

# Temporary Protection Belgium

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

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## Relevant documents related to temporary protection

Electronic A-card	The A-card is a residence permit that is, amongst others, granted to beneficiaries of international protection. If the applicant receives a refugee status, he/she will receive an electronic identity card, type A, that is valid for 5 years. If he/she is granted subsidiary protection status, he/she receives a residence permit in the form of an A-card for a period of one year. The municipality may then renew it each time for a period of two years.
Annex 15	The annex 15 is a temporary residence permit with a validity of 45 days awaiting the issuing of the A-card. Beneficiaries receive the Annex 15 upon registration, after their address is confirmed by the municipality, they are given the A-card.
Temporary protection certificate	Upon registration at the IBZ registration Centre, beneficiaries with a positive decision on their temporary protection application receive a temporary protection certificate which serves a proof of their right to temporary protection but does not in itself function as a residence permit.

### A. General

The Temporary Protection Directive (TPD) was implemented based on the provisions of the Belgian Aliens Act (“*de Vreemdelingenwet*”)<sup>1</sup> introduced in 2003.<sup>2</sup> At the time of implementation, temporary protection was not ‘unknown’ to the Belgian Immigration Office, as in the past similar protection had been offered to nationals of former Yugoslavia, Rwandese nationals, Bosnians, and Kosovars.<sup>3</sup> However, a framework that gave legal status to displaced persons was lacking until the implementation of the Directive. Following the Russian invasion, the Belgian senate agreed on 25 February 2022 that the necessary steps should be taken to temporarily accommodate Ukrainian war refugees.<sup>4</sup> Following the Council Implementing Decision (EU) 2022/382 of 4 March 2022, a registration centre was set up in Brussels for people with a potential right to temporary protection.<sup>5</sup> The Belgian Aliens Act provides that temporary protection is applied to the same categories of people who are eligible for temporary protection under the implementation decision.<sup>6</sup> While this is the case overall, there are slight differences in interpretation and application (see further: [Qualification for temporary protection](#)).

Between 10 March 2022 and 28 February 2023, 66,386 persons received a temporary protection certificate in Belgium.<sup>7</sup> This includes 64,865 persons with the Ukrainian nationality, and 1,521 persons holding another nationality.<sup>8</sup> There are no statistics available on the specific grounds for granting temporary protection, nor on the number of persons present in the country that were displaced but fall beyond the scope of the TPD. The refusal decisions might however provide some insights in this respect: in the same period, 1,208 Ukrainian nationals were rejected for temporary protection. The most common refusal grounds are that the applicant did not prove to have been living in Ukraine before 24 February 2022, or the fact of having a residence permit in another member state (other than temporary protection). For temporary protection applicants without the Ukrainian nationality, the total number of refusal decisions in the same period amounts to 523.<sup>9</sup> This includes people who did not provide sufficient proof of family ties with a beneficiary or did not have a permanent residence permit in Ukraine, and if they had provided sufficient proof, those considered to be able to return home in safe and durable conditions.

### B. Qualification for temporary protection

The durational scope of temporary protection in Belgium is in line with article 4 §1 of the TPD. Initially, temporary protection is granted for a year, renewable with two periods of six months, after which a new Council decision could extend it for another year. The temporary protection status can either be ended in case the maximum period is reached or at any time if a decision of the Council of the EU ends temporary protection.<sup>10</sup> Belgium has equally extended the temporary protection with another year (rather than six months), up to March 2024 (see [Residence permit](#)).<sup>11</sup>

<sup>1</sup> Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens, available in Dutch and French at: <https://bit.ly/3YaTMyC>

<sup>2</sup> Law of 18 March 2003 amending the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens, available in Dutch and French at: <http://bit.ly/3HkLXzE>

<sup>3</sup> Chamber of representatives, *Wetsontwerp*, 1 October 2002, p. 4, available in French and Dutch at: <https://bit.ly/3lF11vd>.

<sup>4</sup> The Senate, *The senate passes a resolution on the Russian invasion in Ukraine*, 25 February 2022, available in Dutch and French at: <http://bit.ly/3KPumMS>.

<sup>5</sup> Fedasil, *Reception of the Ukrainian nationals*, 4 March, 2022, available in English at: <http://bit.ly/3KlImDXF>.

<sup>6</sup> Article 59/27 Aliens Act.

<sup>7</sup> Statbel, *Displaced persons from Ukraine*, available in English at: <https://bit.ly/3ZmG5O4>.

<sup>8</sup> IBZ, *Temporary protection monthly statistics*, available in Dutch and French at: <https://bit.ly/3y1Kvyc>. The numbers from 2022 (from 10 March to 31 December) are added together with the numbers from January and February (from 1 January until 27 February), see table 2.8 for 2022 and 2.6 for 2023.

<sup>9</sup> IBZ, *Temporary protection monthly statistics*, available in Dutch and French at: <https://bit.ly/3y1Kvyc>. The numbers from 2022 (from 10 March to 31 December) are added together with the numbers from January and February (from 1 January until 27 February), see table 3.

<sup>10</sup> Article 57/30 § 1 Aliens Act

<sup>11</sup> IBZ, *Procedure*, available at: <https://bit.ly/3lDfIMQ>.

In terms of the material scope, the following groups are considered to fall under the scope of temporary protection in Belgium as implemented by the federal authority responsible for handling and deciding on temporary protection applications, the Immigration Office (IBZ):

(1) Ukrainian nationals and their family members who had their principal place of residence before 24 February 2022 in Ukraine;

(2) stateless persons and third country-nationals who enjoyed international protection or an equivalent status in Ukraine before 24 February 2022 and their family members who, before that date, had their main place of residence in Ukraine;

(3) third country nationals who resided in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit and who cannot return to their country in a safe and durable manner.<sup>12</sup>

Contrary to the wording of the Council Implementing Decision, the Immigration Office does not speak of Ukrainian nationals who were 'residing' in Ukraine before 24 February but of those having their 'primary residence' in Ukraine before this date. While it is plausible that this is the case for many who resided in Ukraine before 24 February, this still constitutes a restriction of the scope determined by the Council Decision and raises unanswered questions about what can and cannot be considered as a primary place of residence.

For Ukrainian nationals who left Ukraine before 24 February 2022, the Immigration Office evaluates their case on an individual basis, considering all relevant elements.<sup>13</sup> They usually receive a decision on the day of registration, unless their case is more complex, in which case it can take up to three days before a decision is made.<sup>14</sup> There is no clear-cut formula according to which persons of this category receive temporary protection, nor is there much clarity on the reasoning of the Immigration Office. It is known, however, that Belgium follows the recommendations of the European Commission to extend temporary protection to those categories of persons who left Ukraine shortly before 24 February because of work, studies, or family visits (...), in the cases of persons who had a short stay permit in Belgium before 24 February.<sup>15</sup> The issuing of temporary protection to 140 seasonal workers residing in Belgium before 24 February indicates that this category - in the absence of other elements such as a visa for another Member State or reasons of public order - generally receive temporary protection.<sup>16</sup> Other persons whose long term residence permit is or was ending after 24 February 2022, such as students, are subject to an individual evaluation by the Immigration Office.

In cases of Ukrainian nationals living in Belgium before 24 February without having registered their residence in the country, the Immigration Office looks at aspects such as the administrative situation of the person in question, how long they have been in Belgium and other elements in the file.<sup>17</sup> Based on an analysis of several such cases, it seems that whether one resided in Belgium before 24 February rather than in another Member State is considered as an essential element that can be advantageous to the applicant.<sup>18</sup>

Three types of third country nationals are eligible for temporary protection in Belgium:

<sup>12</sup> Website Immigration Office: *Temporary Protection*, available at: <https://bit.ly/3J9SwHo>.

<sup>13</sup> Myria, *Contact meeting*, 18 May 2022, available in French and Dutch at: <https://bit.ly/3XMDJHv>, 13.

<sup>14</sup> *Ibid.*, available at <https://bit.ly/3XMDJHv>, 10-11.

<sup>15</sup> See Agii (agency for integration and citizenship), pt. 2.3.1.1 *Scope of application*, available at: <http://bit.ly/3xZz2in>.

<sup>16</sup> See Agii, pt. 2.3.1.1 *Scope of application*, available at: <http://bit.ly/3xZz2in>.

<sup>17</sup> Myria, *Contact meeting*, 23 March 2022, available in French and Dutch at: <https://bit.ly/3J3i2wV>, 8.

<sup>18</sup> This reasoning is strengthened by the issuing of a negative decision by IBZ [internal document], 5 August 2022, of someone who left Ukraine 4 months before the 24 February 2022, which she spent in Poland, and who was denied temporary protection upon arrival in Belgium even though there was no element of public order or a visa for another member state.

- (1) people who benefitted from international protection or equivalent national protection in Ukraine whose primary residence was in Ukraine before 24 February 2022;
- (2) people residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit who are not able to return safely and durably to their country of origin;
- (3) people who provide proof of family links with a person enjoying temporary protection.

The decision whether a person can return to their country of origin safely and securely, is taken on a case-by-case basis on the ground of a brief interview and evidence provided by the applicant.<sup>19</sup> There is no defined list of countries that are not considered as places where a safe and durable return is possible. To determine whether a return to the country of origin under these conditions is possible, a short interview is conducted within three days' time of the application. The person is expected to present out of their own initiative all the evidence in support of the impossibility to return in a safe and durable manner.<sup>20</sup> With regards to the possibility of a durable return, IBZ takes - among other things but not exclusively - the following into account: whether the person has accommodation in the country of origin, whether the person has lived there recently,<sup>21</sup> the years spent there, whether the person has exercised economic activities there in the past, whether the person has studied there, whether the person was able to provide for their living expenses, whether the person has a social network there and whether the person speaks the local language.<sup>22</sup> In regards to a family with a minor child, IBZ particularly looks at the child's link with the country of origin or the possibility of developing this link, the years the child has spent there and the possibility of learning the culture and language (though the parents).<sup>23</sup> Finally, it is also considered whether the state of health could prevent them from returning to the country of origin.<sup>24</sup>

In case the Immigration Office decides that the person can return to their country of origin, this decision may be subjected to a non-suspensive appeal to the Council for Alien Law Litigation (CALL). The applicant can also decide to apply for international protection.

The 'family members' definition includes the following persons:

- (1) the spouse or unmarried partner with whom a durable relationship is maintained, according to the definition provided in the Belgian Aliens Act (meaning only registered partnerships are considered equivalent to marriage<sup>25</sup>);
- (2) minor unmarried children, including those of the spouse, regardless of whether they were born within or outside the marriage or are adopted;
- (3) other close relatives who were living with the family at the time of the circumstances surrounding the mass influx of displaced persons, and who were wholly or mainly dependent at that time.<sup>26</sup>

On some points, it differs from the scope of the Council Implementing Decision. Firstly, while article 2(4) of the Council Implementing Decision requires that family members must have been residing in Ukraine before 24 February, Belgium does not apply this criterion for the family members under article 2(4) (a) and (b) (spouse or durable partner and minor unmarried children). This means that for these categories

<sup>19</sup> IBZ, *Stateless persons and nationals of third countries*, available in English at: <https://bit.ly/3Zkem0y>.

<sup>20</sup> Myria, *contact meeting*, 18 May 2022, p. 7-8, available in French and Dutch at: <https://bit.ly/3Z8V8es>.

<sup>21</sup> IBZ, negative decision [internal document], 25 August 2022

<sup>22</sup> See: CAL nr. 278.203, 30 September 2022, available [here](#); CAL nr. 278.204, 30 September 2022, available [here](#); CAL nr 277.651, 20 September 2022, not online available.

<sup>23</sup> CAL nr. 278.204, 30 September 2022, available [here](#).

<sup>24</sup> IBZ, negative decision [internal document], 25 August 2022

<sup>25</sup> Article 4, Royal Decree, 7 May 2008, available in French and Dutch at: <http://bit.ly/41AMIU3>, implementing article 40bis §2 Aliens Act. See also Council of Alien Law Litigation (CALL) 14 October 2022, nr. 278 741 which states that in case there is no marriage, a partner relationship can only be proven through a legally registered partnership.

<sup>26</sup> Website Immigration Office: *Temporary Protection*, available at: <https://bit.ly/3J9SwHo>.

of family members – whether Ukrainian or third country national – Belgium broadens the scope of application and allows for family reunification also if the family was formed after 24 February.<sup>27</sup> Secondly, while the ‘other close relatives’ mentioned in article 2(4)(c) of the Council Implementing Decision are considered to fall under the scope of the TPD, the Belgian Aliens Act states that Belgium ‘may’ grant a residence permit to this category.<sup>28</sup> There is a ‘*de facto* appreciation’ in this context, resulting in many ambiguities concerning the application of temporary protection to this category of persons.<sup>29</sup> For example: the third country national parents, who thus do not themselves fall under art. 2 (1) (b), are subject to the discretionary margin applied by IBZ. The IBZ only specifies that ‘the decision to grant a residence permit to this ‘other family members category’ will consider the exceptional difficulties they would encounter if the reunification of these family members would not be allowed.’<sup>30</sup> This is a ‘case-by-case evaluation.’<sup>31</sup> There are no indications as to how IBZ assesses this dependency link.

Persons with a residence permit (as a student, worker...) in another member state are excluded from temporary protection. The Immigration Office stated that the fact that a person has a visa issued by a European member state could give rise to a refusal decision. While each case is treated individually,<sup>32</sup> the application of this criterion is rather strict in practice. The CALL however recently annulled an unfavourable decision by the Immigration Office for a person with a short-term visa for study purposes in another member state which was set to expire on short notice. It stated that ‘temporary residence based on a short-term visa cannot be compared to temporary protection’, referring equally the communication from the Commission, which states that people are free to choose the member state where they want to exercise the rights connected to temporary protection.<sup>33</sup>

Those who do not fall under the scope of temporary protection and have no possibility of family reunification (see [family reunification](#)), can only seek protection by applying for international protection (apart from other routes such as the combined permit or a student visa). The request for international protection of non-Ukrainian third country nationals is examined. However, the international protection application of persons with Ukrainian nationality who do not fall under the scope to temporary protection or those who enjoy it are frozen for as long as temporary protection is active on a European level,<sup>34</sup> irrespective of whether the request for international protection was lodged during or before the activation of temporary protection.<sup>35</sup> This means that for Ukrainian’s who do not fall under the scope of temporary protection, the procedural routes leading to a residence permit are considerably restricted. As However, if they apply for international protection, the fact that their application is not examined, does not restrict their right to reception in a Fedasil reception centre while in procedure.<sup>36</sup> Nonetheless, due to the ongoing reception crisis in Belgium,<sup>37</sup> many (primarily single men) persons falling outside the scope of temporary protection

<sup>27</sup> Article 57/34 Aliens Act does not mention the requirement that the family must have been formed before the date of reference. The draft law (Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>, 27) equally states that Belgium will not limit itself to the hypothesis that the family was already formed in the country of origin and was separated due to the events.

<sup>28</sup> Article 57/34 § 1 Aliens Act

<sup>29</sup> The Cabinet in response to inquiry Caritas regarding the application of ‘other family members’, 22 March 2022. The draft law (Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>, 29) equally makes a clear distinction between ‘members of the core family’ on the one side and ‘other family members’ on the other side.

<sup>30</sup> Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>, 29-30.

<sup>31</sup> IBZ in response to inquiry Vluchtelingenwerk on the interpretation of ‘other family members’, 1 December 2022.

<sup>32</sup> IBZ in response to inquiry Vluchtelingenwerk regarding holders of a visa or residence permit in another member state, 8 June 2022.

<sup>33</sup> Communication from the Commission on the Operational Guidelines, available at: <http://bit.ly/41wYkC6> as confirmed by the Council of Alien Litigation (RVV) 14 October 2022, nr. 277962, 7.

<sup>34</sup> Article 51/9 Aliens Act. VW. See also CGRA, *Ukraine - state of affairs regarding applications for protection in Belgium*, 17 March 2022, available at <https://bit.ly/3WWEHA4>.

<sup>35</sup> Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>, 29-30.

<sup>36</sup> Article 6 § 1, Reception Act, available in Dutch and French at: <https://bit.ly/3Ycznc6>.

<sup>37</sup> See: ECRE, *Belgium: failure to deal with Persistent Reception Crisis is Attack on the Rule of Law*, January 13 2023, available in English at: <http://bit.ly/3KPIQ6e>; The Brussels times, *Despite 6000 convictions, Belgium still refuses to tackle reception crisis*, 23 January 2023, available in English at: <http://bit.ly/3YadjPq>.

will not benefit from reception and the socio-financial support under the regular international protection framework.

## C. Access to temporary protection and registration

### 1. Admission to territory

There have been no reports of problems at the Belgian border for Ukrainian nationals accessing the Belgian territory. People who potentially have the right to temporary protection are expected to present themselves at the registration centre in Brussels, the only place where their eligibility for temporary protection is assessed.<sup>38</sup> Persons arriving at the airport need to have the necessary documents for travel (passport and visa if necessary). They are redirected to the registration centre; in case of need, the police can request support from interpreters for this purpose. The Aliens Act establishes that people who might fall under article 28 of the TPD directive (the exclusion ground) can be detained at the border.<sup>39</sup> In 2022, there have been 26 denials of entry at the border, since the war in Ukraine, there have been no expulsions to Ukraine.<sup>40</sup>

There are equally no problems for Ukrainian nationals with re-accessing the country after a return to Ukraine, regardless of whether they have previously received the temporary protection status. However, for beneficiaries, other rights may be affected. The problems mainly arise in terms of communication with the local municipality about the duration of the departure, a lack of which can seriously affect their right to social benefits, housing, and residence permit (see [Movement and mobility](#)).

The general rule is that persons with a residency permit (A-card) or those still within their three months visa-free period with a biometrical passport can always return to Belgium on the basis of their A-card and passport.<sup>41</sup> In case they are away for longer than three months, several conditions should be met to be assured of their right of return: (1) they should notify their municipality, upon which they will receive an annex 18, (2) their A-card should not expire in the period while they are away, (3) within 15 days upon return, they should notify their return to the municipality, (4) they should return within a year.<sup>42</sup>

Third country nationals who think they might be eligible for temporary protection but have no visa-free entry into the Schengen area and try to reach Belgium from another country than the EU member states or Ukraine might have to acquire a visa.<sup>43</sup> For third country nationals who derive their residence permit from a family member with temporary protection, who do not enjoy visa-free entry to Belgium and who are not present in Ukraine or the Schengen area from where they can travel to Belgium, the only option is to apply for family reunification. Under the Belgian Aliens Act, conditions for family reunification with a person enjoying temporary protection is regulated separately from the family reunification directive and are less strict than the 'regular' family reunification scheme (see [Family reunification](#)).<sup>44</sup>

### 2. Freedom of movement

Individuals entitled to temporary protection who are not in possession of biometric passport or travel documents have not faced difficulties entering Belgium or attempting to continue to other European countries. The only note to add is that for administrative reasons, moving addresses within the country is not recommended as long as no permanent residence permit is obtained. The municipality conducts a 'check' to see if the person lives at the address reported to the municipality; if a person moved addresses during

<sup>38</sup> IBZ, *Where to submit a request for temporary protection?*, available at: <https://bit.ly/3IDfIMQ>.

<sup>39</sup> Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>. Article 57/32 Aliens Act.

<sup>40</sup> IBZ, information provided on 4 April 2023.

<sup>41</sup> Article 39 §1, §3 (2) Royal Decree 8 October 1981, available at: <https://bit.ly/408uhA9>.

<sup>42</sup> *Ibid.* Article 39 §1, §2 Royal Decree 8 October 1981.

<sup>43</sup> Article 6 (1) Schengen Borders Code, Available at: <http://bit.ly/3ZrUpVi>.

<sup>44</sup> Article 57/34 Aliens Act



this time, the process of obtaining a residence permit (A-card) can be prolonged and more complicated. This is because a new annex 15 (temporary residence permit) has to be issued, meaning that the period of 45 days (the maximum validity period of the annex 15) will start running again.

### 3. Registration under temporary protection

The Immigration Office is the authority responsible for the registration of potential beneficiaries of temporary protection.

Contrary to applications for international protection, there is no specific time limit to apply for temporary protection set by the law.<sup>45</sup> Late applications for temporary protection do not negatively influence the decision. However, potential beneficiaries of temporary protection to not end up in 'irregular stay', they should apply for temporary protection within three months since the date of entry to avoid. If their short stay is ending, they are strongly advised to present themselves at the municipality of their visit to either prolong their short stay or to apply for temporary protection.<sup>46</sup>

Potential beneficiaries are expected to reach the registration centre (initially Palais 8 at Heizel - Brussels, later moved to Place Victor Horta 40, 1060 Brussels) from Monday to Friday between 8h30 and 16h. They cannot and do not have to make an appointment. In principle, every person who presents themselves is granted access to the registration centre unless it is evident that the person has no connection to Ukraine or temporary protection. Applicants are asked to register their fingerprints and to present identification along with other elements proving that they fall under the scope of temporary protection.<sup>47</sup> On the day of the application, two interviews are conducted during which they are asked how they arrived in Belgium, on which date they left Ukraine, the reasons for their departure, and which region they are from. Their travel documents are verified to check if they have previously lodged a request for international protection or if they have previously been in Belgium.<sup>48</sup> When a temporary protection certificate cannot be issued immediately because an additional examination is considered necessary, the person will be notified of the decision at a later stage. This is usually within a day, or in more complex cases, within three days. This can occur in the following situations: (1) the applicant does not present the necessary documents, (2) the applicant is already known to the migration authorities and additional analysis on the file is necessary, (3) there are elements of public order or public security, (4) the applicant is a third country national with a permanent residence permit in Ukraine, who states not to be able to return under safe and durable conditions to their country of origin.<sup>49</sup> In these cases, the applicant is given a registration certificate while the Immigration Office examines the file.<sup>50</sup>

According to the Immigration Office, potential beneficiaries must provide 'documents that prove you fall under the scope of the temporary protection directive'.<sup>51</sup> Ukrainian nationals should provide proof of identity such as their biometric passport and national ID card. Persons with international protection in Ukraine, recognised stateless persons or other third country nationals should have evidence of their identity and statute in Ukraine. As for the family members, in addition to proof of identity, they should provide the proof of a sustainable relationship, which can only be delivered through an original marriage certificate or the proof of having a common child (for which a birth certificate including the name of the third country national-parent or a certified DNA test is needed).<sup>52</sup> In this context, the Immigration Office verifies if the marriage still exists at the moment of application.<sup>53</sup> For the category of 'other family members', proof of having lived together and dependency constitute a critical element in the examination.

<sup>45</sup> Article 12 Aliens Act,

<sup>46</sup> Immigration Office, *Short Stay*, available at: <https://bit.ly/3RjrmjY>.

<sup>47</sup> Immigration Office, *Procedure*, available at: <https://bit.ly/3IDfIMQ>.

<sup>48</sup> Fedasil in response to inquiry Vluchtelingenwerk regarding the registration procedure, 27 February 2023

<sup>49</sup> Myria, *Contact meeting 18 May 2022*, available in French and Dutch at: <https://bit.ly/3Z8V8es>, 10.

<sup>50</sup> *Ibid.*

<sup>51</sup> IBZ, *Procedure*, available at: <https://bit.ly/3IDfIMQ>.

<sup>52</sup> IBZ in response to inquiry Vluchtelingenwerk on the interpretation of 'family members', 1 December 2022.

<sup>53</sup> Myria, *Contact meeting 18 May 2022*, available in French and Dutch at: <https://bit.ly/3Z8V8es>, 8-9.

Persons with a favourable decision will receive a temporary protection certificate. This certificate is either in French or Dutch. They also receive a document which explains their status and rights as holders of 'temporary protection' from IBZ. Persons to whom no decision has been granted yet, receive an attestation of registration as well as an appointment to come and collect their decision on a later moment.<sup>54</sup> This attestation of registration does not allow registration at the municipality.

A negative decision is accompanied by information on the procedure to appeal as well as the contact details of the legal desk they can address for legal help. However, this information is usually in French or Dutch and is not very accessible to Ukrainians or third country nationals. They also receive a document briefly explaining the procedure for requesting international protection. Furthermore do they receive documents from the Red cross on a variety of topics (see [Information provision and access to NGOs](#)).

Persons who receive a refusal decision may present an appeal for annulment within 30 days.<sup>55</sup> They may again present themselves at the registration centre to ask for a review if new evidence could bring them under the scope of temporary protection. NGOs or lawyers may also request a review of an unfavourable decision via e-mail to the Immigration Office.

Practical obstacles and delays in registering applications arose especially in the first period after the activation of temporary protection, as some persons who could not provide proof that they fell under the scope of the temporary protection were denied entry to the registration centre without obtaining the chance to examine their case. Denial of entry – other than a refusal – did not result in a refusal decision or any proof of application, which is problematic in terms of the right to an effective remedy.<sup>56</sup> Another issue that arose was the delay in the issuing of a decision where the cases were more complex. The decision could take up to several weeks, especially for third country nationals. This was problematic since, without temporary protection, these persons could not enjoy any of the social rights attached to temporary protection. The waiting time is currently significantly reduced (see [Qualification of temporary protection](#)).

#### 4. Legal assistance

Potential beneficiaries of Temporary protection might seek legal assistance for a variety of reasons; for example, if they received a refusal decision for temporary protection and they want to understand the decision or appeal it. Even after recognition, situations may arise that lead individuals to seek legal help, especially with regards to their right of social welfare. They might equally seek the help of an NGO, such as Caritas or Vluchtelingenwerk, to help explain them the reason of refusal.

Article 23 of the Belgian Constitution determines that the right to live with dignity implies for every person, *inter alia*, the right to legal assistance. The Aliens Act guarantees free legal assistance by a lawyer to all foreign nationals in procedures included in the Aliens Act under the conditions that apply to Belgian nationals.<sup>57</sup>

There are two types of free legal assistance: first line assistance and second line assistance.<sup>58</sup>

##### - First line legal assistance

The so-called "first line assistance" is a competence at the regional level and is organised in each judicial district by local Commissions for Legal Assistance, composed of lawyers representing the local bar association and the public centres for social welfare (CPAS / PCSW). There, first legal advice is given by a lawyer, or a person is referred to a more specialised instance, organisation or to "second line assistance", completely free of charge, regardless of income or financial resources. Besides these lawyers' initiatives,

<sup>54</sup> Before 16 May 2022, the procedure was slightly different: people who did not immediately receive temporary protection received an invitation by e-mail. This method however resulted in people not knowing when and if they would be contacted.

<sup>55</sup> Article 39/2 §2 Aliens Act

<sup>56</sup> Myria, *Migration in numbers and rights*, September 2022, p. 18, available in Dutch at: <https://bit.ly/3Y6mxFT>.

<sup>57</sup> Article 90 Aliens Act.

<sup>58</sup> Article 508/1-508/25 Judicial Code.

there are also other public social organisations and NGOs providing this kind of first line legal assistance such as Caritas and Vluchtelingenwerk. Vluchtelingenwerk Vlaanderen has an Infodesk accessible by phone every weekday, through which people can ask any kind of question related to temporary protection or any kind of other question related to their rights in Belgium. Info can be provided in Ukrainian language if needed.<sup>59</sup> If the refusal decision is not sufficiently or incorrectly motivated, Vluchtelingenwerk may ask for a review or for clarifications by writing an e-mail to IBZ. This happened more often in the immediate aftermath of the outbreak of war in Ukraine, as national authorities still had to provide comprehensive guidelines on scope of temporary protection and necessary documents to prove entitlement to the status. More recently, poorly or incorrectly motivated refusals are rare, and simply requesting a review is generally not the best strategy in terms of support that can be offered by NGOs. As such, the best option is to often to appeal to the Council for Alien Litigation (CALL) with the aid of a (pro deo) lawyer in the case of a refusal decision. After being recognised temporary protection, individuals might need a legal advice, which is mainly the case for decision on the allocation of social revenue; these cases are also supported through the Infoline of Vluchtelingenwerk.

- Second line legal assistance

“Second line assistance” is organised by the local bar association that exists in every judicial district. Each bar association has a bureau for legal assistance that can appoint a lawyer for (entirely or partially) free second line assistance, the so-called “pro-Deo lawyer”. In practice, this might limit the free choice of a lawyer to a certain extent, but in theory every lawyer can accept to assist someone “pro-Deo” and ask the bureau to be appointed as such, upon the direct request of an asylum seeker. Within this “second line assistance”, a lawyer is appointed to provide substantial legal advice and to assist and represent the person in the asylum procedure. More information about the system of second line legal assistance can be found in the [AIDA report Belgium](#).

## 5. Information provision and access to NGOs

With regards to the provision of information, the Aliens Act merely states that, when applying for a residence permit, the person enjoying temporary protection shall be given a document, drafted in a language they understand, which sets out the applicable provisions on temporary protection.<sup>60</sup> To that end, they receive a document which provides information on their status and rights as holders of ‘temporary protection’ from IBZ. As mentioned, a negative decision is accompanied by information on the procedure to appeal, as well as the contact details of the legal desk they can address for legal help. They also receive a document briefly explaining the procedure for requesting international protection.

Aside from the documentation applicants receive from the Immigration Office upon registration, the Red Cross provides them with a document stating that, if they need housing, they can be provided with a reception place in an emergency centre of the Red Cross (‘Ariane’ in Molenbeek, Brussels) or that they may address the request to a municipality of their choice. The need to access reception needs, however, to be expressed on the day of registration and they will only be redirected to Ariane if they have certain vulnerabilities (see [housing](#)). They also receive a set of documents from the organisation Pagasa,<sup>61</sup> providing information on human trafficking indicators and the number of the Infoline of Vluchtelingenwerk Vlaanderen. The information from the Red Cross is provided in Ukrainian. Lastly, when applicants arrive at the registration centre after closure hours or in the weekend, a poster on the door refers to Samusocial, an organisation providing assistance to homeless people.<sup>62</sup>

The NGO Vluchtelingenwerk Vlaanderen has an Infoline<sup>63</sup> along with the organisations Orbit and – up until April 2023 – Solentra, where (potential) beneficiaries of temporary protection, volunteers, host families, municipalities, lawyers, and other organisations providing aid to displaced persons may call to with

<sup>59</sup> See: <https://vluchtelingenwerk.be/infolijn>.

<sup>60</sup> Article 57/30 § 1 Aliens Act.

<sup>61</sup> A Brussels based organisation which informs persons on human trafficking and supports victims of human trafficking.

<sup>62</sup> Fedasil in response to inquiry Vluchtelingenwerk regarding the registration procedure, 27 February 2023.

<sup>63</sup> See: <http://bit.ly/3Ud57Od>.

any questions they have in relation to temporary protection. This may range from questions on the scope of temporary protection, to the registration procedure, social benefits, school... In the context of this helpdesk, Orbit specializes in information about housing, while Solentra provides psychological help.

In Wallonia and Brussels, a similar Infoline is operated by Caritas, while Ciré maintains a French language information page on the legal position of Ukrainians in Belgium.<sup>64</sup>

On a federal level, a regularly updated information page<sup>65</sup> on several aspects of temporary protection is provided in English, French, German, Ukrainian, and Russian.

#### D. Guarantees for vulnerable groups

In exceptional circumstances, where persons cannot autonomously reach the registration centre (for example due to a medical condition), an exception to the obligation to register personally can be granted. An authorisation may be given to a family member who can register the person upon showing a doctor or hospital reference attesting to the impossibility of the person registering. In practice, to avoid misunderstandings, it is advised to inform the Immigration Office of this necessity beforehand.<sup>66</sup>

From 10 March 2022 to 3 April 2023, 50,969 persons stated upon registration not to be in need of accessing reception, while 16,563 indicated to need it.<sup>67</sup> This means that roughly only one out of four people fleeing from Ukraine indicated being in need of support for what concerned accommodation upon registration. Of those in need of accommodation, part are given temporary reception at the Ariane centre managed by the Red Cross for the time needed to find a solution at the local level. Roughly 8,352 persons have been referred to Ariane since the beginning of the crisis. This referral depends on whether they are considered as having a vulnerability. In practice, however, vulnerability factors are considered also depending on the number of places available at the emergency centre. Not all persons who indicate a need for reception are thus given reception at Ariane. In practice, people stay in Ariane for weeks or even months, especially when housing must abide by certain conditions tailored to the needs of the person with specific vulnerabilities such as persons with limited mobility.<sup>68</sup> The average stay in Ariane amounted to 17.4 days in the period between March 2022 and March 2023.

Vulnerabilities are selected on the basis of on-site assessments; visible vulnerabilities, pregnant women, young children, elderly people are the cases that appear to have more chances of being recognised as vulnerable.<sup>69</sup> There is no list of what classifies as vulnerable, nor is there a standard questionnaire to identify vulnerabilities. The examination is, according to Fedasil, realised on a case-by-case basis. Persons who are victim of human trafficking or exploitation, are also considered as vulnerable. However, with no transparent screening procedure and limited guidelines on the matter, which generates concerns as to whether non-visible vulnerabilities are properly identified.<sup>70</sup>

After registration, several organisations can help the beneficiaries with a redirection, if needed to a healthcare or elderly facility. In Wallonia, there is, for example, the public agency of Aviq. Persons with vulnerabilities or with a handicap can present themselves at a regional office where the person's overall

<sup>64</sup> UKRAINE: informations sur les possibilités d'arrivée, le séjour et le statut juridique en Belgique – CIRÉ asbl (cire.be), available in French at: <https://bit.ly/3KiwMZx>.

<sup>65</sup> See: <https://info-ukraine.be/en>

<sup>66</sup> IBZ in response to inquiry Vluchtelingenwerk regarding the condition to physically apply for temporary protection, 16 May 2022

<sup>67</sup> Statbel, *Displaced persons from Ukraine*, available in English at: <https://bit.ly/3ZmG5O4>

<sup>68</sup> Myria, *Contact meeting*, 21 September 2022, available in Dutch at: <https://bit.ly/3m5NaUA>, 50.

<sup>69</sup> *Ibid*, 50-51.

<sup>70</sup> Fedasil in response to inquiry Vluchtelingenwerk regarding the registration procedure, 27 February 2023

situation is analysed so they can be redirected to the most appropriate solutions.<sup>71</sup> In Flanders, the Flemish agency for persons with a handicap (VAPH) plays a similar role in supporting people living with a recognised handicap.

As with regards to persons in need of psychological support, Solentra VZW (an organisation that is specialized in providing psychological help) has a free and accessible telephone helpline where Ukrainians can call to for psychological aid and be assisted in their mother tongue.

Considering unaccompanied minors, the registration procedure is slightly different. Unaccompanied minors have to register at dedicated desks. Just like other beneficiaries of temporary protection, they receive a temporary protection certificate with which they can present themselves to a municipality. Not having a legal guardian or parent may not be used by municipalities as a reason to refuse the issuance of the temporary residence permit (annex 15) and the subsequent residence card.<sup>72</sup> In total, 21,182 unaccompanied minors were registered in 2022.<sup>73</sup>

A differentiation needs to be made between the situation of minors in the company of adults who are acquaintances or adult family members who do not have the parental authority of a parent or legal guardian, and that of minors who are not accompanied by anyone. If a minor is accompanied, they can be accommodated with the adult person. During the registration process, both the minor and the accompanier will be asked whether they agree with this arrangement.<sup>74</sup> The minor will be signalled to the guardianship service (“dienst voogdij” or “tutelles”) so that a legal guardian can be appointed. Since the minor is accompanied, crisis accommodation is not always provided. As for the minors who are not accompanied, the same registration process is applicable. The person is equally signalled to the guardianship service. They are placed in a host family through foster care (“Pleegzorg Vlaanderen” in Flanders and “VZW Mentor Jeunes” in Wallonia or Brussels).

Local authorities are expected to monitor cases in which friends, acquaintances or a host family hosts an unaccompanied minor. However, when the minor is not placed in a host family but lives with acquaintances, there is no structural follow-up. The Immigration Office should, in such cases, report the minor to the local authorities so that they are aware of the non-accompanied minor<sup>75</sup>; however, in practice it is not clear whether this is done.<sup>76</sup>

There is a current shortage of legal guardians who can legally represent unaccompanied minors, resulting in waiting times of sometimes months before a guardian is appointed.<sup>77</sup> This can lead to problems such as taking out healthcare insurance,<sup>78</sup> opening a bank account, accessing social benefits.<sup>79</sup> Minors in the age group of 16-17 are rarely appointed a legal guardian. If the minor, however, has specific vulnerabilities (medical or psychological problems, pregnancy, indications of abuse, human trafficking, etc.) a legal guardian can be appointed with priority.<sup>80</sup>

<sup>71</sup> Coordination unit of the Walloon Region for the reception of Ukrainian refugees, *Practical guide for support of Ukrainian refugees*, October 2022, available in French at: <https://bit.ly/3Jrg6js>.

<sup>72</sup> VVSG, *what happens after registration?*, available in Dutch at: <http://bit.ly/3wEj9NQ>.

<sup>73</sup> IBZ, numbers provided on 4 April 2023.

<sup>74</sup> VVSG, *What happens with the registration of a non-accompanied minor?*, available in Dutch at: <http://bit.ly/3wEj9NQ>.

<sup>75</sup> Information received orally from “pleegzorg Vlaanderen” (foster care Flanders).

<sup>76</sup> *Ibid*, *notification of non-accompanied minors to the legal guardianship service*

<sup>77</sup> Myria, *Contact meeting*, 5 October 2022, p. 50, available in Dutch at: <https://bit.ly/3SDmKpq>.

<sup>78</sup> VVSG, *Social rights: health insurance and disability*, available in Dutch at: <http://bit.ly/3Jpdtij>.

<sup>79</sup> This problematic has been widely addressed in a letter to the responsible minister from the VVSG along with its Walloon and Brussels partners (ASBL & Brulocalis), 19 May 2022, available in Dutch at: <https://bit.ly/40t0J0j>.

<sup>80</sup> Myria, *Contact meeting*, 5 October 2022, available in Dutch at: <https://bit.ly/3SDmKpq>, 50.

## Content of Temporary Protection

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence permit

1. What is the duration of residence permits granted to beneficiaries of temporary protection?  
The A card has a validity of one year. Currently the A card is prolonged until 24 March 2024<sup>81</sup>
2. How many residence permits were issued to beneficiaries from the activation of the Temporary Protection Directive until the second of February 2023 December 2022?  
As of 2 February 2023, 51,828 persons with temporary reception have obtained a residence permit (A-card).

Once in possession of the temporary protection certificate, persons can register their residency in a municipality of their choice, unless they have declared a need for housing, in which case they may receive a place at the emergency reception centre (see [guarantees for vulnerable groups](#)). The municipality of their place of residence is responsible for the administrative process of granting the residence permit card.<sup>82</sup> On 2 January 2023, 51,828 persons were given an A-card.<sup>83</sup> The procedure for obtaining a residence permit can vary from municipality to municipality in terms of physical and/or online appointments. Upon registration at the municipality, people receive a temporary residence permit (annex 15). This permit is valid for up to 45 days, opens the right to work, social benefits, education, and allows them to open healthcare insurance, as will be presented in detail in the following sections.<sup>84</sup> The local police conducts a 'check' if the person effectively resides at the given address. Once this is confirmed, the person is asked to present themselves again at the municipality to pick up the residence permit (A-card).<sup>85</sup> The original duration of the residence permit was up to 4 March 2023. From 4 January 2023, people could go at their municipality to prolong their residence permit. This prolongation will last one year, until to the 24 March 2024. The municipality was expected to communicate the possibility of prolongation to TP beneficiaries in their municipality.<sup>86</sup>

The time this process takes (from the first appointment with the municipality to obtaining the residence permit) significantly varies depending on the municipality. Where this process took longer than 45 days, the temporary residence permit (annex 15) needed to be renewed. In one case, a case of a person was requested to pay the fee for renewal of annex 15 due to reasons not under their control. The long processing time could cause problems, especially when a person wants to visit family outside of Belgium, as the annex 15 does not allow them to travel if the 90 days out of 180 days they can travel based on their passport already expired.

A primary obstacle in obtaining the A card is finding an address to register residency. At the beginning of the crisis, the Federal Agency in charge of asylum seekers' reception (Fedasil), referred people registering for temporary protection expressing a housing need to the local municipalities (as they had a list of the available places by municipality). Since autumn 2022, referrals from Fedasil to local municipalities were realised only in exceptional cases. The persons who indicates being in need of accommodation and is not considered as part of a vulnerable group (see [guarantees for vulnerable groups](#)), is then requested to individually reach out to a municipality of their choice. This means that persons with a reception need who

<sup>81</sup> Council of the EU Justice and Home Affairs, *Russia's aggression against Ukraine*, 13 October 2022, available in English at: <https://bit.ly/3Yb5wl4>.

<sup>82</sup> Article 12, Aliens Act.

<sup>83</sup> IBZ, information provided on 4 April 2023.

<sup>84</sup> Institute for health and disability insurance (RIZIV), *Circular: right to medical care for displaced persons from Ukraine*, 15 March, 2022, available in Dutch at: <https://bit.ly/3lIpY6J>.

<sup>85</sup> Article 52/2 §2, Royal Decree, 8 October 1981, available in Dutch and French at: <https://bit.ly/408uhA9>.

<sup>86</sup> IBZ, *Circular: temporary protection – renewal A-card*, 16 November 2022, available in Dutch at: <https://bit.ly/3ZrSSi2>.

cannot count on friends or family to live with, might encounter serious difficulties in registering their address of residency. This is highly concerning, as this does not allow them to obtain a residence permit and pushes them into irregular stay, regardless of their condition as beneficiaries of temporary protection.<sup>87</sup>

Other problems or obstacles related to registration that have been signalled appear to constitute isolated situations, rather than consolidated patterns. According to one report, a municipality not registering the person in the register because the documents did not have an apostille, even though it was widely recognised that, considering the circumstances, beneficiaries of temporary protection could not reasonably be expected to obtain them.<sup>88</sup> Moreover, in another case, the municipality demanded the host family (and thus the temporary protection beneficiary) to bring their own interpreter as a condition for registration. As municipalities have access to translation services that do not offer those services to individual persons and considering the difficulty for the latter to find a translator, this cannot be regarded as a reasonable demand.

It is possible for temporary protection holders in Belgium to move to another member state and receive temporary protection there. The rights and social benefits the person enjoyed in Belgium must consequently be terminated. Municipalities are advised to make concrete arrangements for the person's departure during the initial registration.<sup>89</sup> The person should notify their municipality of the departure so that the person can be removed from the registers, meaning that their A-card will no longer be valid. Through the registration platform on a European level, which was introduced at the end of May 2022, Belgium can exchange relevant information with other member states.<sup>90</sup> If Belgium is informed that a person received temporary protection in another member state, an instruction is sent to the municipality and the residence permit is withdrawn.

## 2. Access to asylum

There is no restriction to the right to apply for international protection for people who have been granted – or are entitled to temporary protection.<sup>91</sup> However, the examination of the application for international protection of a temporary protection holder is suspended until the temporary protection regime ends at the European level.<sup>92</sup> The same applies to Ukrainian nationals. While the law does not prescribe that the procedure should be suspended for Ukrainian nationals,<sup>93</sup> the CGRS has 'frozen' their requests for international protection.<sup>94</sup> The requests of third country nationals who fall outside the scope of temporary protection are not frozen and thus examined accordingly. Due to the ongoing reception crisis, however, access to some of their rights as asylum seekers such as reception cannot be guaranteed (see [AIDA report Belgium on international protection](#)).

<sup>87</sup> See for example: The Brussels Times, *Belgium's reception crisis: Ukrainian refugees now also sleeping rough*, 18 November 2022, available at: <http://bit.ly/3KMcyZJ>.

<sup>88</sup> The additions to the circular (IBZ, *Circular regarding the registration of Ukrainians in the registers under the temporary protection statute*, 9 March 2022) states that "Ukrainian civil status certificates, mainly birth certificates, cannot be apostilled/legalized given the circumstances," and that it should be possible "to register a civil status on declaration as already provided for foreigners included in the waiting register", available in Dutch at: <https://bit.ly/3SDXteQ>, 2.

<sup>89</sup> Communication from the Flemish government support team on Ukraine (VLOT) to the municipalities, 13 September 2022.

<sup>90</sup> Myria, *Contact meeting*, 15 June 2022, available in French and Dutch at: <https://bit.ly/3XMDJHv>, 20.

<sup>91</sup> Article 50 Aliens Act; Article 17 of the Temporary Protection Directive.

<sup>92</sup> Article 51/9 Aliens act, in line with article 17 §2 of the Temporary Protection Directive

<sup>93</sup> Article 51/9 mentions 'persons who enjoy temporary protection' and not specifically 'Ukrainian nationals'

<sup>94</sup> See also CGRS, *Ukraine - state of affairs regarding applications for protection in Belgium*, 17 March 2022, available at <https://bit.ly/3WWEHA4>.

## B. Family reunification

A distinction needs to be made between those who have a right to temporary protection as family member,<sup>95</sup> and the persons who do not fall under the scope of temporary protection but can nevertheless apply for family reunification.

Those who are considered as family members under the implementation decision receive temporary protection rather than a residence permit on the basis of 'family reunification'.<sup>96</sup> The question of family reunification does thus not arise for this group. However, it should be noted that the Belgian Aliens Act considers the last category of other close relatives who lived with the family at the time of the invasion and who were completely or mainly dependent on that relative' as a group that 'may' be granted a residence permit,<sup>97</sup> thus leaving more discretion to the migration authorities than is technically allowed under the implementation decision. This is equally a group that does not automatically qualify as family members for family reunification, as the recognition of their status as family members is based on an assessment of the dependency links.<sup>98</sup>

The need to apply for family reunification as potential beneficiaries in practice almost exclusively arises where a person cannot apply for temporary protection because they are not capable of obtaining a visa to come to Belgium to apply for temporary protection. This can for example be the case where a third country family member under the scope of temporary protection left Ukraine after 24 February 2022 but has travelled to a third country from where they cannot travel visa free to Belgium. These persons can benefit from a more beneficial family reunification regime, as detailed below.

The second category of persons are those family members who are not, strictly speaking, covered by the scope of temporary protection because the condition of the family being already present and residing in Ukraine before 24 February 2022<sup>99</sup> is not met. This situation arises if the family was not yet created at the time of the invasion, or if the family member that seeks family reunification was not present in Ukraine before 24 February. To that effect, the Belgian Aliens Act does not mention this criteria of the family being formed already in the country of origin but simply states that a residence permit should be granted to the family member of a person with temporary protection.<sup>100</sup> The Immigration Office does thus allow for family reunification even when the family was formed after the 24 February. This way, certain family members outside the scope of the temporary protection itself can still obtain a right of residence in Belgium of the same duration via family reunification. This, however, only applies to the nuclear family members, meaning the spouse under article 2 (4) (a) and the minor children under article 2 (4) (b) of the council implementing decision, thus again excluding 'other family members'.<sup>101</sup>

Although the Commission refers to the Directives regulating family reunification with a third country national or EU citizen,<sup>102</sup> family reunification under temporary protection - regardless of the sponsor's nationality - is regulated separately under the Belgian Aliens Act.<sup>103</sup> The applicable article does not lay down any conditions for family reunification, resulting in more favourable conditions in terms of reunification with

<sup>95</sup> Article 2 (4) Council implementing Decision establishing the existence of a mass influx of persons displaced from Ukraine, 4 March 2022, available at: <http://bit.ly/3ZuzZuN>.

<sup>96</sup> Article 57/34 §3 Aliens Act.

<sup>97</sup> Article 57/34 § 1 Aliens Act.

<sup>98</sup> Article 4 Council Directive 2003/86 on the right to family reunification, 22 September 2003, available in ENG here: <https://bit.ly/3SC8Js6>.

<sup>99</sup> Article 2 (4) of the Council Implementing Decision.

<sup>100</sup> Art. 57/34 § 1 Aliens Act.

<sup>101</sup> Chamber of representatives, *Wetsontwerp*, 1 October 2002, available in French and Dutch at: <https://bit.ly/3IF11vd>, 28-29.

<sup>102</sup> Communication from the Commission on the Operational Guidelines, available at: <http://bit.ly/41wYkC6>, referring to family reunification on the ground of Directive 2003/86/EG, 22 September 2003, available at: <https://bit.ly/3SC8Js6> and Directive 2004/38/EG, 30 April 2004, available at: <http://bit.ly/3F9w4ft>.

<sup>103</sup> Article 57/34 Aliens Act: IBZ has confirmed that this article is applicable to family reunification with a temporary protection beneficiary, IBZ, *family reunification with a temporary protection beneficiary*, available in French and Dutch at: <https://bit.ly/3wFHNh9>.



a beneficiary of temporary protection for persons who cannot apply for temporary protection for the reasons mentioned above. For instance, there is no retribution to be paid, and the person to be reunited is not required to have adequate housing, health care insurance, or sufficient means of existence.<sup>104</sup> This does not alter the fact that there is still the condition of being able to provide proof of the family relationship.<sup>105</sup> In addition, adults have to prove that they do not constitute a danger to public order (or explain why they cannot provide such proof).

Persons abroad who cannot reach Belgium should ask for a visa D based on family reunification at a Belgian consulate or embassy.<sup>106</sup> The question of which embassy is competent arises. For example, a recognised refugee in Ukraine cannot be expected to submit a visa application in their country of origin. In this context, the Immigration Office clarified that an application to a diplomatic post in another country may sometimes be possible. However, the applicant should explain why they wish to submit their application there. It is not entirely clear on which basis this can be done so it is recommended to contact the diplomatic post first.<sup>107</sup> Upon arrival in Belgium, these persons are expected to present themselves at the municipality of their place of stay within 8 days.<sup>108</sup>

Family members who reach Belgium through family reunification will receive a residence permit with the same validity period as the residence permit of the person with temporary protection status. It is equally extended under the same conditions.<sup>109</sup> No provision of the temporary protection directive or the implementing decision excludes potential beneficiaries of temporary protection from enjoying temporary protection if they already have another residence status, as long as they meet the application conditions.<sup>110</sup> The Immigration Office has confirmed that family members with family reunification status can, therefore, effectively apply for temporary protection once they are in Belgium if they fall under the scope of temporary protection.<sup>111</sup> Especially for the family members who fall under the scope of temporary protection but had to apply for a visa D because they were not able to come to Belgium visa free, this can be regarded as a positive development.

### C. Movement and mobility

Beneficiaries are not subjected to any territorial restrictions imposed by Belgium in terms of freedom of movement within the Schengen zone. Based on their residence permit and biometric passport, they may travel freely in the Schengen zone for three months within 180 days.<sup>112</sup>

There are however some obstacles regarding access to social rights and residence status. In this regard, there are limited national guidelines, and municipalities are left a significant degree of autonomy. Most municipalities apply the rule applicable under the law on the right to social integration (“*wet maatschappelijke integratie*”) by analogy. Under this law, beneficiaries may leave the country for 28 days within a year without losing the right to social benefits. However, the municipality should be notified when the time spent abroad is longer than a week.<sup>113</sup> Municipalities might nevertheless apply stricter rules, as they are not subjected to specific obligations within the existing legal framework on temporary protection.

<sup>104</sup> See: Agii, *pt. 3.15 Family reunification family members of temporary protection beneficiaries*, available in Dutch at <https://bit.ly/3HLq9Pq>.

<sup>105</sup> Article 10 Aliens Act with application of article 12bis §5 & §6 Aliens Act.

<sup>106</sup> IBZ, *family reunification with a temporary protection beneficiary*, available in French and Dutch at: <https://bit.ly/3wFHNh9>.

<sup>107</sup> IBZ in response to Inquiry Myria regarding the application at the diplomatic post and conditions family reunification, 19 October 2022.

<sup>108</sup> Article 12 Aliens Act.

<sup>109</sup> Article 57/34 §3 Aliens Act.

<sup>110</sup> See also The Commission, *Frequently asked questions on interpreting the Temporary Protection Directive and Council Implementing Decision*, 2022, available at: <https://bit.ly/3RnvY8D>, 5.

<sup>111</sup> IBZ in response to Inquiry Myria regarding the application at the diplomatic post and conditions family reunification, 19 October 2022.

<sup>112</sup> Article 21, Schengenacquis, 22 September 2000, available at: <http://bit.ly/3Y7qVve>.

<sup>113</sup> Article 23 §5 Law on the right to social integration, 26 May 2002, available in Dutch and French at: <https://bit.ly/3WP7Mxg>.

It is concerning that beneficiaries of temporary protection are not always informed of these travel and notification rules, especially since the application thereof might differ depending on the municipality involved. This can equally have implications on the residence status. In the absence of communication to the municipality, there have been cases in which the municipality incorrectly assumed that the person had left the territory indefinitely, while they had, in fact, only left for a relatively short time to evaluate the security situation in their home area in Ukraine. Removal from the register by the municipality however does not mean the person loses temporary protection. This can only be determined through a decision of IBZ, in which case the person also loses their residence status and, consequently, temporary protection status. In the case of a removal from the registers by IBZ because of loss of residence status (and thus temporary protection), the person has to re-apply to the registration centre and go through a new registration process.<sup>114</sup>

The obligation to notify the municipality of an absence of a week and to not be absent for 28 days over the course of a year relates to the right to social benefits. Under the Belgian Aliens Act, however, there is in principle no obligation to notify the municipality of absences under three months as this should not affect their residence status.<sup>115</sup> An absence under three months may only affect the social benefits and – if applicable – their place in the reception centre. An issue that emerged in this respect is the fact that municipalities remove persons from the register before this three months period has ended and, upon return, it is not clear whom the person should address to obtain an address and thus be able to access the social rights and benefits connected to temporary protection. This happens mainly where the beneficiary did not notify the municipality of their absence. There has been a case of a municipality not willing to register a person again after the person had left for two months without giving notice.<sup>116</sup> These persons can also not return to the registration centre to express their housing need, as people who already have the temporary protection status are not again given access to the registration centre. To avoid such situations, persons with temporary protection are (and should be) advised to always communicate their travel goals and intentions, including a possible return, clearly to the municipality.

In Flanders, there are no deadlines imposed on municipalities for keeping a reception place available during a person's absence. Municipalities are merely advised to 'transparently provide information on the rules regarding housing and payment of social benefits.'<sup>117</sup> In Wallonia however, it is clearly indicated that if the stay abroad is less than three months, the accommodation should always be considered as occupied and may thus not be made available for another family.<sup>118</sup>

The many insecurities connected to the autonomy that is given to the municipalities and the resulting discrepancy in the approach to absence, may lead to a significant obstacle for temporary protection holders who wish to temporarily leave Belgium.

<sup>114</sup> Agii, pt. 2.3.3.3 *Electronic A card and duration of temporary protection*, available at in Dutch at: <http://bit.ly/3xZz2in>; see also The Commission, *Frequently asked questions on interpreting the Temporary Protection Directive and Council Implementing Decision*, 2022, available at: <https://bit.ly/3RnvY8D>, 7; and IBZ, *Circular: temporary protection – renewal A-card*, 16 November 2022, available in Dutch at: <https://bit.ly/3ZrSSi2>.

<sup>115</sup> *Ibid.*, article 39 §2, §3, §6.

<sup>116</sup> This case was reported to the infoline of Vluchtelingenwerk Vlaanderen and confirmed by the municipality

<sup>117</sup> Communication from the Flemish government support team on Ukraine (VLOT) to the municipalities, 13 September 2022.

<sup>118</sup> Coordination unit of the Walloon Region for the reception of Ukrainian refugees, *Practical guide for support of Ukrainian refugees*, October 2022, available in French at: <https://bit.ly/3Jrg6js>, 21.

## D. Housing

### Indicators: Housing

1. For how long are temporary protection beneficiaries entitled to stay in reception centres?  
No specific time limit
2. Number of beneficiaries staying in reception centres as of 31 December 2022  
On 3 April 2023, 7,392 people resided in the reception centres of Antwerp and Mechelen.<sup>119</sup> There are no numbers available on the total amount of beneficiaries staying in reception centres.
3. Number of beneficiaries staying in private accommodation as of 31 December 2022  
Not available

The provision of accommodation for beneficiaries and the policies set up to that effect are relatively similar between the different regions of the country (Flanders, Brussels, and Wallonia). The information provided in the following section refers mainly to the region of Flanders (which hosts the vast majority of TP beneficiaries). Regardless, cases in which significant differences can be observed in other regions have been highlighted.

Article 13 § 1 of the Temporary Protection Directive states that the member states shall ensure that persons enjoying temporary protection have access to suitable accommodation, or, if necessary, have a right to receive the means to obtain housing. As of February 2023, approximately 59% of the people registered, reside in Flanders, 20% in Wallonia, and 21% in Brussels.<sup>120</sup> Many reception places were created at both the local and federal level to cope with the high number of arrivals from Ukraine. A rough estimate shows that 7,700 extra reception places were created in Flanders and 1,300 in Wallonia.<sup>121</sup> The federal Ariane emergency centre in Brussels currently has a maximum capacity of 450 places for beneficiaries of temporary protection (the total capacity is larger as Ariane also functions as a transit centre for international protection applicants). It should be noted that these numbers reflect the extra places that were created by local authorities in the wake of the crisis, and do thus not include host families or places on the private housing market.

There are different forms of accommodation: emergency accommodation, public reception places (including collective reception centres), and private accommodation (including accommodation with a host family). Each type of accommodation will be addressed more in detail below.

As for emergency accommodation, beneficiaries who indicate a reception need upon registration can, in principle, stay for some nights at the Ariane emergency reception centre organised by Fedasil in Brussels. At the end of June 2022, the Ariane reception centre saw an increase of occupation up to almost 1,200 persons. In this period, the Ariane centre was used solely for temporary protection beneficiaries, a policy that was changed later on and resulted in the capacity for temporary protection beneficiaries being reduced to 450. As a result of this high influx, it was established that only vulnerable persons needing reception can be accommodated until another solution at the local level can be found.<sup>122</sup> The average stay of persons at Ariane is of 17.5 days since the beginning of the crisis.<sup>123</sup> Other persons are requested to independently contact a municipality of their choice to find an accommodation solution.<sup>124</sup> However, considering the saturation of local reception facilities, the progression to the local level is rather difficult.<sup>125</sup> Local municipalities were requested to centralise information on the available places they can offer, be it

<sup>119</sup> Numbers provided by VLOT (Flemish Ukrainian support team).

<sup>120</sup> Numbers provided by VLOT (Flemish Ukrainian support team).

<sup>121</sup> Rough estimate by Fedasil, no definite publication of these numbers is available at the moment of writing.

<sup>122</sup> Myria, *Contact meeting*, 21 September 2022, available in Dutch at: <https://bit.ly/3m5NaUA>, 50.

<sup>123</sup> Communication by the Red Cross, 15 March 2023.

<sup>124</sup> VVSG, *Crisis & durable housing, emergency shelter by Fedasil*, available in Dutch at: <http://bit.ly/3wJSJtS>.

<sup>125</sup> Myria, *Contact meeting*, 19 October 2022, available in French and Dutch at: <https://bit.ly/3DuWmla>, 44; see also VVSG, *Cities and towns are sounding the alarm: 'our reserves have run out'*, 9 October 2022, available in Dutch at: <http://bit.ly/3JB6D9g>.

in host families, collective reception centres, or other. This information is shared through a common platform 'the housing tool'. Persons can be dispatched from Ariane to the local level based on the places available in this tool. However, the supply of places available on the housing tool is insufficient and the tool is not frequently updated, leading to uncertainty about the actual number of places available.<sup>126</sup>

Housing in public places can take many forms. The most common is housing in collective reception centres: these are either places owned by the local municipality or by other actors who made places available, and they are managed either by the local municipality, by the actor itself, or jointly. The main actors involved in the collective reception centres besides the municipality are the Red Cross and the IOM. Two bigger reception centres were set up to accommodate for the influx of displaced persons: one in Antwerp and one in Mechelen. The centres in Antwerp and Mechelen have a capacity of 600 places each (expandable to 1000 in the case of Antwerp).<sup>127</sup> Equally, a collective reception centre is set to open between the end of April and the beginning of May in Ghent, providing 600 additional places.<sup>128</sup> Usually, no specific time limit is provided for the stay at the reception centres. The reception facilities must at least provide for a bed in a shared room, with equally the possibility of the sanitary and kitchen spaces being common areas.<sup>129</sup> The services offered at collective centres may differ, with some offering meals, clothing, and medical support, etc.

To cope with the sudden influx, local authorities can also receive funding to provide other public places to beneficiaries of temporary protection.<sup>130</sup> These places include hotels or B&B's, hostels, youth residence centres, holiday chalets or other touristic residencies, assisted living facilities, or service flats. The places must be the local authority's property or rented out by the local authority. Depending on the type of residence, these places must be available for at least 21 days. However, how often municipalities use this option is unclear.

Lastly, social housing actors can provide for collective centres and housing that can be rented to temporary protection beneficiaries. In addition, (social) rental agencies can use vacant social housing pending demolition, renovation, or sale to provide temporary housing. This can be done either through an intermediate institution or directly by the social housing actor.<sup>131</sup>

Beneficiaries can also rent on the private housing market. The feasibility of this highly depends on the financial means of the beneficiary and the benefits they receive. Equally, the temporary character of their statute can negatively affect their chances on the private market.<sup>132</sup> Generally speaking, while the requirements concerning the quality of the house are slightly eased,<sup>133</sup> both for landlords and host families, a check is conducted to determine whether the house does not have any severe defects. An inventory or register check can be undertaken to ascertain whether the property has a history of housing quality defects. If based on a previous assessment, there are reasons to believe that there may be quality risks and the house is not in line with existing requirements, a limited screening or full-fledged conformity assessment may be carried out. This can be done by the housing inspector or by an intercommunal agency specialising in conformity assessment.<sup>134</sup> However, beneficiaries of temporary protection who have difficulty finding a reception place may end up in squatted buildings or situations of overcrowding where hygiene, fire safety, and general security norms are not complied with.<sup>135</sup>

<sup>126</sup> Myria, *Contact meeting*, 18 May 2022, available in French and Dutch at <https://bit.ly/3XMDJHv>, 40-41.

<sup>127</sup> See, The Brussels Times, available in English at: <http://bit.ly/3KBQzVe> and VRT News, available at: <http://bit.ly/40JhgN1>.

<sup>128</sup> Stad Gent, *Emergency centre for Ukrainians*, available in Dutch at: <http://bit.ly/3U8ea2N>.

<sup>129</sup> Flanders regional government page, *rental for the reception of displaced persons from Ukraine*, available in Dutch at: <http://bit.ly/3J3bSOU>.

<sup>130</sup> Flanders regional government page, *financing*, available in Dutch at: <https://bit.ly/3HhIouh>; Communication from the Flemish government support team on Ukraine (VLOT) to the municipalities, 14 March 2022.

<sup>131</sup> VVSG, *possibilities through social housing organisations*, available in Dutch at: <https://bit.ly/3HK6EXi>.

<sup>132</sup> Obstacles identified by Orbit, specialized in housing for refugees.

<sup>133</sup> VVSG, *derogations to the housing rental decree*, available in Dutch at: <https://bit.ly/3XMGClu>.

<sup>134</sup> *Ibid.*, *Housing Quality*

<sup>135</sup> See, for example; VRTNWS, *350 squatters of vacant office building in Zaventem given until 9 December to vacate premises*, 2 December 2022, available in Dutch at: <http://bit.ly/3JuOM48>.

As for accommodation with a host family, in the beginning stages the reception was mainly focussed on stay in host families. This happened through the 'temporary living' ("tijdelijk wonen") notification which made it possible for host families to host beneficiaries of temporary protection in their house while being legally considered to be separate entities.<sup>136</sup> This meant that there was no negative impact on the taxes or the financial benefits of the host family. A campaign was launched and people could indicate they were open to host through the hashtag "#place available" ("#plekvrij") in Flanders or ("#placedispo") in Brussels and Wallonia. However, the possibility for host families to sign up and accommodate a family was a rather *ad hoc* one. A framework was lacking so that when progression to another solution was needed, municipalities were confronted with reception needs they had difficulty accommodating for. Ultimately, the local authorities are responsible for the reception of beneficiaries in the sense that they have to take responsibility for re-location of those registered in their municipality.<sup>137</sup>

As per information related to the risks involved in hosting through host families, the approach may differ from municipality to municipality. In Flanders, cities are expected to screen the candidate host families to prevent abuse and exploitation. Municipalities are strongly advised to do this, for example, by demanding the criminal record and checking the accommodation where the beneficiary will be housed on potential security, health, and housing quality issues. In Wallonia, a similar check is conducted to ensure the reception places and the reception adhere to the housing quality requirements. The host family (or person) will have to sign a charter with the municipality by which they commit to welcome and host the person concerning the values of responsibility, solidarity, open-mindedness, and respect.

The reception of beneficiaries is thus regulated at a local level rather than at the federal level, with the exception of the short stay at the transit centre of Ariane in Brussels. This is so because beneficiaries, unlike applicants for international protection, immediately access their rights to social benefits and work, and are thus expected to "find their way". Since 10 March 2022 until 4 April 2023, 75% of persons who have received temporary protection have indicated during registration not to have a reception need.<sup>138</sup> These people find solutions through their network and stay with family and/ or friends. As mentioned, part of the group that *does* indicate a reception need and has vulnerabilities is given temporary reception at Ariane for the time needed to find a solution at the local level. Roughly 8,352 persons have been referred to Ariane since the beginning of the crisis.<sup>139</sup>

It is however unclear whether those that indicate not to have a reception need managed to find a durable accommodation solution: having no housing at the reception centre of Ariane in the first days means that Fedasil will not take on the responsibility to refer them to municipalities for accommodation. At the same time, the municipality is not strictly responsible for those who do not yet have a registered address at their place. These people thus risk finding themselves in a 'responsibility' gap. This gap is also reflected in the numbers: between the persons who are registered in the Aliens Register and those who have received an A-card (meaning that they have registered at the municipality) 10,000 persons cannot be accounted for.<sup>140</sup> A large group thus remain unheeded, possibly struggling to find adequate housing.

The municipalities, when confronted with someone with a reception need or a need for relocation from the host family, are however expected to undertake several steps to ensure that the person can access housing. If durable housing solutions are not available, nor temporary solutions such as hotels, B&B's, the municipalities are expected to contact neighbouring municipalities. If this is to no avail, they should contact the Ukrainian support team (VLOT), that would provide support in the search for a reception place.<sup>141</sup> Municipalities however do not always make full use of their options to contact neighbouring municipalities or to contact VLOT.

<sup>136</sup> For Wallonia, see: *Proposition of place of residence*, available in French at: <http://bit.ly/3KURzE6>; for Flanders, see IBZ, *Circular regarding the registration of Ukrainians in the registers under the temporary protection statute*, 9 March 2022, available in Dutch at: <https://bit.ly/3JqlxPV>, 3.

<sup>137</sup> Fedasil, *Fall in arrivals of Ukrainian refugees*, 5 August 2020, available at: <http://bit.ly/3Y9WtA7>.

<sup>138</sup> Statbel, *Displaced persons from Ukraine*, available in English at: <https://bit.ly/3ZmG5O4>.

<sup>139</sup> Numbers provided by IBZ

<sup>140</sup> Communication by IBZ, 15 March.

<sup>141</sup> Communication from the Flemish government support team on Ukraine (VLOT) to the municipalities, 27 October 2022.

The situation regarding reception is worsened by the lack of social housing solutions. Particular issues are encountered with regards to housing for large families and people with physical disabilities.

Another issue concerns the impossibility of registering during the stay at the Ariane transit centre. As Ariane was initially meant to provide a short-term solution, the extended stay without any means to register has a negative impact on access to social, financial, and work rights.<sup>142</sup>

## E. Employment and education

### 1. Access to the labour market

Beneficiaries with a residence permit (A-card) or annex 15 can legally work in Belgium.<sup>143</sup> They may work both as an employee or a self-employed person. The temporary protection status exempts them from the obligation to obtain a special working permit to exercise activities as self-employed persons.<sup>144</sup> In total, 17% of Ukrainians registered as job seekers in Belgium have found a job.<sup>145</sup> This is an average of 9% in Brussels (538 persons out of 6,248 registered), 10% in Wallonia (623 persons out of 6,140 registered) and 23% in Flanders (4,016 persons out of 17,471 registered).<sup>146</sup> These numbers only concern people Ukrainian nationals, rather than persons with the temporary protection status.

The social benefits may (certain exceptions aside) be conditional upon the ‘willingness to work’.<sup>147</sup> Beneficiaries can present themselves with their residence documents to one of the regional offices where they can register as a jobseeker. In Flanders, this is VDAB; in Brussels, Actiris and Wallonia, Forem. There are various measures to facilitate access to the labour market of TP beneficiaries. While employers cannot specify the nationality of people they want to recruit to avoid discrimination, they can use hashtags to indicate that they are open to newly arrived employees in Belgium. In Flanders, this can be done through #werkplek vrij; in Brussels, through # Welcome.<sup>148</sup> Wallonia has no such hashtag, although employers open to newcomers are encouraged to avoid imposing certain conditions such as language requirements, and use comprehensible, clear language in their vacancies.<sup>149</sup>

Regarding the labour rights, every worker in Belgium has enjoys the same rights regardless of their right of residence.<sup>150</sup> Every sector has a minimum wage, and labour must always be remunerated. For questions, doubts or complaints, people can contact the inspection service (“*arbeidsinspectie*”).

Beneficiaries also have the option to follow free integration courses. This includes a course on integration and a course on Dutch. Due to the high demand, this is mainly done through online available info sessions. The beneficiary can apply with his attestation of temporary protection in combination with the A-card or the Annex 15.<sup>151</sup>

<sup>142</sup> Myria, *Contact meeting*, 21 September 2022, available in Dutch at: <https://bit.ly/3m5NaUA>, 50.

<sup>143</sup> Article 10, °6, Royal Decree, 2 September 2018, available in Dutch and French at: <https://bit.ly/3Y9wvqg>.

<sup>144</sup> Article 1, °15 Royal Decree, 3 February 2003, available in French and Dutch at: <http://bit.ly/3mj78LC>.

<sup>145</sup> This does however not mean that they are all still currently working.

<sup>146</sup> Measurement from the 1 January 2022 to 31 December 2023. Numbers provided by the VDAB, as calculated by Statbel/KSZ (“*kruispunt databank sociale zekerheid*”).

<sup>147</sup> Article 3 § 5, Law on the right to social integration, 26 May 2002, available in Dutch and French at: <https://bit.ly/3WP7Mxg>; see also Institution on social integration (POD MI), *FAQ on Ukraine*, available in French and Dutch at: <https://bit.ly/3Rh1B3L>, 7.

<sup>148</sup> Actiris, see: <http://bit.ly/3DrOdEn>.

<sup>149</sup> Forem, see: <http://bit.ly/3XInk77>.

<sup>150</sup> Article 4 §1 & article 11, Law establishing sanctions and measures for employers of illegally staying third-country nationals, available in French and Dutch at: <https://bit.ly/3HKisxV>

<sup>151</sup> See Agii (agency for integration and citizenship), pt. 3.8. *Scope of application*, available at: <http://bit.ly/3xZz2in>.

## 2. Access to education

All children between the ages of 5 and 18 residing in Belgium have the right to education, regardless of their residence status.<sup>152</sup> Temporary protection beneficiaries are obliged to enrol in education 60 days after registration in their municipality, regardless of whether this is distance learning, or enrolment in the Belgian education system through home schooling or physical classes.<sup>153</sup> Education has no age limit, although compulsory education ends at 18.<sup>154</sup> On 19 December 2022, 7,257 persons with temporary protection were enrolled in Flemish-speaking schools (Flanders including Flemish speaking schools in Brussels). 44 of them did not have the Ukrainian nationality, while approximately 400 Ukrainians were enrolled without a temporary protection status.<sup>155</sup>

All beneficiaries are entitled to education under the same conditions as nationals, except for the diploma requirements where the degree obtained in a foreign country – contrary to Belgians – may not give direct access to a degree or additional exams or preparation programs may be required.<sup>156</sup> Some rules are more favourable for TP beneficiaries. For example, beneficiaries have the opportunity to, at any moment, file a declaration of home education. Those who prefer distance learning are exempted from the requirement to take exams unlike the Belgian home-schooled children.<sup>157</sup> Generally speaking, administrative requirements are eased; this is so regarding the admission requirements to secondary school.<sup>158</sup> Moreover, beneficiaries have access to preparatory classes (“*Okan*” in the Flemish-speaking region, “*DASPA*” in the French-speaking region) for foreign newcomers who speak a different language.<sup>159</sup>

If a child has special needs, the centre for student counselling can redirect the person to a school more adapted to the child’s needs. The procedure for such enrolment is temporarily simplified, not requiring a medical diagnosis.<sup>160</sup> The schools for special needs are mainly for children who, temporarily or permanently, require special assistance because of: (1) a physical or mental disability, (2) serious emotional or behavioural problems, and (3) severe learning disabilities. With the influx of displaced persons, these schools have extra personnel providing (para)medical, social and psychological support.<sup>161</sup>

There are however some obstacles for children under the age of eighteen. First, preparatory classes are saturated, meaning that some beneficiaries are put on waiting lists and – unless home-schooling is a possibility – do not in practice access the education system. Moreover, if a guardian has not been appointed (of which there is equally a shortage), this may cause problems in practice (such as payments and school trips abroad...). The decision to enrol is an act of parental authority that belongs to the parents or guardian. Even if the student would be enrolled anyway, persons with legal custody can sign certain documents, as long as those documents do not affect the right to education and the decisions to be made about it. Foster caregivers can make decisions about parenting in cases of urgent necessity, with notification to the parents.<sup>162</sup>

As for those who wish to enrol in higher education, higher education institutions and universities are competent to verify whether the secondary degree obtained abroad can be considered equivalent. Beneficiaries of temporary protection who wish to continue their studies after completing their secondary education

<sup>152</sup> GD/2003/03, *The right to education for children without legal residence*, 24 February 2003, available at: <http://bit.ly/3jpxYRb>.

<sup>153</sup> Article 1 § 7 Law of 29 June 1983 on compulsory education (amended 23 March 2019) available at: <http://bit.ly/3jpxYRb>.

<sup>154</sup> *Ibid.*, article 1 §1.

<sup>155</sup> Numbers provided by the Flemish ministry of education, 19 december 2022

<sup>156</sup> Article II.177 Codified Decree on higher education, 11 October 2013, available in Dutch at <http://bit.ly/3JxTwWJ>.

<sup>157</sup> Flanders education government page, *Ukraine crisis: lower- and secondary education*, available in Dutch at: <https://bit.ly/3kS0fQS>.

<sup>158</sup> Walloon-Brussels Education unit, *Circular: Ukrainian situation, schooling for children fleeing from conflicts*, p. 7, available in French at: <https://bit.ly/3jlVAX1>.

<sup>159</sup> Flemish Government Royal Decree, 7 February, available in Dutch at: <http://bit.ly/40et3TR>.

<sup>160</sup> For Flanders, see: <https://bit.ly/3kS0fQS>; for Wallonia, see: <http://bit.ly/3kVpGkC>.

<sup>161</sup> Flanders education government page, *Ukraine crisis: lower- and secondary education*, available in Dutch at: <https://bit.ly/3kS0fQS>.

<sup>162</sup> Article 387 Quinquies Civil Code, 21 March 1804, available in French and Dutch at: <https://bit.ly/3KJp8ZN>.

must thus individually contact the institution where they want to study. In the absence of a secondary school diploma, an institution may enrol the person for the following reasons: humanitarian, medical, psychological or social. Passing a knowledge and language exam may also be set as a requirement.<sup>163</sup> Some educational degrees, however, require passing mandatory exams as a prerequisite for enrolment (e.g. dentistry, medicine).<sup>164</sup> The enrolment fee is equivalent to the standard fee that Belgian students pay (rather than the fee for third country nationals). Moreover, diploma recognition procedures, as required also for certain jobs, are free for beneficiaries.<sup>165</sup>

However, some obstacles remain regarding enrolment in higher education. The language barrier, combined with many courses being in either Dutch or French, constitutes a first obstacle. Moreover, the Ukrainian high school diploma is equivalent to only the second (out of three) cycles of high school education in Belgium, which means that if one wants to continue studying with a Ukrainian secondary education degree and has already passed the age of 18, they must finish the last high school cycle through adult education, while learning one of the local languages. As mentioned, each school can individually grant access based on humanitarian reasons, even when these conditions are not met. For people without the financial means to continue their studies through higher education, welfare centres can support the student financially throughout their education; this is conditional on meeting the commitments agreed upon with the assigned social worker.<sup>166</sup> The willingness of the social welfare centre (responsible for granting financial aid to people with financial needs) to ‘invest’ in these cases varies depending on the municipality. It is highly dependent on the person’s profile.

Lastly, beneficiaries may also enrol in adult education. In relation to vocational training and above-age education beneficiaries, there is an adult education fee exemption for those who enjoy temporary protection. Beneficiaries may take Dutch (in Flanders) and French (In Wallonia) as a second language and other courses offered by the adult education centres. To do so, they must demonstrate their lawful residence in Belgium, for which they can invoke their temporary protection status. For Dutch as a second language, adults must apply first at the ‘agency for integration and citizenship’ (the whole of Flanders), Atlas (Antwerp) or IN-Ghent. They can orient non-native speakers to the most appropriate course.<sup>167</sup>

## F. Social welfare

The right to social benefits starts from the day of the demand. This means that a person with a temporary protection certificate and an inscription in the register (or proof of an appointment with the municipality) can address himself to the social welfare centre to receive or social revenue or ‘social benefits’. The right to the reception of social benefits will work retroactively to the day of the demand.<sup>168</sup> Each municipality has a ‘social welfare centre’ which operates relatively autonomously (in Flanders “OCMW”, and in Brussels and Wallonia “CPAS”). The social welfare centre of the municipality where the address is registered is responsible for granting social benefits.<sup>169</sup> Hence, the beneficiary must be a resident in the specific municipality to qualify for social benefits. From March 2022 up until – and including – 23 January, 26,808 temporary protection beneficiaries received social benefits. This includes 5,650 beneficiaries in Brussels, 16,560 in Flanders, and 7,416 in Wallonia.<sup>170</sup>

<sup>163</sup> Article II.177 Codified Decree on higher education, 11 October 2013, available in Dutch at <http://bit.ly/3JxTwWJ>.

<sup>164</sup> Flanders education government page, *conditions of admission to higher education*, available in Dutch at: <http://bit.ly/3JuRrLa>.

<sup>165</sup> Naric, *information on the recognition of Ukrainian diploma's*, see: <http://bit.ly/3IHuXUW>.

<sup>166</sup> Art. 11 § 2 (a) & art. 52, law on the right to social integration, 26 May 2022.

<sup>167</sup> Flanders education government page, *Adult education*, available in Dutch at: Flanders education government page, *Ukraine crisis: lower- and secondary education*, available in Dutch at: <https://bit.ly/3kS0fQS>.

<sup>168</sup> *Ibid.*

<sup>169</sup> Article 2§ 5 Law on aid granted by public social welfare centres, 2 April 1965, available in French and Dutch at: <https://bit.ly/3mksaK8>.

<sup>170</sup> Note: these numbers are based on the number of total files a person has at the social welfare centre, rather than on the total number of social benefit requests. The average number of persons per file is at 1.7. Statistics provided by the authority on social benefits POD MI, available at: <https://bit.ly/3mkmob5>.



The amount of financial aid given can vary greatly.<sup>171</sup> This is so because under the (“*equivalent leefloon*”) there is no fixed amount, no selected calculation method, and no fixed categories, which results in a high margin of discretion for the social welfare centres and a significant difference between the revenue granted from person to person, and from municipality to municipality. The social welfare centre examines the need for financial assistance and decides within 30 days.<sup>172</sup> The social welfare centre determines what aid is granted based on the established factual situation (housing, forms of support received, cohabitation, etc.).<sup>173</sup>

Some issues emerged regarding access to social benefits. A certain lack of clarity has been signalled concerning the amount of the benefits granted and/or the reasons for the refusal or reduction of the revenue. These are often communicated through an official decision only available in Flemish or French. The motivation is often very generic, and not sufficiently individualized to deduct the real reason of refusal/reduction. A lack of transparency and the extensive margin of discretion accorded to the welfare centre results in incomprehension about the reasons for which a certain amount was or was not granted. Problems may also arise when the person moves from a host family or collective centre to a rental house on the private market (appointed by the municipality or not) and where the benefits received are no longer sufficient to accommodate the new social situation. Beneficiaries are recommended to keep the social welfare centre up to date with their situation so that their social benefits can be adapted in a timely manner. Moreover, have there been cases of social welfare centres not granting the social revenue retroactively starting from the day of demand but only starting from the moment the social investigation is concluded and the amount of income is set.

Lastly, the beneficiary usually depends on the aid and information their social worker gives. When there is a suspicion that the social worker is not informing the person correctly and transparently, or when there are complaints about the behaviour of the social worker (racist, discriminatory), there is hardly any information given on whom they can address within or outside of the organisation. The decision mentions the possibility of appealing a decision of the social welfare centre, but this is in a language they do not usually understand. People who feel their rights to social benefits are not respected generally have little information on the steps they can undertake or to whom they can address their concerns. Among services available to people in such situations, one can call the Infoline of Vluchtelingenwerk Vlaanderen to try to obtain information from social welfare centres.

## G. Health care

Foreigners authorised to reside in Belgium for more than three months are registered as ‘residents’ and consequently have the right to healthcare insurance.<sup>174</sup> Beneficiaries are entitled to the same level of healthcare services as Belgian nationals. Persons ‘visiting’ in short stay, are therefore required to apply for temporary protection if they wish to enjoy medical care beyond urgent medical aid.

Before obtaining resident status, the right to urgent medical support is ensured regardless of whether the person has a residence permit.<sup>175</sup> Urgent medical health care can be provided to those who have fled Ukraine and have not yet acquired the necessary documents. This concerns potential beneficiaries who (1) have not yet undertaken any steps for registration at the registration centre of IBZ but declare that they will do so shortly, those who are on a short stay and merely have a declaration of arrival (annex 3), those who claim that they have been to the registration centre, but have not yet received the temporary protection certificate, and those who have received a certificate of temporary protection but have not yet registered themselves at their municipality.<sup>176</sup> The cost of the medical care will, in this case, be covered by the

<sup>171</sup> Institution on social integration (POD MI), *FAQ on Ukraine*, available in French and Dutch at: <https://bit.ly/3Rh1B3L>, 5.

<sup>172</sup> Response POD MI on the calculation of the *equivalent leefloon*, 12 August 2022

<sup>173</sup> See VVSG, *Right to Social benefits*, available in Dutch at: <http://bit.ly/41y2kSS>.

<sup>174</sup> Article 128 Quinquies §1 Rocal Decree, 3 July 1996, available in French and Dutch at: <https://bit.ly/3EOP1nj>.

<sup>175</sup> Article 5 Royal Decree 5, 12 December 1996, available in French and Dutch at <https://bit.ly/3XU7Tc4>.

<sup>176</sup> Institution on social integration (POD MI), *FAQ on Ukraine*, available in French and Dutch at: <https://bit.ly/3Rh1B3L>, 3.

social welfare centre on the condition that they have an 'attestation of urgent medical needs' from the attending physician.<sup>177</sup>

Once the healthcare insurance is in order, it works retroactively, going back to the obtainment of the temporary protection certificate or – where this took some more time – to the day of registration at the registration centre. Annex 15, or the A card, allows to take out healthcare insurance. In the absence thereof but with only a temporary protection certificate or proof of registration, the insurance will check if the inscription in the Aliens Register has been realised.

However, there may be some issues related to healthcare access despite enjoying same status as other residents or nationals.<sup>178</sup> As with many other aspects, most problems arise where a person cannot register at an address. In such cases, access to healthcare is not only limited to urgent medical healthcare, but access to actors crucial in providing healthcare information may be limited. For those who had an address and have an insurance, but no longer have an address, problems may also arise as there are no clear instructions on possible exceptions. It should be noted, however, that institutions providing insurance have shown some flexibility in this regard.

<sup>177</sup>

*Ibid.*

<sup>178</sup>

Obstacles as identified by Medimmigrant.