

# Practical Tool for Guardians

## Temporary protection for unaccompanied children fleeing Ukraine





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## List of abbreviations

Term	Definition
<b>Council Implementing Decision</b>	Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection
<b>EU</b>	European Union
<b>EU+ countries</b>	Member States of the European Union and associated countries
<b>EUAA</b>	European Union Agency for Asylum
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>Member States</b>	Member States of the European Union
<b>TPD</b>	temporary protection directive - Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
<b>CRC</b>	Convention on the Rights of the child
<b>UNHCR</b>	United Nations High Commissioner for Refugees



## About this series of practical tools

The European Union Agency for Asylum (EUAA) and the European Union Agency for Fundamental Rights (FRA) have joined forces in the development of a series of practical tools for guardians of unaccompanied children with international protection needs. The objective is to support guardians in their daily tasks and responsibilities during the asylum procedure, including the Dublin procedure and the temporary protection. Hence, the series of practical tools will address the following topics:

- the temporary protection,
- an introduction to international protection,
- the regular asylum procedure
- the special asylum procedures such as the Dublin procedure or border procedures.

The aim of these practical tools is to allow the guardian to better inform and assist children in the process, and thus helping children to better understand the relevance of the steps involved. The child's meaningful participation and capacity to make informed decisions will be improved.

Good functioning guardianship systems are essential in promoting the best interests of the child and children's rights. Guardians are responsible for ensuring that any legal, social, medical and psychological needs are addressed throughout the specific procedure and until a durable solution is secured for the child.

In preparation of the practical tools, the EUAA and FRA have consulted the [European Guardianship Network](#) through a rapid needs assessment to define the objectives and the topics covered by the practical tools.

The series will include several booklets, flowcharts and posters and be adaptable to the national context where guardians and children are operating together. It is for this reason that editable boxes have been included.

Considering the target group of this series, the tools are based on the handbook on guardianship by FRA and the European Commission <sup>(1)</sup> and are consistent with the FRA training modules for guardians <sup>(2)</sup>.

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<sup>(1)</sup> FRA and European Commission, *Guardianship for Children Deprived of Parental Care - A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 30 June 2014.

<sup>(2)</sup> The FRA e-learning website is available at: <https://e-learning.fra.europa.eu/>





# This tool on temporary protection

This tool focuses on the topic of temporary protection. It is the first deliverable in the series targeting guardians. It aims at assisting guardians appointed by EU Member State to support displaced children from Ukraine when registering for the temporary protection and exercising their rights.

The tool is structured into four parts:

1. What is temporary protection?

A general overview of the protection and rights set out in the temporary protection directive.

2. Who are the children fleeing Ukraine?

This chapter presents the most common situations of children arriving from Ukraine to the EU.

3. What do you as a guardian need to know about temporary protection?

This chapter focuses on the rights for children under temporary protection, on the registration for temporary protection or any other legal status available to children and can be explored.

4. What do you as guardian need to know about temporary protection?

This chapter untangles the implications temporary protection may have on your daily tasks and how safeguards need to be applied in this context.

You will find also two annexes with:

- a) **Additional resources** with hyperlinks to additional information on temporary protection.
- b) A **workflow** to visualise the main tasks of your role in the different steps of temporary protection.

Finally, the tool contains two types of additional features:

- **Blue boxes** are editable boxes that you can complete with information specific to your country.
- **Tip Boxes**, where you can find useful practices or advice for your daily work.







# 1. What is temporary protection?

Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx of displaced persons from non-EU countries who are unable to return to their country of origin. The legal basis is found in Council Directive 2001/55/EC (TPD) <sup>(3)</sup>, adopted following the conflicts in the former Yugoslavia in 2001 but only triggered for the first time in March 2022 after Russia's military invasion of Ukraine.

The TPD sets out a series of rights for the beneficiaries <sup>(4)</sup>:

- a residence permit for the entire duration of the protection (which can last from one to three years);
- appropriate information on temporary protection;
- access to employment, subject to rules applicable to the profession and to national labour market policies and general conditions of employment;
- access to suitable accommodation or housing;
- access to social welfare or means of subsistence, if necessary;
- access to medical care;
- access to education for children;
- activities such as educational opportunities for adults, vocational training and practical workplace experience;
- opportunities for families to reunite in certain circumstances;
- guarantees for access to the asylum procedure;
- access to banking services, for instance opening a basic bank account;
- move to another EU country, before the issuance of a residence permit;
- move freely in EU countries (other than the Member State of residence) for 90 days within a 180-day period after a residence permit in the host EU country is issued

The TPD was activated to allow those persons fleeing Ukraine to apply for temporary protection and to have immediate access to protection in the EU. The Council implementing decision (EU) 2022/382 of 4 March 2022 establishes the following categories of displaced persons (Article 2(1)):

- Ukrainian nationals and their families.

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<sup>(3)</sup> [Council Directive 2001/55/EC of 20 July 2001](#) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, (20.07.2001, OJ L 2125).

<sup>(4)</sup> See the European Commission's website on temporary protection available here: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)



- Stateless persons and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection, and their families.

In addition, Member States must apply either temporary protection or adequate protection under their national law to stateless persons and nationals of third countries other than Ukraine with a permanent residence permit issued in Ukraine before 24 February 2022, and who are unable to return in safe and durable conditions to their country or region of origin.

Member States can extend temporary protection to other categories, hence there might be other displaced persons from Ukraine who can be beneficiaries of temporary protection in your country <sup>(5)</sup>.

### Additional categories of beneficiaries in your country

Check your national legislation to see if there are additional groups of persons that can benefit from temporary protection. You can use the following resources to find out more:

- The EUAA [Who is Who](#) platform page on temporary protection
- The [EU Solidarity with Ukraine](#) webpage
- FRA [overview](#) on National legislation implementing the temporary protection directive in selected Member States.

Furthermore, persons entitled to temporary protection have the right to make and lodge an application for international protection (asylum) or to apply for recognition of statelessness where a statelessness determination procedure exists.



#### Tip

Check out the European Commission's [information page for people fleeing the war in Ukraine](#). It is available in English, Ukrainian and Russian and provides detailed information on rights as well as contact information for the relevant authorities in all Member States.

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<sup>(5)</sup> Article 7(1) TPD.



## 2. Who are the children fleeing Ukraine?

Many of the displaced persons from Ukraine are children, usually accompanied by one parent, family members or related adults, or caregivers or guardians from Ukrainian institutions. Some of them thus may be considered unaccompanied children while others are accompanied.

### Unaccompanied children including separated children

Under temporary protection, children arriving from Ukraine will be viewed as **unaccompanied** when they arrive on the EU territory unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or children who are left unaccompanied after they have entered the territory of the Member State <sup>(6)</sup>.

Unaccompanied children may include children who are **separated**, meaning accompanied by relatives or known (non-related) adults. In some cases, parents may have authorised <sup>(7)</sup> other adults to travel with the child and/or to provide temporary care. For example, this could be the case of a Ukrainian mother traveling with her own children and those of another family. Some of these children might arrive without parents nor responsible adults and you might be appointed as their guardian.

Displaced children from Ukraine who fall under the scope of the Council Implementing Decision <sup>(8)</sup> are entitled to protection, care and access to all basic rights immediately upon arrival in the EU. Effective access to all the rights, and safeguards requires the child's presence to be known to the authorities as soon as possible. Children not falling within the scope of the Council Implementing Decision may fall under other protection regimes at national or regional level, where their best interests and the *non-refoulement* principles should be assessed.

It will be important to determine from the individual circumstances of each case whether the accompanying adult might be suitable to exercise the day-to-day care only, or also parental responsibility and consequently the child would not be viewed as unaccompanied.

Where children arrive with adults who do not hold documents attesting their temporary guardianship responsibilities, the competent authorities of your country may decide it is in the interest of the child to appoint the accompanying adult as a guardian for the child as defined in the TPD. Otherwise, the accompanying adult may be viewed as responsible for day-to-day care, and a local guardian may be appointed to assist the child and/or the accompanying adult in national procedures and to access national services.

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<sup>(6)</sup> Article 2(f) TPD.

<sup>(7)</sup> Council of Notariats of the Europe Union, [Tools for Cross-Border Notarial Practice - cross-check Ukrainian children](#).

<sup>(8)</sup> [Council Implementing Decision \(EU\) 2022/382 of 4 March 2022](#) establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, (4.3.2022, OJ L 71).





## Assessing the suitability of the accompanying adult who does not hold a guardianship decision from Ukraine to become the guardian

Check your national legislation to see who is the responsible authority for assessing the capacity and suitability of the accompanying adult to act or become a guardian of the child and what the procedure entails.

### Children accompanied by a guardian appointed by the competent Ukrainian authorities

In the case of Ukraine, there are two other categories of children accompanied by a guardian appointed by the competent Ukrainian authorities. These children are therefore, legally-speaking, accompanied children but they also need additional protection and the support of the national child protection system.

These two categories are <sup>(9)</sup>:

- children who had been living in Ukrainian institutions, and who often arrive to the EU in groups and accompanied by a guardian appointed by the competent Ukrainian authorities;
- children who arrive to the EU accompanied by a guardian appointed by the competent Ukrainian authorities.

Depending on the individual circumstances of the child and of the guardian appointed in Ukraine, the support and supervision of the host country child protection services may be needed to complement the guardianship assigned to the guardian. This support could consist of:

- Registration of the children in the child protection system and monitoring of their situation.
- Revision of their placement or care arrangement.
- Helping with practical aspects to ensure access to school, healthcare, etc. These can include, for example, help in understanding and filling in administrative forms.
- Ensure access to complaints mechanisms for the children and for their guardians appointed in Ukraine.
- Check whether they need a local 'support' guardian, or a legal representative, for certain procedures.

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<sup>(9)</sup> European Commission, *Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care*, 2022.





### 3. What do you as a guardian need to know about temporary protection?

As a guardian it is essential you know:

- whether a child may be in need of temporary protection;
- the rights of children in general, and the additional rights of unaccompanied and separated children;
- how to register a child for temporary protection in the host country;
- the other legal options available to children that could be relevant, such as international protection, protection in the case of trafficking victims, protection due to their age, special protection in cases of domestic violence, etc.;
- how to access legal assistance in order to determine the most appropriate pathway for regularising the stay of the child.

#### 3.1. What are the rights of the child beneficiary of temporary protection?

##### 3.1.1. For all children

All children, including those fleeing Ukraine, are entitled to all rights laid out in the UN Convention of the Rights of the Child (CRC) <sup>(10)</sup>. The TPD establishes particular obligations for the Member States to protect children and the European Commission has issued recommendations on how to fulfil them <sup>(11)</sup>.

The TPD recall that all the decisions taken in relation to children must be based by virtue of the **principle of the best interests of the child**, in compliance with by the CRC <sup>(12)</sup> and the EU Charter of Fundamental Rights <sup>(13)</sup>.

The individual circumstances of the child, and their needs, must be **assessed** by all those working with children.

Children must be **informed** of procedures applied to them in a language that they understand.

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<sup>(10)</sup> UN General Assembly, [Convention on the Rights of the Child](#), 20 November 1989, United Nations, Treaty Series, vol. 1577.

<sup>(11)</sup> [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 (21.3.2022, OJ C 126I).

<sup>(12)</sup> As laid out in Article 3(1) CRC.

<sup>(13)</sup> Article 24 of European Union, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02.





The **views** of the child must be heard and given due weight when making decisions affecting the child, according to the age and maturity of the child.

An **integrated child protection response** ensures children are at the centre as well as the coordination of relevant authorities in the different proceedings in which children participate

Displaced children from Ukraine have the immediate right to access **the education system** under the same conditions as Member State nationals and EU citizens. In practice, this means that they should be able to access the national education system as soon as it is materially possible and clear that the children meet the temporary protection conditions and being able to follow the courses and activities offered in adequate conditions. This applies:

- even when the procedure to issue the residence permit is still pending;
- for unaccompanied children, even where procedures for the appointment of a guardian/representative and for determining the type of care are still ongoing or while the child is in provisional accommodation.

Where there is a legal entitlement to early childhood **education** and care or where the latter is compulsory, access to it should be provided for children who are beneficiaries of temporary protection under the same conditions as for nationals.

Documents showing the level of education achieved in Ukraine (e.g. graduation of secondary school, level A1 in English, Ukrainian online platforms etc.) should be taken into account.

The European Commission recommends that **support measures**, such as preparatory classes, are provided to children to facilitate their access to and participation in the education system<sup>(14)</sup>. Such support measures include supporting the acquisition of knowledge of the host country language (in mainstream education or through preparatory classes leading to a quick transition into regular education), assessing pupils' competence levels, providing guidance to pupils and parents about the host country, psychological support, and supporting the teachers and other professionals.

Children must have **access to healthcare**, including preventive care and mental healthcare, and psychosocial assistance. Children arriving to your country might be suffering from physical or mental health issues or psychological distress due to the effects of the conflict and thus might require special care. Regular and specialised healthcare should be guaranteed to these children under the same conditions as national children.

Authorities should provide children with **age-appropriate information** on the situation, their rights and on procedures and services available. Authorities should ensure that all those

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<sup>(14)</sup> European Commission, Directorate-General for Education, Youth, Sport and Culture, [Supporting the inclusion of displaced children from Ukraine in education: considerations, key principles and practices for the school year 2022-2023](#), Publications Office of the European Union, 2022.





professionals working with children – including border staff – are **appropriately trained** and that **child protection professionals are involved** where relevant <sup>(15)</sup>.

### 3.1.2. Unaccompanied children

Unaccompanied children have, in addition to the rights mentioned above, specific child protection needs and are therefore entitled to additional rights and safeguards. Temporary protection ensures full protection and swift access to the following rights for unaccompanied children.

#### Representation

The appointment of a guardian/representative should take place as soon as possible. This can be by appointing a temporary guardian while pending the appointment of the permanent guardian, or otherwise appointing an organisation responsible for the care and well-being of children, or any other appropriate representation. The European Commission <sup>(16)</sup> considers that ‘appropriate representation’ necessarily requires that it be suited to the specific needs of children and, in particular to assess and act in the best interests of the child.

Guardians or representatives must possess the necessary expertise in the field of childcare to ensure that the child’s best interests are safeguarded. Representation can only be assigned to those individuals who hold no record of previous child-related crimes (‘vetting’) <sup>(17)</sup>.

Among the unaccompanied children arriving from Ukraine, there are also children that are travelling and being taken care of by relatives or friends of the family, but without a formal appointment as guardian. Child protection authorities should be informed about these children so that they can assess the support needed. This could include appointing the accompanying adult as legal guardian while appointing a local ‘support’ guardian to help them carry out their tasks. Another alternative could be appointing a legal guardian from the host country while entrusting the care to the accompanying adult. The solution should be taken according to the best interests of the child.

#### Family tracing and reunification

Authorities must initiate as soon as possible the procedures for tracing and identifying the child’s family members that may be residing elsewhere. If family members have been identified, initiate as soon as possible the procedures for the reunification of the child with the family members, if this is in the child’s best interests.

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<sup>(15)</sup> [Operational guidelines](#) for the implementation of Council implementing Decision 2022/382 within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (2022/C 126 I/01).

<sup>(16)</sup> European Commission, [Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care](#), 2022.

<sup>(17)</sup> Based on the Article 10 of [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA (17.12.2011, L 335/1).





Family members are defined in Article 15 TPD as:

- nuclear family of the child: parents of the child and siblings, or if the children are with their own family, their own spouse/partner and children.
- close relatives: close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the beneficiary at the time.

Unaccompanied children with family members who are beneficiaries of temporary protection in another Member State, should be reunited (in accordance with Articles 15 and 26 TPD), taking into account the views of the child, according to their age and maturity, and the best interests of the child.

In addition, unaccompanied children arriving from Ukraine, who have family members in another Member State under a different legal regime, may also be reunited with them according to other instruments of EU law (e.g. Directive 2003/86/EC <sup>(18)</sup>, Directive 2004/38/EC <sup>(19)</sup>, Regulation (EU) 604/2013 <sup>(20)</sup> where applicable, or on the basis of national law <sup>(21)</sup>.

### **Adequate placement**

The TPD <sup>(22)</sup> requires authorities to accommodate unaccompanied children with

- a) adult relatives;
- a) a foster family;
- b) in reception centres with special provisions for children, or in other accommodation suitable for children;
- c) or with the person who looked after the child when fleeing.

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<sup>(18)</sup> [Council Directive 2003/86/EC](#) of 22 September 2003 on the right to family reunification (3.10.2003, OJ L 251).

<sup>(19)</sup> [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), (30.4.2004, OJ L 158)

<sup>(20)</sup> [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), (29.6.2013, OJ L 180).

<sup>(21)</sup> [Communication 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 2011/55/EC, and having the effect of introducing temporary protection(2022/C1261/01), 21/3/2022

<sup>(22)</sup> Pursuant to Article 16(2) of [Council Directive 2001/55/EC of 20 July 2001](#) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, (20.07.2001, OJ L 2125).







As far as is possible, siblings and family members must be kept together, considering the best interests of the child concerned and the child's view based on the age and maturity of the child.

Where available, alternatives to institutionalised care – such as foster families or community care, semi-independent living arrangements for teenagers above 16 years old, etc. – should be prioritised.

Foster families and communities/organisations entrusted under national law with the care of unaccompanied children benefitting from temporary protection should also be provided with family and support allowances for the children taken in charge, as laid out in the national law of the host country.

### 3.1.3. Children accompanied by guardians formally appointed by Ukrainian authorities

Children who were living in Ukrainian institutions are typically arriving in Europe in relatively large groups, often accompanied by guardians and/or social workers and/or teachers from the same Ukrainian institution they were residing in. Some of the children may have physical and/or mental disabilities and require special care.

Authorities must work to identify suitable community-based and alternative care solutions for these groups of children, for example smaller groups of 5-6 children could be assisted by diverse professionals and accommodated together in close vicinity with the other groups so that they can remain in contact. Alternative care solutions should provide a good balance between the need to preserve the links between the members of the group and providing high quality care in compliance with the deinstitutionalisation process, the principle of the best interests of the child and the UN Convention on the Rights of Persons with disabilities<sup>(23)</sup>.

Another case with some similarities is the children arriving with friends or family members who have been formally assigned a guardian by the competent Ukrainian authorities before departing Ukraine. Guardians appointed in Ukraine, who are themselves displaced persons as well, may need support in two aspects.

#### The recognition and verification of Ukrainian acts appointing guardianship

Ukraine and all the Member States are all Contracting States to the 1996 Hague Convention on Parental Responsibility and Protection of Children<sup>(24)</sup>. Under Article 23(1) of this Convention, the act of appointment of a guardian will be automatically recognised in the Member States without the need of a formal procedure, if in the best interests of the child. The authenticity of the guardianship documents can also be verified for individual cases with the

<sup>(23)</sup> European Commission, *Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care*, 2022. UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106.

<sup>(24)</sup> Hague Conference on Private International Law, *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children*, Concluded 19 October 1996.



support of the Central Authorities appointed under the 1996 Hague Convention and of the Ukrainian consulates. In all cases, sharing of information about the child needs to consider personal data issues and safety considerations regarding the individual situation.

Central Authorities can assist in obtaining evidence and clarifications from the Ukrainian authorities regarding the situation of unaccompanied children (localising and contacting parents in Ukraine, family tracing, documentation, etc.). Additionally, the Central Authorities appointed under Council Regulation (EU) 2019/1111 <sup>(25)</sup> may be able to assist in situations where information is sought, or judicial cooperation is needed between Member States. This could occur, for example, when a child who has been placed in one Member State has siblings in another Member State and information is needed or a transfer of the child is being considered.

**Tip**

- You can find the contact details of the Central Authority of your country here: <https://www.hcch.net/en/states/authorities>
- The European Judicial Network provides further information on European and international instruments relevant for children fleeing Ukraine in a factsheet available here: [https://e-justice.europa.eu/38593/EN/children\\_from\\_ukraine\\_\\_civil\\_judicial\\_cooperation](https://e-justice.europa.eu/38593/EN/children_from_ukraine__civil_judicial_cooperation)
- The Council of the Notariats of the European Union has developed a form enabling parents to express their wishes regarding the journey of their child leaving Ukraine and the exercise of parental responsibility available here: <https://enn-rne.eu/crossCheckUkrainianChildren>

**Supporting guardians appointed by Ukrainian authorities to navigate the national system**

As mentioned above, guardians from Ukraine may be supporting unaccompanied and separated children for whom they were responsible before leaving Ukraine whether in institutions or as foster families. Some adults accompanying children may have become guardians for them by virtue of the displacement, and, have been formally appointed as such.

Being displaced persons themselves, these guardians may need additional and exceptional support to navigate the procedures and to achieve the necessary level of socio-economic autonomy, especially when they are also in charge of providing the daily care for the child(ren). In addition, some are not professional guardians, and have little experience and qualifications in relation to performing the tasks of the guardian. In this context, it is very important to find ways to support the guardians with their guardianship tasks.

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<sup>(25)</sup> [Council Regulation \(EU\) 2019/1111 of 25 June 2019](#) on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).



Some countries have developed new forms of support for the guardians appointed in Ukraine or to further support the children under their care. Below are some examples <sup>(26)</sup>:

- several Italian juvenile courts have occasionally appointed local *protutori* (supporting guardians) to support the guardian or the carer from Ukraine;
- the Netherlands made the national guardianship authority Nidos responsible for temporary / additional guardianship for the children with guardians appointed in Ukraine, to support the latter in delivering their tasks;
- Belgium is considering enabling a ‘light’ guardianship i.e. a system whereby the local guardian would support the Ukrainian guardian (and could therefore take on lighter tasks than full guardianship, and consequently also cover more children).



#### Tip

A collection of good practices offered to the Ukrainian guardians across the European Union is available from the European Guardianship Network <sup>(27)</sup>.

## 3.2. How does temporary protection work?

Children are entitled to protection, full care and access to all basic rights immediately upon arrival to your country. This is particularly relevant where registration for temporary protection of a child must be done by the parent/guardian/representative, but their appointment or the recognition of the guardian/representative is still pending.

The registration of the unaccompanied and separated children is not only limited to registration for temporary protection but includes also registration at the border when entering the host country and a registration with child protection authorities in the host country.

Not all child protection authorities keep a registry of the children under their protection, hence a timely referral to child protection services will be necessary to activate the protection of the child and the monitoring of the situation of the children, and even to initiate procedures for the appointment of a guardian.

The registration with the child protection services is a distinct step from registration for temporary protection. For children, temporary protection adds a specific set of rights and swift access to services. It is thus essential children are registered for temporary protection as soon as possible.

<sup>(26)</sup> European Commission, *Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care*, 2022.

<sup>(27)</sup> European Guardianship Network, *Spotlight on practices regarding guardianship for unaccompanied and separated children arriving in the EU from Ukraine*, Last updated: 21 July 2022.





## Registration for temporary protection

Authorities must register the child's personal data:

- name;
- nationality or statelessness;
- date and place of birth;
- marital status;
- family relationship;
- a photograph, fingerprints and signature may be also requested.

In the case of a separated child, data should also include information about the adult that is accompanying the child.

In the case of an unaccompanied child, authorities must appoint guardians/representatives as soon as possible. This could include appointing a temporary guardian pending the appointment of the permanent guardian, or, ensuring the representation by an organisation which is responsible for the care and well-being of children, or by any other appropriate representation.

Where the information on the registered child needs to be exchanged with other Member States (e.g. in the case of family reunification) this data can be exchanged via DubliNet, an electronic network used to transmit information between national authorities established under Regulation (EU) No 604/2013 <sup>(28)</sup>.

Once registered for temporary protection, authorities can confirm the child is a beneficiary of temporary protection and will issue a residence permit for the duration of the protection, set for one year and renewable.

### Temporary protection registration in your country

Check your national legislation to understand temporary protection registration in your country. Useful information can be found at the EUAA Who is Who platform here: <https://whoiswho.euaa.europa.eu/Pages/Temporary-protection.aspx>

## 3.3. How is temporary protection related to other procedures?

### Anti-trafficking measures and the prevention of children going missing

Children and unaccompanied children are at a particularly high risk of trafficking.

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<sup>(28)</sup> European Commission, 'Transmission of asylum applications between member states - DubliNet now operational', Brussels, IP/03/1271, 19 September 2003.





The vast majority of persons fleeing Ukraine are women and children <sup>(29)</sup>. A gender and child rights-based approach needs to be taken into account in the implementation of all the actions taken by officials and professionals, including you as a guardian.

Children should be traceable from the moment they leave Ukraine to the moment of arrival in their country of destination. Your duty as a guardian is to ensure children are registered in the country of their current stay or residence. Unaccompanied children should be registered with the child protection authorities in countries of destination to initiate procedures for the placement in care and guardianship as soon as possible.

Cooperation and involvement of international organisations and civil society organisations with child protection expertise will facilitate the children's access to the appropriate services and support.

Unaccompanied children and children evacuated from institutions are also at particular risk of being exploited by traffickers. Equally important is to pay particular attention to the higher trafficking risks for children with disabilities or with other special needs <sup>(30)</sup>.

According to the European Commission's anti-trafficking common action plan <sup>(31)</sup>, anti-trafficking measures should include:

- carrying out checks and ensuring proper vetting for all adults working with the children, and in particular of foster families, in line with the best interests of the child;
- awareness raising sessions with the children according to their maturity and level of comprehension;
- training for officials who come into contact with potential victims;
- 24/7 helplines.

As a guardian, be aware of the risks both offline, for instance in the context of offers for private accommodation, and online, including on social media and the internet. Where a child has been trafficked, they will benefit from the provisions of the EU anti-trafficking directive <sup>(32)</sup>.

When representing displaced unaccompanied children it is important to take stock of protective measures to prevent the child from going missing.

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<sup>(29)</sup> Eurostat, '[Ukrainians granted temporary protection in July](#)', 9 July 2022.

<sup>(30)</sup> European Commission, '[A Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine – Under the lead of the EU Anti-trafficking Coordinator](#)', 2022.

<sup>(31)</sup> European Commission, '[A Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine – Under the lead of the EU Anti-trafficking Coordinator](#)', 2022.

<sup>(32)</sup> [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (15.4.2011, OJ L 101).



**Tip**

If a child goes missing, immediately alert law enforcement, provide information on the child and inform the hotline for missing children 116 000 (active in 31 European countries, including all Member States). You can also find country specific information on the Missing Children Europe's webpage 'Missing Children Ukraine' available here: <https://missingchildreneurope.eu/ukraine/>

In the event of a child's disappearance, as a guardian you should inform law enforcement authorities. Additionally, national authorities can register the disappearance in relevant international and national databases, including the Schengen Information System (SIS) established by Regulation (EU) 2018/1862 <sup>(33)</sup>, the Interpol notices and Europol's database.

Where likely that the missing child has crossed borders, law enforcement officers should introduce an alert in the SIS <sup>(34)</sup>. SIS allows officers to insert not only 'reactive' alerts about children who have gone missing, but also 'preventive' alerts on different situations, such as:

- children at risk of abduction by a parent, a family member or a guardian;
- children at risk of being taken abroad unlawfully or who need to be prevented from travelling for their own protection from trafficking or from being made to participate actively in hostilities.

### International Protection

Children who are beneficiaries of temporary protection or children not falling under the scope of the TPD have the right to apply for international protection at any time.

The duty of the guardian is to secure legal aid and quality legal assistance in order to help and support the child when deciding which legal pathway represents the best interests of the child. Sometimes, depending on the individual circumstances of each child, applying for asylum might be in the best interests of the child. In this case, the guardian should support the child in submitting an application for international protection. The temporary protection may be suspended while the child has the status and rights of an applicant for international protection. If at the end of the examination the application for international protection is rejected and the current temporary protection is still in place in the EU, the child will once again have temporary protection status. Be aware of the practice in your country in order to

<sup>(33)</sup> [Regulation \(EU\) 2018/1862](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, (7.12.2018, OJ L 312).

<sup>(34)</sup> Article 32 SIS regulation.



decide whether to recommend asking for international protection in addition to the temporary protection status.

### **National protection for children**

Some countries have established other national protection pathways based on their domestic legislation. When dealing with unaccompanied children you should be familiar with all the available legal pathways to be able to assess which one is more beneficial for the child and ask for advice if necessary. For example, an unaccompanied child may be not eligible for temporary protection or may not meet the criteria to qualify for refugee status but may be considered for humanitarian protection or may be granted a permit to stay because of their minor age, or for study reasons. There are some countries that recognise a residence permit for social integration programmes for young adults who have been under the care of child protection services, and upon reaching the age of majority, obtain the conversion of the document into a residence permit to study or work.

### **Alternative legal pathways available in your country**

Check your national legislation to see the alternate available legal pathways for children.



## 4. What do you need to do as a guardian?

As a guardian, developing a positive/trusting relationship with the child is crucial to providing effective services and due representation. It is also important that all other professionals working with the children develop positive relationships with the child and with the family (unless there are reasons indicating the contact with the family is not in the child's best interests).

Understanding and respecting a child's opinion, strengths, needs and goals is crucial to develop a positive relationship. This trust-based relationship will help you and other authorities in making decisions according to the best interests of the child.

Allowing the child to feel in charge through the involvement in the decision-making process will encourage them to be more engaged.



### Tip

As a guardian you can improve your skills in order to better support the child and join the efforts of other child protection professionals. FRA and the European Commission have developed a detailed practical handbook on the functions of guardians of unaccompanied children, available in all EU languages here:

<https://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care>

An online course developed by FRA in coordination with the European Guardianship Network will be available online in the FRA learning platform at the end of 2022 here:

<https://e-learning.fra.europa.eu/>

You should consider the following particularly for unaccompanied children in the context of the TPD.

### **Safeguard the child's best interests, by participating in the assessment and ensuring children have adequate access to the procedures.**

As a guardian, you are in a position to initiate and promote an assessment with competent authorities of the particular situation of the child you are representing. This assessment should include the risk of the child going missing in the next days after the child is placed under your care. As a guardian you should be aware of and know how to respond to children who experienced domestic violence or abuse, including sexual abuse. Guardians should also be involved in the individual care plans, adapted on a regular basis considering the evolving needs of the child.

This assessment should also consider and explore all **possible legal pathways** for the child, such as temporary protection, international protection, statelessness recognition, or any other





national protection available (e.g. permit to stay based on their minor age, permit to stay under national protection such as on humanitarian grounds for study reasons or health considerations, special protection for victims of domestic violence). Depending on the country, this might be done by the guardian or by child protection authorities, or another professional with the support of the guardian.

As a guardian you should help to identify and implement a **durable solution**. You may have to consider the child's return and reintegration in Ukraine once safe to do so. Depending on the individual case and based on a best interests assessment, return to Ukraine might not be possible and/or other durable solutions may need to be considered. For example, the child's integration in the country of arrival, if the child applied and was granted international protection or another legal residence status; or resettlement to a third country<sup>(35)</sup>. Respect for the principle of *non-refoulement* should always be ensured and children need to be provided with adequate information and be given the opportunity to express their views and be heard.

### **Exercise legal representation, support the child in legal procedures and ensure access to legal assistance and counselling**

→ **Registration.** As guardian you should support the child in registering for temporary protection or in applying other appropriate procedures. There might be cases, and depending on the circumstances, where applying for international protection may be a better option for the child. Due consideration concerning family reunification needs also to be evaluated. The guardian should also support the child in that procedure.

→ **During the temporary protection** and other legal procedures, as guardian you should accompany the child to administrative appointments, and also to possible hearings and interviews. You should support the child during the notification of the decisions, including potential relocations and/or transfers to another country, or other durable solutions.

You might require legal aid or counselling to understand and assist the child in obtaining temporary protection and initiating any appeal procedure, if needed.

Overall, you are expected to act as an advocate for the child and to promote the rights of the child in relation to different state authorities and service providers and in specific procedures.

### **Facilitate the child's participation by informing the child and hearing their views, and creating the space for other actors to consider the child's views**

To be able to form their views and actively participate in the procedure, children need to be **adequately informed**. As a guardian, you should inform the child of their rights, available services, and the different procedures, including the specific steps and possible outcomes of procedures.

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<sup>(35)</sup> European Commission, Action Plan on Unaccompanied Minors (2010-2014), COM(2010)213 final, Brussels, 6 May 2010, p. 12.



The child might not receive adequate information, or might have misunderstood, or might have forgotten. You, as guardian, have a responsibility to make sure appropriate child-friendly information reaches the child in a language that the child understands.



The EUAA leaflet targeting children on the temporary protection directive to inform them of their rights may be useful.

It is available in different languages, including in Ukrainian here: <https://euaa.europa.eu/publications/what-you-need-know-about-temporary-protection-children>



The TPD (Article 16(2)) also establishes the **right of the child to be heard** in the context of assigning placement. This right applies in all decisions affecting the child, including in relation to service provision and in the context of administrative and judicial proceedings. Children have different needs to make their views heard and to be listened to, for example some children may be timid, may have hearing or speaking impairments, others may need an interpreter. Some children may be used to forming and expressing their opinion, for others this might be more difficult. The guardian should also manage the expectations of the child, as the decisions of the authorities might not always correspond with the child's wishes.

In the case of unaccompanied children fleeing Ukraine, officials and service providers will have to ensure children have access to an interpreter and that interpretation services respect quality standards. Interpreters should not interfere with the content and substance of the communication, must be neutral and avoid intimidating the child. The gender of an interpreter may be relevant for a child and a child should be asked for their preferences, especially where the child is a victim of violence or exploitation or where the communication touches upon other sensitive issues. Online/virtual telephone interpretation can be useful in cases where quick access and an anonymous service is needed and where interpretation services for Ukrainian or other spoken languages is not available locally.

### Ensure the child's safety and well-being

An important task is to identify and respond to the child special needs, including by referring the child to the services needed such as those detailed below.

→ **Accommodation.** The TPD (Article 16) requires Member States to provide unaccompanied children with accommodation and refers to placement with adult relatives, with a foster family, in reception centres, or with the person who looked after the child when fleeing. As a guardian, you will need to ensure that the child accommodation is appropriate and that the views of the child regarding the placement are also considered, as indicated in Article 16(2).



The guardian will also supervise the stay of the child with the relatives or caregiver to ensure the child is doing well. If the child comes with a group of children such as sport teams or from a Ukrainian institution, it is recommended children can maintain close contact with those other members of the group but avoiding re-institutionalising the child.

→ **Access to education.** The TPD (Article 14(1)) grants persons under 18 years access to the education system under the same conditions as nationals of the host country. As guardian, you should make sure that access to quality education has been granted and that the child is enrolled in school. You might need to support the child in any administrative requirements, for example to validate previous degrees or diplomas, or facilitate access to language lessons.

→ **Access to medical or other assistance.** The TPD (Article 13(4)) refers to unaccompanied children as persons who might have special needs and are thus entitled to medical or other assistance. This could include, for example, psychological support for children witnessing war crimes, or services for child victims of rape. As a guardian, you should ensure the child is referred and has effective access to the support services.

→ **Family reunification.** The guardian should promote close contact with the parents of the child provided unless there are reasons to think is not in the child's best interests. When children do not have contact with parents or family members or do not know their whereabouts, as a guardian you should initiate or encourage authorities to initiate family tracing. Once the family is found, you should promote family reunification, after assessing that tracing and reunification respect the best interests of the child.

### The family reunification procedure in your country

Check your national legislation to see which organisation is responsible for tracing family members in your country and for information on the reunification procedure.

### Act as a link with other professionals

As a guardian, you will need to ensure that the child receives all necessary services, such as legal, social, health, psychological, material and educational services. For this, you will have to stay in regular contact with the child, and act in coordination with other agencies, authorities, service providers and other individuals. You are a reference person for the child and the link between the child and the specialists who provide care and assistance to the child. This could include, in the case of children from Ukrainian institutions, the coordination with the Ukrainian guardian or the adult person who accompanied the group of children to the EU.

The guardian should also facilitate the child's contact and communication with other professionals when necessary. You will also have to respect, and advocate for, the child's right to be heard, and to facilitate the child's participation in all decisions affecting the child.





Your responsibility as a guardian also includes monitoring the situation of the child and the support of other professionals involved, with the aim to ensure that all services provided are adequate and meet the child's best interests.





# Annexes

## Additional resources

### EUAA

The EUAA Who is Who platform is a source of information about the key stakeholders and their role in asylum and reception systems based on national policies and legislation and how this is implemented in practice. It includes a page on temporary protection, which is available at: <https://whoiswho.euaa.europa.eu/Pages/Temporary-protection.aspx>

EASO, *Practical Guide on the Best Interests of the Child in Asylum Procedures*, 2019.

### FRA

*National legislation implementing the EU Temporary Protection Directive in selected EU Member States*, October 2022, updated regularly.

*Children deprived of parental care found in an EU Member State other than their own – A guide to enhance child protection focusing on victims of trafficking*, 2019.

FRA and the European Commission, *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2014.

### European Guardianship Network

*Ukraine information – Resources and information concerning Ukraine*, last updated 7 October 2022.

### European Commission

*Unaccompanied and Separated Children fleeing from war in Ukraine – FAQs on Registration, Reception and Care*, 2022

The EU Solidarity with Ukraine webpage with information for people fleeing the war in Ukraine is available here: [https://eu-solidarity-ukraine.ec.europa.eu/index\\_en](https://eu-solidarity-ukraine.ec.europa.eu/index_en).

- This webpage contains key information about the rights with regard to crossing the border into an EU country, eligibility for temporary protection and applying for international protection, as well as the rights of travel inside the European Union.





## UNHCR

[Data Portal on the Ukraine Refugee Situation](#)

Information for children and young people arriving from Ukraine can be found on the UNHCR help pages of Country Offices such as [Romania](#), [Slovakia](#), [Poland](#).

## UNICEF

[\*Guidance for protecting displaced and refugee children in and outside of Ukraine - How authorities and aid workers can help keep children displaced by the war in Ukraine safe from trafficking and other forms of exploitation and abuse\*](#), 10 March 2022.

## IOM

IOM [Platform for Counter-trafficking in humanitarian settings](#).

## Civil society organisations

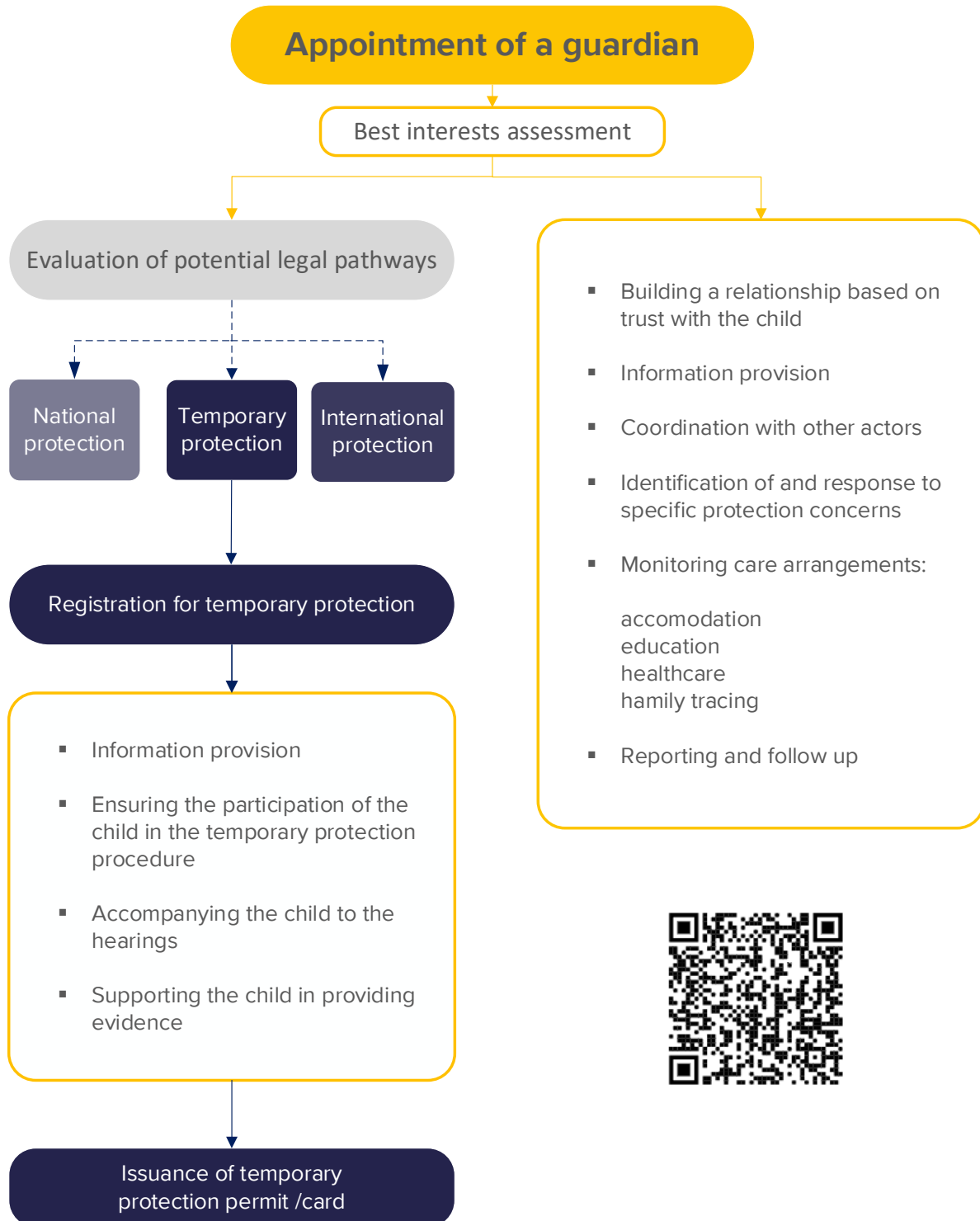
Missing Children Europe, [\*Practical guidance on preventing and responding to trafficking and disappearances of children in migration\*](#), 2019.

Proguard, [\*Durable solution: integration in the receiving country\*](#).





## 4.1. Workflow of the guardian’s role in the temporary protection context





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