

## Policy & Legal review for children in alternative care & unaccompanied and separated children from Ukraine arriving in: GERMANY

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1. What are the laws and/or policies covering care arrangements for children temporarily or permanently deprived of family care (with translation into English if available)?

### Existing legal framework:

- See German Institute for Youth Human Services and Family Law (DIJuF) (2022/03/11): First hints on Legal issues in connection with the flight of Ukrainian children, adolescents and their families to Germany:  
[https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_KJH\\_fuer\\_junge\\_Gefluechtete\\_aus\\_der\\_Ukraine\\_11.3.2022.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_KJH_fuer_junge_Gefluechtete_aus_der_Ukraine_11.3.2022.pdf)
- Especially:
  - II. (Temporary) Taking into Care of Children and Adolescents Arriving in Germany (p.2): According to § 42a SGB VIII, the Youth Welfare Office is entitled and obligated to temporarily take into custody foreign children who arrive in Germany unaccompanied. Unaccompanied children and adolescents are those who do not enter Germany accompanied by a guardian or legal guardian.
  - III. Granting of child and youth welfare services (p.8): Children, adolescents and their families as well as young adults who have fled must be granted child and youth welfare services if there is a corresponding need. In principle, all children and their parents have access to the entire repertoire of services under SGB VIII.
  - IV. Order of guardianship and appointment of a guardian (DIJuF p.10)
- Press Release, Family ministry, 2022.03.21: Federal Ministry of Family Affairs coordinates accommodation for Ukrainian orphans:  
<https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/bundesfamilienministerium-koordiniert-unterbringung-ukrainischer-waisenkinder-194392>
- Please see the Federal Office for Migration and Refugees (BAMF) information on Accommodation, Care and Assistance:  
<https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp80-unbegleitete-minderjaehrige.html?jsessionid=7A218AFBF476A5BC7410F2E2AA1EDC71.intranet662?nn=284778>

### National coordination for reception of Ukrainian orphanages:

The reporting and coordination center for the reception of Ukrainian orphanages and children's homes of the Federal Ministry of Family Affairs starts its operation. The office rests on **two pillars**: <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/koordinierungsstelle-zur-aufnahme-ukrainischer-waisenkinder-nimmt-betrieb-auf-195192>.

- 1) **The SOS reporting center**, operated by **SOS-Kinderdorf e.V.** (089 12606 0.) [info@sos-kinderdorf.de](mailto:info@sos-kinderdorf.de), is available as of today on the toll-free telephone number 0800-1260612 daily
- 2) **The central coordination office**, set up at the Federal Office of Administration. It registers admissions and capacities in the federal states and ensures the fair distribution of evacuated groups among the federal states as well as the joint accommodation, care and support of the groups with their accompanying persons.

2. What are the laws and/or policies or bi-lateral agreements covering care arrangements for unaccompanied and separated children (UASC) from foreign countries (with translation into English if available)?

### **Summary of guidance on entry and stay requirements for all arriving refugees from Ukraine into Germany**

The Federal Office for Migration and Refugees regularly publishes UA-specific guidance in German, Russian and Ukrainian on entry and stay requirements here:

<https://www.bamf.de/SharedDocs/Anlagen/DE/AsylFluechtlingsschutz/faq-ukraine.html>.

Detailed information in German can also be found here: <https://www.proasyl.de/news/wichtige-infos-zur-einreise-und-verbleib-in-deutschland-fuer-ukrainerinnen/>. The Federal Ministry of the

Interior (BMI) has issued additional specific guidance, available in English

(<https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/ministry/ukraine-war-eng/faq-ukraine-artikel.html>) and Ukrainian

(<https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/ministerium/ukrain-war-ukr/faq-list-ukrain-war.html>); civil society organisations have also released detailed guidance in English and

Ukrainian: <https://minor-kontor.de/aufenthaltsrechtliche-fragen-fuer-menschen-aus-der-ukraine-in-deutschland/>.

Germany has extended temporary protection to third-country nationals who can prove they were lawfully present in Ukraine for a non-temporary purpose but had not yet obtained permanent residency or international protection.

### **Existing legal framework:**

- Social security statute book, Sozialgesetzbuch (SGB) VIII: The Book Eight of the German Social Code (SGB VIII) covers arrangements for unaccompanied and separated children from foreign countries or legal guardians from abroad countries - all children are entitled to all



the benefits that are legally consolidated in SGB VIII. Legal text available (de):

[https://dejure.org/gesetze/SGB\\_VIII](https://dejure.org/gesetze/SGB_VIII);

- Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz) - de: [http://www.gesetze-im-internet.de/aufenthg\\_2004/](http://www.gesetze-im-internet.de/aufenthg_2004/); en: [http://www.gesetze-im-internet.de/englisch\\_aufenthg/index.html](http://www.gesetze-im-internet.de/englisch_aufenthg/index.html)
- Asylum Procedure Act (Asylverfahrensgesetz) - de: [http://www.gesetze-im-internet.de/asylvfg\\_1992/](http://www.gesetze-im-internet.de/asylvfg_1992/); en: [http://www.gesetze-im-internet.de/englisch\\_asylvfg/index.html](http://www.gesetze-im-internet.de/englisch_asylvfg/index.html)
- Act on Senior Judicial Officers (Rechtspflegergesetz), Section 14 - Parent and child cases and adoption cases - de: [http://www.gesetze-im-internet.de/rpflg\\_1969/](http://www.gesetze-im-internet.de/rpflg_1969/); en: [http://www.gesetze-im-internet.de/englisch\\_rpflg/index.html](http://www.gesetze-im-internet.de/englisch_rpflg/index.html)

3.

- a. What is the legal status of unaccompanied and separated children (UASC) [from Ukraine] in this country?
- b. Does this status guarantee that a child will be able to return to Ukraine once the situation normalises? Or if there is no such “guarantee”/clause please also indicate.
- c. Is there a difference in how the legal system treats the child classified as unaccompanied vs. separated?
- d. Does this status allow the adoption of the Ukrainian child who has entered this country without the consent or participation of parents and/or representatives of Ukrainian relevant state parties?

a.

See “V. Right of residence of Ukrainian citizens” (last updated 24 Mar):

[https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_Ablaufschema\\_Ankommen\\_junger\\_Gefluechter\\_2022-03-24.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_Ablaufschema_Ankommen_junger_Gefluechter_2022-03-24.pdf)

b.

The Federal Office for Migration and Refugees (BAMF) is the authority under the Federal Ministry of Interior, Building and Community (BMI) in charge of the asylum procedure, including return. The explanation on returns, from the BAMF website – although note it is not specific to Ukraine

<https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp80-unbegleitete-minderjaehrige.html;jsessionid=7A218AFBF476A5BC7410F2E2AA1EDC71.intranet662?nn=284778>):

“Before forcibly returning an unaccompanied minor, authorities have to make sure that assistance for the minor in the return state is ensured by a family member, a person with custody or a suitable

reception facility. This is difficult to do in practice, which is why removal is only impending in rare exceptional cases. Unaccompanied minors are usually granted a suspension of removal until they turn 18. If unaccompanied minors decide to return voluntarily, they can receive financial support for return and reintegration (for example through the REAG/GARP Programme). Here as well, assistance and care in the country of origin has to be ensured.”

In case the legal status of Ukrainians changes because the Temporary Protection Directive expires, for every decision to return a person forcibly, an appeal to a court is possible. In regard to children, the decision of the administration before has to take the best interest of the child into account, this has to be proven in a potential trial.

If a child has been taken into care and a Ukrainian relative wants to return the child, the best interest of the child would also be the criterion on which the authorities decide. Here as well, an appeal to the courts is possible – for both sides.

c.

NO. There is no legal status as “separated” – every child that enters Germany without a guardian/legal guardian, is qualified as unaccompanied. If there is a possibility to reunite a family, that has been separated, authorities will try to do so. If there is no option to reunite, the child is taken into care (see above).

The definition of unaccompanied children is defined by this article:

[https://dejure.org/gesetze/SGB\\_VIII/42a.html](https://dejure.org/gesetze/SGB_VIII/42a.html). It states that “*A foreign child or a foreign juvenile shall in principle be regarded as unaccompanied if the entry is **not accompanied by a legal guardian or legal guardian; this shall also apply if the child or juvenile is married.***”

d.

The Joint Central Adoption Office (GZA): <https://www.hamburg.de/gza/15987782/keine-adoption-kriegs-und-krisengebiete/>

**NO.** An unaccompanied minor cannot be adopted – especially not against the will of parents.

Authorities would contact Ukrainian authorities to evaluate if there are parents or other relatives.

states that adoption of children coming from war crisis is not possible.

4.

a. What is the legal status (especially the length of the status, benefits and restrictions) of the Ukrainian guardian accompanying a Ukrainian separated child arriving in this country (for

example a member of staff from the evacuated institutions which has been appointed by the Ukrainian authorities as a guardian for a group of children during evacuation of an institution)?

- b. What safeguarding measures are in place to check and protect the best interests of the child if the child has a guardian from Ukraine (i.e., verifying who the guardian is, approve the guardian status in relation to the child, provide support and monitoring, etc.)?

a.

The authorities have to determine this on a case by case basis. The guiding principle in the decision is the best interest of the child and the protection of the child. If Ukrainian guardians can provide the necessary papers, they will be accepted in Germany as a guardian. Depending on the education the person might be also considered as professional and has the option to work in Germany in its profession regularly. In case the Ukrainian experience is not (fully) acknowledged, measures for further qualifications might be possible – but specific regulations in this regard are not made yet.

“

According to Ukrainian law, a guardianship is established for persons who are under 14 years of age and are not cared for by their parents”

[https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_KJH\\_fuer\\_junge\\_Gefluechtete\\_aus\\_der\\_Ukraine\\_2022-03-28\\_01.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_KJH_fuer_junge_Gefluechtete_aus_der_Ukraine_2022-03-28_01.pdf)).

**The Ukrainian guardianship order is to be recognized in Germany in principle (Art. 23 para. 1 CSÜ).** Consequently, Ukrainian children or adolescents who enter the country with a guardian are not considered unaccompanied as defined by § 42a SGB VIII. Whether a person has parental authority is determined in accordance with § 7 Para. 1 No. 6 SGB VIII: According to this, the person with parental authority and any other person over the age of 18 is entitled to parental authority, insofar as he or she is responsible for the care of the person not only temporarily and not only for individual tasks on the basis of an agreement with the person with parental authority. The agreement with the legal guardian does not have to be in writing to be effective. If there is no written power of attorney, the professionals must assess on the basis of the overall impression of the situation and the information provided by the child or adolescent and the accompanying person whether the existence of a power of attorney for custody can be assumed.

It should be noted again that the mere assignment of a "travel or escape escort" is not sufficient to establish a parental authority within the meaning of §§ 7, 42a SGB VIII. Thus, for example, children who leave the country with German helpers (e.g. accompanied by a German pastor) do not qualify as accompanied in the sense of §§ 42a ff.

b.

The DIJuF (Deutsches Institut für Jugendhilfe und Familienrecht e. V.) answers this question here [https://dijuf.de/fileadmin/Redaktion/Hinweise/SN\\_2022\\_0526\\_GA\\_Web\\_2022-04-22.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/SN_2022_0526_GA_Web_2022-04-22.pdf):

“In the cases in which the minors enter the country unaccompanied by their parents but together with accompanying persons, it must therefore be **checked whether the accompanying persons have parental authority** within the meaning of § 42a Para. 1 S. 2 SGB VIII in conjunction with § 7 para. 1 no. 6 SGB VIII. **The youth welfare office has to determine the existence of a legal guardianship ex officio** (§ 20 par. 1 SGB X) and may in particular make use of the information provided in § 21 par. Paragraph 1 S. 2 SGB X to use evidence.” “Based on the law ([§ 42a Abs. 1 S. 1 SGB VIII](#)) - <https://www.buzer.de/gesetz/7514/a195108.htm>, temporary custody is only considered when the youth welfare office Youth Welfare Office comes to the conclusion that the child or adolescent is unaccompanied. **The verification of the legal guardianship of the accompanying person would therefore always have to take place prior to a provisional taking into custody.**”

“Since parental authority cannot be established immediately, the young person should initially be taken into custody in the best interests of the child, i.e. **the child should be treated as unaccompanied until parental authority or accompaniment has been sufficiently clarified (which is currently not the case).**”

5.

- a. What are the regulations and procedures in case a child arrives without parents and any legal guardian (or any papers authorizing the person to care for the child), e.g., a child which is looked after by an adult (e.g., a family friend, a neighbour, someone who found the child alone on the street and took it along to keep it safe...)?
- b. May the return of these children to Ukraine, after the normalisation of the situation, be questioned/hampered by the legal status they receive?

a.

See this chart giving an overview of the procedure:

[https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_Ablaufschema\\_Ankommen\\_junger\\_Gefluechter\\_2022-03-24.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_Ablaufschema_Ankommen_junger_Gefluechter_2022-03-24.pdf)

Children arriving without parents or legal guardian fall under Sections 33 -

<https://www.sozialgesetzbuch-sgb.de/sgbviii/33.html> (concerning Full-time care) and 34 -

<https://www.sozialgesetzbuch-sgb.de/sgbviii/34.html> (concerning institutional care) of the Social Code Book VIII.

Full-time care in accordance with § 33 SGB VIII can be considered, especially if close relatives, acquaintances or friends are willing and suitable to take in the young person. These can be caregivers who already live in Germany and are familiar with the young person. A care permit is required.

Unaccompanied minors are initially taken into care by the locally responsible youth welfare office (<https://www.bamf.de/DE/Themen/AsylFluechtlingsschutz/UnbegleiteteMinderjaehrige/unbegleite>

[teminderjaehrige-node.html](#)). Then they are taken into temporary custody (either Section 33 or Section 34 above mentioned), there, an initial screening takes place. In addition to a general health check, it also establishes the age of the minors. The methods used for this range from a pure age estimate to physical examinations and radiological examinations.

In addition, the responsible youth welfare office assesses whether the implementation of the subsequent distribution procedure could endanger the child's well-being in physical or psychological terms.

b.

**No**, but a best interest assessment will be carried out (including the opinion of the child). If it would not be in the best interest of the child return would not be pursued.

Before a return, authorities must ensure that a person with custody or a suitable reception facility takes over the care of the minors in the country of return. It must be ensured before leaving the country that the minor is cared for in the country of origin.

<https://www.bamf.de/SharedDocs/Anlagen/DE/EMN/Studien/wp80-unbegleitete-minderjaehrige.html?nn=284778>

6. Which government ministry/department is responsible for the:

- a. the care of children temporarily or permanently deprived of family care & would it be possible to provide immediate contacts?
- b. the care of unaccompanied and separated children (UASC) [from Ukraine] & would it be possible to provide immediate contacts?

a.

Ministry of Family Affairs, BMFSFJ - [www.bmfsfj.de/](http://www.bmfsfj.de/); poststelle@bmfsfj.bund.de - 03018/ 555 – 0, Minister: Lisa Paus

SOS Kinderdorf Germany have offered to arrange some contacts on the working level across Germany (i.e. at federal-state level), as they are coordinating the German hotline for the evacuation of children living in institutional care in Ukraine. For such details on the ground, it is the state-level administration that is responsible, so it might be slightly different in all 16 states. The SOS reporting center: [info@sos-kinderdorf.de](mailto:info@sos-kinderdorf.de); toll-free telephone number 0800-1260612.

b.

The Ministry of Family Affairs (BMFSFJ) is also responsible for the care of unaccompanied and separated children - [www.bmfsfj.de/](http://www.bmfsfj.de/); poststelle@bmfsfj.bund.de - 03018/ 555 – 0, Minister: Lisa Paus

The Federal Office for Migration and Refugees (BAMF) is the authority under the Federal Ministry of Interior, Building and Community (BMI) in charge of the asylum procedure.

7. Has the government adopted specific legislation/policy or bi-lateral agreements on USAC from Ukraine? If not, would the government develop such legislation / regulations or bilateral agreements?

The Ministry of Family Affairs developed a document for clarification of the situation and rights of refugee children and young people from Ukraine (a so-called *punctuation*). The punctuation provides an overview of the tasks and responsibilities of the public child and youth welfare against the background of SGB VIII. See:

[https://www.lvr.de/media/wwwlvrde/jugend/service/arbeitshilfen/dokumente\\_94/jugend\\_mter\\_1/landesstelle\\_nrw\\_1/ukraine/Punktuation\\_RS\\_U\\_4218\\_Rechtsfragen\\_KJH\\_Anlage.pdf](https://www.lvr.de/media/wwwlvrde/jugend/service/arbeitshilfen/dokumente_94/jugend_mter_1/landesstelle_nrw_1/ukraine/Punktuation_RS_U_4218_Rechtsfragen_KJH_Anlage.pdf)

Also see “I. Scope of Social security statute book, Sozialgesetzbuch (SGB) VIII for children, adolescents and their families who have fled to Germany their families” (German Institute for Youth Human Services and Family Law - DIJuF p.1:

[https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_KJH\\_fuer\\_junge\\_Gefluechtete\\_aus\\_der\\_Ukraine\\_11.3.2022.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_KJH_fuer_junge_Gefluechtete_aus_der_Ukraine_11.3.2022.pdf)).

The opening of the scope of application of SGB VIII for foreign children, adolescents and their families is laid down in § Section 6 (2) and (4) of Book VIII of the SGB in conjunction with Article 6 (1) in conjunction with Article 5 (1) of the Hague Child Protection Convention (CCC1):

- See “V. Right of residence of Ukrainian citizens” (DIJuF p.11)
- See “IV. Order of guardianship and appointment of a guardian” (DIJuF p.10)

Apart from the above, the Temporary Protection Directive and its German implementation applies.

8.

- a. Has the government in this country put in place a system/process to track children from Ukraine, especially UASC?
- b. Who is responsible for identification and registration of these children, as well as accommodation and care?

- a. Tracking under the TPD is difficult since people arriving from Ukraine are not obliged to register in Germany. Once registered they will be tracked. For families the Federal Office for Migration and Refugees (BAMF) is responsible. UASC are tracked by the Child and Youth Welfare Offices (Jugendamt) within the city



administration/municipality specifically tasked with support and protection of children, adolescents and families.

- b. For UASC the local Child and Youth Welfare Offices (Jugendamt) is responsible. [https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF\\_Ablaufschema\\_Ankommen\\_juenger\\_Gefluechteter\\_2022-03-24.pdf](https://dijuf.de/fileadmin/Redaktion/Hinweise/DIJuF_Ablaufschema_Ankommen_juenger_Gefluechteter_2022-03-24.pdf). Also see: <https://b-umf.de/src/wp-content/uploads/2022/03/flyer-ukraine-2022-uade-ansicht.pdf>

9. Which authorities have responsibility for family tracing and reunification? Contact information provided where available.

- The Federal Office for Migration and Refugees (BAMF) is the authority under the Federal Ministry of Interior, Building and Community (BMI) in charge of the asylum procedure, including family tracing and reunification. The Ministries of the Federal States also have competencies and are part of the process.
- BAMF website on Family reunification: (<https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp80-unbegleitete-minderjaehrige.html?nn=282022>): It is generally in the best interests of children to live together with their parents or other relatives. The youth welfare office can initiate family reunification if relatives of an unaccompanied minor live in Germany or in other EU Member States. This is governed by youth welfare law. Family reunification under residence law (the subsequent immigration of dependent family members from a third country), on the other hand, is governed by residence law. If and how this type of family reunification is possible depends on the residence status of the unaccompanied minor.
- See Working Paper 80 "Unaccompanied Minors in Germany – Challenges and Measures after the Clarification of Residence Status" was authored as part of the European Migration Network (EMN): [https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp80-unbegleitete-minderjaehrige.pdf?\\_\\_blob=publicationFile&v=16](https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp80-unbegleitete-minderjaehrige.pdf?__blob=publicationFile&v=16)

**Additional relevant information & resources:**

- Dedicated website: <https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/ministry/ukraine-war-eng/faq-ukraine-artikel.html>