

## CONFLICT IN UKRAINE: SUMMARY OF PROTECTION MEASURES FOR DISPLACED PERSONS FROM UKRAINE<sup>1</sup> IN THE EUROPEAN UNION AND SPAIN

10 March 2022

- **INTRODUCTION:** On 4 March, the Council of the European Union activated<sup>2</sup> the mechanism of temporary protection<sup>3</sup> for persons displaced from Ukraine as a result of the armed conflict that began with the invasion of the country by the military forces of the Russian Federation. This is the first time that this mechanism has been activated. This report is a summary of the document [“Conflict in Ukraine: Protection measures, in the European Union and Spain, for displaced persons from Ukraine”](#).
- **BENEFICIARIES OF TEMPORARY PROTECTION:** Persons who left Ukraine from 24 February 2022 onwards. There are two groups of persons:
  - Group 1:
    - (i) Ukrainian nationals residing in Ukraine (before 24 February 2022);
    - (ii) Stateless persons and nationals of third countries other than Ukraine who had refugee status or equivalent protection in Ukraine (before 24 February 2022); and
    - (iii) Members of the families of the persons referred to in the previous two paragraphs if such families were already in Ukraine and residing in Ukraine at the time of displacement. For these purposes, members of the families of the persons referred to in points (i) and (ii) shall mean the following:
      - Spouse or unmarried partner in a stable relationship (if the Member State which is to grant temporary protection treats unmarried partners in a comparable way to married couples under national law relating to foreign nationals).
      - Minor children of the person entitled to temporary protection, or of his/her spouse (regardless of whether they are children born in or out of wedlock, or adopted).

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<sup>1</sup> Updated with: (i) Order PCM/169/2022 of 9 March, implementing the procedure for acknowledging temporary protection to persons affected by the conflict in Ukraine; and (ii) Order PCM/170/2022 of 9 March, publishing the Agreement of the Council of Ministers of 8 March 2022, extending the temporary protection granted under Council Implementing Decision (EU) 2022/382 of 4 March 2022 to persons affected by the conflict in Ukraine who can find refuge in Spain.

<sup>2</sup> Implementing Decision (EU) 2022/382 of the Council of the European Union of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and with the effect of commencing temporary protection.

<sup>3</sup> This mechanism is regulated by Council Directive 2001/55/EC of 20 July 2001 concerning minimum standards for providing temporary protection in the event of a mass influx of displaced persons and regarding measures promoting a balance of efforts among Member States in receiving such persons and bearing the consequences thereof.

- Other close relatives who were living together as part of the family unit and who were wholly or mainly dependent on the person entitled to temporary protection at the time of the crisis which led to the displacement.
- Group 2: stateless persons and nationals of third countries other than Ukraine who:
  - (i) can prove that they were legal residents in Ukraine before 24 February 2022,
  - (ii) had a valid permanent residence permit issued in accordance with Ukrainian law, and
  - (iii) are unable to return to their country or region of origin in a safe and sustainable manner.
- **POSSIBLE APPLICATION OF TEMPORARY PROTECTION TO OTHER PERSONS (CASES ACCEPTED IN SPAIN)**: Member States may extend temporary protection to other subjects. In Spain, temporary protection has been extended to the following categories of persons:
  - (i) Ukrainian nationals staying in Spain before 24 February 2022 who, as a result of the armed conflict, cannot return to Ukraine.
  - (ii) Third country nationals or stateless persons who were legally residing in Ukraine on the basis of a valid legal residence permit (whether permanent or otherwise as students) issued in accordance with Ukrainian law and are unable to return to their country or region.
  - (iii) Family members of the above two categories (i) and (ii). Family members shall mean:
    - the spouse or unmarried partner;
    - unmarried minor children or children of the spouse, without differentiation as to whether they were born in or out of wedlock or adopted;
    - other close relatives who were living together as part of the family unit at the time of the circumstances related to the mass movement of displaced persons and who were totally or mainly dependent on them.
  - (iv) Ukrainian nationals who were illegally present in Spain before 24 February and who, as a result of the armed conflict, cannot return to Ukraine.

In the latter category, temporary protection does not extend to their family members.
- **DURATION OF TEMPORARY PROTECTION**: Temporary protection has an initial duration of one year. It shall be automatically extended for further periods of six months, for a maximum period of one (additional) year. If at the end of this period the reasons justifying the temporary protection continue to exist, the Council may extend the temporary protection for a further year. The maximum possible limit is therefore three years.

Temporary protection can be terminated at any time by a decision of the Council of the European Union – on the grounds that the situation in the country of origin allows for safe return.

- **THE STATE COMPETENT TO RECOGNISE TEMPORARY PROTECTION:** The Member State chosen by the applicant for temporary protection. Citizens of Ukraine are exempted from the visa requirement for crossing the external borders of the Member States, for stays not exceeding 90 days. This allows them to move freely within the European Union during that 90-day period (within a period of 180 days). During this period, they can go to the State of their choice and apply for temporary protection there.

Temporary protection rights can only be enjoyed in the host State.

- **APPLICATION PROCEDURE FOR TEMPORARY PROTECTION (IN SPAIN):**

PROCEDURE	EXPLANATION
<b>Application</b>	It may be presented to: (i) officials of the Directorate General of the Police, in the reception, acceptance and referral centres of the Ministry of Inclusion, Social Security and Migration or, where appropriate, (ii) the police stations to be designated.
<b>Information to be provided with the application</b>	Documentation accrediting that they belong to a group benefiting from temporary protection. Address. Where possible, mobile phone number and e-mail address of the applicant (the applicant may consent to receiving notifications electronically). Police officers will take the fingerprints of the applicants.
<b>Minors</b>	If the minor is accompanied by an adult, the application shall be submitted by the person responsible for the minor. Although not expressly regulated, if the minor is unaccompanied, the application shall be submitted by his or her legal guardian or custodian, as indicated below.
<b>Processing</b>	The procedure will be handled by the Asylum and Refugee Office (“OAR”)
<b>Interview</b>	This is not a compulsory procedure. It may be arranged, exceptionally, if it is considered that some points of the application need to be clarified.
<b>Decision</b>	It is issued by the Ministry of the Interior. A favourable decision shall contain the residence authorisation and, in the case of adult applicants, a work permit.
<b>Maximum time limit for resolving the application</b>	24 hours from the submission of the application.
<b>Notification of the decision</b>	Electronically if possible. Also by post or by personal appearance at police stations or immigration offices, or at the reception, acceptance and referral centres of the Ministry of Inclusion, Social Security and Migration. In addition, notices of the decisions taken may be published in the “Official State Gazette” and on the website of the Asylum and Refugee Office.
<b>Change of address</b>	To be notified to the OAR as soon as possible.
<b>Challenging the refusal</b>	Challenging the refusal. This can be contested. By means of an appeal for reconsideration to the Minister of the Interior (one month from notification), or by means of a contentious-administrative appeal (two months from notification).

- **RIGHTS OF TEMPORARY PROTECTION:**

RIGHT	CONTENT
<b>Rights of the applicant for temporary protection</b>	Authorisation to stay in Spanish territory (while the application is being processed). Authorisation to receive social assistance.
<b>Right to information</b>	At the time of submitting the application, a written document will be provided, in a language that the applicant can understand, with his/her rights and obligations.
<b>Residence permit</b>	A temporary residence permit will be issued. In Spain, it will last for one year (extendable for annual periods).
<b>Identification documents</b>	Identification documents will be issued to the beneficiary of temporary protection. In Spain, a Foreigner's Identity Card (TIE) will be issued. This documentation must be requested within one month of notification of the residence authorisation at the corresponding foreigners' office or police station.
<b>Work permit</b>	The beneficiaries of temporary protection may carry out paid activities as self-employed or employed persons, in accordance with the regulations applicable to each profession – during the period in which the temporary authorisation is in force. The work permit is valid for the same period as the residence permit.
<b>Right to education</b>	Minors have the right to education under the same conditions as nationals of the host State. Adults may participate in vocational training and practical workplace training.
<b>Medical assistance</b>	This right shall in any case include emergency care and essential treatment of illnesses.
<b>Accommodation</b>	It must be ensured that the person concerned has access to appropriate accommodation or is provided with the means to obtain it.
<b>Social assistance</b>	Necessary social and food assistance must be provided if the person concerned does not have sufficient resources. This assistance may depend on the person's ability to provide for his or her own subsistence.
<b>Vulnerable persons</b>	Provision must be made for the necessary medical or other assistance for particularly vulnerable persons (unaccompanied minors, persons who have suffered torture, rape or other serious forms of moral, physical or sexual violence).
<b>Right to freedom of movement</b>	In Spain, the beneficiary of temporary protection may move freely within the territory of the State.

- **RELOCATION TO ANOTHER MEMBER STATE OF THE EUROPEAN UNION:** A person enjoying temporary protection may be relocated to another Member State of the European Union, subject to consent of the person concerned. The transfer entails termination of the residence authorisation in the State of origin, and the State of destination shall provide personal protection to the relocated person. The Member State shall issue a *laissez-passer* for the transfer.
- **FAMILY REUNIFICATION:** A beneficiary may regroup in the Member State which has granted them temporary protection, members of his or her family who: (i) were part of his or her family already constituted in Ukraine, and (ii) have suffered separation due to the invasion and armed conflict. For this purpose, family members eligible for reunification shall mean:

### FAMILY MEMBER

### REUNIFICATION REGIME

Spouse or life partner (if the Member State considers the situation of unmarried couples to be similar to that of married couples under its own legislation on foreigners). Not applicable in cases of legal separation, de facto separation or divorce.

They shall be reunited, taking into account the wishes of the family.

Unmarried minor children of the applicant, his/her spouse or unmarried partner (irrespective of whether they are children born in or out of wedlock or adopted).

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The reunification may be carried out taking into account the extreme hardship that these family members would face in the absence of reunification.

Other close relatives who were living together as part of the family unit (at the time of the events that caused the mass influx), and who were totally or partially dependent on the head of the family, at the time of the crisis that caused the displacement.

In Spain, the competent body for reunification actions is the Asylum and Refugee Office (“**OAR**”).

- **UNACCOMPANIED MINORS:** The best interests of the child shall be a primary consideration. The Member State shall agree on:
  - The representation of the minor through a legal guardian.
 

In Spain, this guardianship is assumed by the regional public authorities where the minor resides (the minor is considered to be in a situation of abandonment).
  - The guardianship of the minor. The competent authority of the Member State (in Spain, the autonomous regions) shall agree on the guardianship of the minor:
    - (i) with adult family members;
    - (ii) in a foster family;
    - (iii) in residential care with special facilities for children or in other accommodation with appropriate facilities for children; or
    - (iv) with the person who was caring for the child at the time of escape. Member States shall take the necessary measures to make such accommodation possible.

It shall be verified that the adult person entrusted with the care of the child agrees. The child’s opinion must also be taken into account in accordance with his or her age and level of maturity.
- **TERMINATION OF TEMPORARY PROTECTION:** This occurs in the following cases:
  - At any time by decision of the Council of the European Union, based on the grounds that the situation in the country of origin allows for safe return.

- This circumstance shall be notified to the interested parties at the time of renewing the residence permit, and they shall be given a period of time to make the allegations they deem appropriate.
- If the beneficiary gives up the residence permit.
- By relocation to another Member State (which will grant temporary protection, in accordance with the above).
- By tacit waiver. This will occur when the beneficiary of temporary protection is required to appear before the competent authority in order to carry out an essential procedure and does not appear within 45 days of the request (unless justified cause is provided).

Once the temporary protection has ended, the general law regarding protection and foreigners of the Member State shall apply. An application for international protection may be submitted (if it has not yet been submitted), or an application for another residence and work permit may be submitted.

- **RETURN TO UKRAINE IN THE EVENT OF TERMINATION OF TEMPORARY PROTECTION:** The Member State shall take measures to ensure that voluntary return is made possible. Where this is not possible, the State may take measures of forced return. Forced return shall not apply where humanitarian reasons make return impossible, or where there are reasonable grounds (health status) for not being able to travel (for the duration of the situation).

Families with minor children attending school may be authorised to benefit from conditions of residence that allow the children to complete the current school term.

- **COMPATIBILITY OF TEMPORARY PROTECTION WITH INTERNATIONAL PROTECTION (REFUGEE STATUS/SUBSIDIARY PROTECTION):** If compatible, it may be advisable to apply for international protection in addition to temporary protection. International protection is subject to longer processing times and requires an individualised analysis of each case's circumstances (to verify whether there is a situation of persecution – refugee status – or serious risks in the event of return to the country of origin – subsidiary protection). However, the advantages of international protection may be: (i) it is not subject to the time limits of temporary protection; (ii) it cannot be terminated at any time by a general decision (of the Council); (iii) they have a more extensive rights regime.

If temporary protection ends and the international protection procedure has not been finalised, it should be completed thereafter.

Although not clarified in the regulations, it is reasonable that the State competent for granting international protection be the same State that is competent for recognising temporary protection.

The benefit of temporary protection shall not be aggregated with the benefits of international protection.

A more detailed explanation of the legal and procedural regime for international protection can be found in the document "[Conflict in Ukraine: Protection measures, in the European Union and Spain, for displaced persons from Ukraine](#)".

- **INTERNATIONAL PROTECTION RECEPTION SYSTEM (IN SPAIN)**: The following persons shall be eligible:<sup>4</sup> (i) persons displaced from Ukraine as of 24 February 2022 as a result of the Russian invasion that started on that date, and (ii) persons resident in Ukraine who were in Spain when the conflict broke out and have been unable to return to their country.

Both cases include Ukrainian nationals residing in Ukraine and third-country nationals or stateless persons residing long-term in Ukraine, with their families.

To access the system, they must lack financial resources and meet the other requirements set out in the International Protection Reception System Management Manual.

To remain in the system they must be documented, either by means of a declaration of willingness to apply for international protection, or by means of an application for international protection, or by means of documentation accrediting that they are beneficiaries of temporary protection, as soon as possible and in any case within a maximum term of three months.

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<sup>4</sup> Information note dated 4 March 2022 concerning the reception of persons fleeing the war in Ukraine or unable to return to Ukraine due to the war, issued by the director general of the International Protection and Humanitarian Aid Programs.

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