<sup>247</sup> Ibid 7.

<sup>248</sup> Section 10 (3) Social Code V.

<sup>249</sup> Section 6 (6) Social Code V.

<sup>250</sup> GGUA, KV in Deutschland für Geflüchtete aus der Ukraine, 18 May 2022, available in German at: <https://bit.ly/3WoZ8oV>.

<sup>251</sup> Spitzenverband der Krankenversicherungen (GKV), Krankenversicherungsschutz für Kriegsflüchtlinge aus der Ukraine, 20 May 2022, available in German at: <https://bit.ly/3QRfJjW>.