

Fundamental rights of children displaced in the EU following the Russian war of aggression

Estonia
June 2023

Contractor: Tallinn University

Author: Mart Susi

Disclaimer

This document was commissioned under contract by the European Union Agency for Fundamental Rights (FRA) as background material for the project 'Fundamental rights of children displaced in the EU following the Russian war of aggression'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Contents

1. Children fleeing Ukraine	3
1.1. Data on children fleeing Ukraine.....	3
2. Child protection – legal, policy framework and procedures in place	5
2.1. Responsibilities of child protection authorities.....	5
2.1.1. Individual children, including unaccompanied and separated children.....	5
2.1.2. Children evacuated from Ukrainian institutions.....	6
3. Guardianship/legal representation arrangements for unaccompanied and separated children fleeing Ukraine	8
3.1. Arrived unaccompanied	8
3.2. Arrived without parents, but with other family members, neighbours or family friends	8
3.3. Arrived within a group, from Ukrainian institution or foster carers (with or without an appointed legal guardian)	10
3.4. Arrived within a group, through private initiatives, such as football clubs (with or without an appointed legal guardian)	10
4. Information and practical challenges in access to basic services for children fleeing Ukraine	11
4.1. General information and challenges	11
4.2. Challenges for children at multiple risk/disadvantage.....	13
5. Policies in place.....	14
5.1. Dedicated action plan and/or integrated measures	14
5.2. European Child Guarantee	14
5.3. Budget	15

1. Children fleeing Ukraine

1.1. Data on children fleeing Ukraine

Table 1 Children fleeing Ukraine

Category of child	Registration system Y/N	Number of children (as disaggregated as possible) (as of 30 April 2023 unless otherwise specified)
Overall number of children	Y	28 837
Arrived accompanied by mother, father or another legal guardian	Y	28 727
Arrived without parents, but with other family members, neighbours or family friends	Y	Please see the notification below
Arrived unaccompanied	Y	110
Arrived within a group of children, as an organised evacuation from Ukrainian institutions or foster carers (with or without an appointed legal guardian)	Y	5
Arrived within a group of children, through private initiatives, such as football clubs (with or without an appointed legal guardian)	N	N/A

Source: Social Insurance Board, Police and Boarder Guard Board.

According to the information obtained in response to information request from the Police and Boarder Guard Board on 29 June 2023 via several e-mail exchanges, office of analysis, during the period of 24 February 2022 until 30 April 2023, a total of 28 837 children from Ukraine arrived to Estonia. Of these, 12 420 children arrived with the purpose of transit. 28 727 children arrived as accompanied. Into the database, out of these, for 18 986 the connection to the accompanying adult was not specified. For 9452 children was specified that the child is accompanied by a parent. In other cases, it could

be deducted from the information entered into the registration system, that the accompanying adult was grandmother, friend of the mother, foster mother or foster father. There is no information held by the Police and Border Guard Board about children arriving in a group. The respective figure in the table is from the Social Insurance Board.

The registration system is managed by the Police and Border Guard Board. In the event when the border was crossed by an adolescent without adults and this adolescent has been in need of alternate care, the information is separately managed by the Social Insurance Board. This Board also manages information at information stands located at border crossings regarding those individuals entering from Ukraine, who needed accommodation. Those who did not come to the information stands are not reflected in these separate registries.

The applications for temporary protection are handled by the Police and Border Guard Board. This registry also included information about applications from unaccompanied children, but they cannot be separated from the total data.

All information about border crossings in conjunction is handled by the Police and Border Guard Board. The Social Insurance Board handles cases of unaccompanied children.

There is no separate system for applications of children from Ukraine. Their data is included into the general data about applications for temporary protection and border crossings. The data of Ukrainian children is entered into Estonian population registry (*rahvastikuregister*) once they have obtained the personal ID code and temporary protection.

Social Insurance Board has data which enables to distinguish the age, gender and citizenship of children.

2. Child protection – legal, policy framework and procedures in place

2.1. Responsibilities of child protection authorities

2.1.1. Individual children, including unaccompanied and separated children

There exists legal framework. The roles of authorities are divided as follows.

The Police and Border Guard Board undertakes the initial procedures (in the presence of a representative), such as: identification of the person, taking the photo, introducing rights and obligations, giving temporary protection, issuing identification documentation, issuing personal identification number. In the event where the status of the child is determined as travelling unaccompanied or separated, the child is taken to a safe house.

Social Insurance Board conducts the assessment interview, introduces rights and obligations, provides accommodation (in an accommodation center or providing alternate care), compiling case report, health check, upon need translation services, psychological counselling, undertakes case management and finances the services.

Local municipality is the legal representative of the child. When necessary, it turns to the court for the appointment of a guardian, for children in alternate care and for those studying – when they become adults the local municipality provides aftercare.

The court decides about guardianship.

The Social Insurance Board has additionally indicated, via e-mail exchanges between 21 to 29 June, that the following legal acts are relevant for the framework.

The Social Welfare Act is relevant for alternate care regulation - <https://www.riigiteataja.ee/en/eli/ee/531052023001/consolide/current>

Family Law Act is relevant for appointing guardianship - <https://www.riigiteataja.ee/en/eli/ee/501022023005/consolide/current>

Child Protection Act contains principles regarding the child in need - <https://www.riigiteataja.ee/en/eli/ee/510042023004/consolide/current>

For giving protection is relevant the Act of Granting International Protection to Aliens regulates procedures of the Police and Boarder Guard Board and the Social Insurance Board regarding unaccompanied children and extending international protection. This legal act also has a translation into Ukrainian - <https://www.riigiteataja.ee/en/eli/ee/530082022008/consolide/current>

2.1.2. Children evacuated from Ukrainian institutions

There is no separate regulation for children in this category. The division of responsibilities described in section 2.1.1. applies. As far as the authorities are aware, there are no such evacuations to Estonia. The principles which the authorities follow is to maximize the chances that children can stay with the adults with whom they have arrived.

The Social Insurance Board, department of child welfare, has provided additional explanation via e-mail exchanges between 19 to 29 June 2023, regarding the Child Protection Act amendments as of 20 November 2022. This Act does not regulate directly situations of unaccompanied children. Yet these norms are applicable towards the actions of officials of local municipality child protection officials in assessing the needs of the child (article 28) and giving assistance (articles 29,29¹ and 30 – 32). Also, in all procedures the best interests of the child have to be taken into account (articles 5 and 21). On 22 November 2022 became into force articles 15 (5) and 34¹: respectively (5):

The Social Insurance Board as the Central Authority shall perform the functions prescribed for in points (a), (b), (f) and (g) of Article 79 and in Articles 80 and 82 of Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (OJ L 178, 02.07.2019, p. 1–115). [RT I, 10.11.2022, 1 – entry into force 20.11.2022] and § 34¹. Placement of child from another Member State in Estonia

(1) The Social Insurance Board processes, on the basis of Council Regulation (EU) 2019/1111, the requests related with the placement of a child from another Member State of the European Union (hereinafter *Member State*) in Estonia.

(2) The list of information on the request for placement of a child shall be established by a regulation of the minister in charge of the policy sector.

(3) The local authority and competent authorities shall be required, upon request of the Social Insurance Board, collect and submit information connected with the proceedings of placement of a child from another Member State in Estonia.

(4) In case of establishment of guardianship proceedings concerning another Member State, the Social Insurance Board shall verify, in case of placement of a child in Estonia, whether the potential guardian complies with the requirements for a guardian provided for in the Family Law Act.

(5) In case of other proceedings related with the placement of a child in Estonia, the Social Insurance Board shall verify whether the person specified in the application complies with the provisions of clauses 1–7 of subsection 1 of § 45¹³ of the Social Welfare Act.

(6) Upon making a decision on the placement of a child from another Member State in Estonia, the Social Insurance Board shall account for all the circumstances pertaining to the child and assess the potential effect of placement on the child's rights and wellbeing.

(7) A child from another Member State may be placed in Estonia without the previous consent of the Social Insurance Board only with the child's parent.
[RT I, 10.11.2022, 1 – entry into force 20.11.2022]

However, these provisions do not apply to children arriving from third countries, including Ukraine.

3. Guardianship/legal representation arrangements for unaccompanied and separated children fleeing Ukraine

3.1. Arrived unaccompanied

The child is cared for and raised by the provider of the substitute care, which can be either the foster family or the provider of institutional care. The child is represented by the local municipality on whose territory the child is located.

3.2. Arrived without parents, but with other family members, neighbours or family friends

In all of these cases the children stay with the individuals with whom they have arrived. There are a few exceptions, when the individuals themselves have given up the interest to care for the child. Legally taken there are two options for representing the child. The first is guardianship appointed by a court, whereas usually the person with whom the child arrived is appointed as the guardian. The second option is to represent the child under a notarized mandate. On the example of Ukraine, it was seen how initially there was appointed a guardian, but these children then became represented via notarized mandate, when the parents were able to acquire it. After the outbreak of the war it was important to transport the child to safety and later formalized the mandate.

In order to explain the meaning of the notarized mandate, the Ministry of Justice upon clarification request, forwarded on 29 June 2023 the following explanation. This mandate is a written authorization certified by a notary giving the power of representation. In Estonia, the substantive part is regulated by the Act of the General Part of the Civil Code, see here <https://www.riigiteataja.ee/en/eli/503022023002/consolide> and procedurally it is regulated by the Notarisation Act, see here: <https://www.riigiteataja.ee/en/eli/529122020008/consolide> Procedurally taken, this means that the authorization is given to a third party to execute certain will from the

person giving the authorization. It can be given either to one or several persons. Any acts can be performed on the basis of the mandate which are stipulated in the authorization. Law sets certain limitations for acts that cannot be performed, for instance to issue will, conclude marital agreements, etc. In order to issue the mandate, the person has to appear to the notary and submit concrete personal data and specify the content of the authorization. The mandate is issued in two original copies, one held by the notary.

If the authorization is certified in a country with whom Estonia has a mutual judicial assistance agreement (for instance, the Russian Federation, Ukraine, Lithuania, Latvia, Poland), then it can be used in Estonia without additional legalization or apostille. Such authorization issued in a foreign country can be used if certified by an official of respective foreign country, which is included into the decree of the Minister of Justice from 22 July 2018, "The listing of officials of foreign countries, whose certified or proved authorization is equal to the authorization certified by an Estonian notary" – available in Estonian language: <https://www.riigiteataja.ee/akt/119072018018> If the foreign country has joined the Hague 1961 apostille convention, it is necessary that the authorization is certified by an apostille. If the foreign country is not a member of the said convention, it is necessary that the signature of the local official is legalized by the local Ministry of Foreign Affairs and also the Estonian Ministry of Foreign Affairs.

The Ministry of Justice has explained regarding the Hague 1996 Convention the following. Firstly, the agreement between Estonia and Ukraine is relevant. Children arriving without a guardian, but having a notarised authorization for guardianship of another adult, are cared by these adults because the authorization is valid. If there are children who are unaccompanied or are accompanied by an adult without a notarized mandate, then Estonian court is appointing a guardian, on the basis of the mutual agreement between the countries article 30 (4) which gives the party the discretion to undertake measures in the event of urgency. However, there is the obligation to notify the other party of the measures taken. If there was a need to urgent action, preliminary protection procedure has been applied.

3.3. Arrived within a group, from Ukrainian institution or foster carers (with or without an appointed legal guardian)

There are cases when children of parents who work in the Ukrainian Police have arrived in Estonia. This was mainly the initiative of the Estonian Female Police Union. There are no arrivals of children organized by the Ukrainian institutions.

3.4. Arrived within a group, through private initiatives, such as football clubs (with or without an appointed legal guardian)

Some children engaged in sports have arrived. For instance, some football teams and gymnasts were in Estonia when the war broke out, and they stayed. Some of these children were placed by the Social Insurance Board to alternate care, several were found guardians and living places on the initiative of private individuals.

4. Information and practical challenges in access to basic services for children fleeing Ukraine

4.1. General information and challenges

Providing educational opportunities. Representing children when there is the authorization from the parent. Teaching Estonian language. There has not been implemented a special adjustment program for these children.

According to the information from the Social Insurance Board, obtained after e-mail exchange on 28 June 2023, department of child welfare, the following problems in relation to education were identified. There are not enough places at schools for children from Ukraine, nor enough teachers. Children need support to learn the Estonian language, so that they can proceed to learn the content of subjects. Parents do not register children into Estonian schools, but keep them in Ukrainian schools. The curricula in Estonian and Ukrainian schools are different, which leads to the necessity of the children to start from lower grade. The compulsory age of starting school in Ukraine is 6, but in Estonia it is 7.

Regarding the matters of health, the Social Insurance Board identified the following matters. Primary health protection is guaranteed to all persons from Ukraine, but the parents often do not trust the Estonian health system. They consider it too complicated, for instance it is not possible to enter straight into the doctor's office, but one needs to register for reception. Access to psychological counselling is generally difficult in Estonia due to the shortage of specialists. The matter concerning Ukrainian children is even more complicated due to language barrier. However, several institutions have hired temporarily psychologists from Ukraine, so that first support can be provided (local municipalities, Social Insurance Board). Sometimes access to such services for children located in rural areas is even better (education, health care), because the number of persons wishing the same service is smaller. The language barrier stays of course. In general, when locating Ukrainian refugees to the rural areas, the Estonian officials are guided by the principle that all refugees from Ukraine receive services on the same ground as locals.

Regarding the question of children with disabilities, the response to clarify the procedure from the Social Insurance Board department of child welfare is the following. It is not possible to direct children with disabilities directly to medical expertise, because they cannot be equated with children who have special needs or who are in danger. The needs of children with disabilities may not be directly related to the degree of the disability. For instance, a special need is also considered someone's higher than usual capabilities. On the other hand, if the special need concerning the need for medical equipment or special services and appropriate interventions (for instance adjusting educational services to the age, family counselling, services of the local municipality) is satisfactorily compensated, then the Board does not apply the degree of disability. At the same time, still appropriate services are applied and support is given to assure that the child can cope with the special needs.

The expertise to determine the degree of disability is based on documentation, that is, it is based on the medical data entered into state medical information database by doctors (connected to the obligation of the doctors to document disabilities). This data can describe or specify the type of disability, which may be caused by health situation (for instance illnesses, injuries, poisonings). These situations can cause limitations to the functioning or participation of the child in social life.

Administrative proceedings and medical expertise as a part of these proceedings are initiated upon the request of the parent or legal representative (including local municipality having the representation independently if the subject is underage or an adult). When custody has been assigned, this occurs upon the request of the custodian. A child is directed to medical expertise upon the request of the parent, who is advised and counselled by child support service of the local municipality or client service unit of the Social Insurance Board – for instance if someone applies for family support.

The relevant legal document is:

Listing of data entered into application for applying for the determination of the degree of disability of a child or old age pension age person (available only in Estonian, decree of the Minister of social affairs from 12 May 2016, new redaction from 11 May 2020 - *Lapse ja vanaduspensioniealise inimese puude raskusastme tuvastamise taotlusele kantavate andmete loetelu*, the legal act is available at: <https://www.riigiteataja.ee/akt/108052020009>

4.2. Challenges for children at multiple risk/disadvantage

The background of the children and the assessed need for special assistance is unknown. In the case of children with disabilities it is necessary to undertake a new medical expertise, which takes time. As a rule, children with disabilities become known once problems emerge in connection with their stay in Estonia. The flow of information with the Ukrainian institutions (Hague 1996 Convention) is slow.

Information obtained from the Social Services Board department of child welfare on 28 June 2023, upon additional information request, identified the following additional challenges, in addition to information provided by them above.

As a rule, the information about disability reaches the local municipality or the Social Insurance Board from the parent, school, pre-school establishment or family doctor (the obligation to inform about the child in need). Parents or adults accompanying children from Ukraine have often with them medical summaries issued in Ukraine, including clinical epicrisis. There are sometimes more generally worded summary assessments about development peculiarities or special needs, but in these situations, there is no possibility to clarify the information from the Ukrainian doctors or specialists. If needed, the Social Insurance Board has the capability to obtain a translation into Estonian from Ukrainian or Russian language or other language – if the documents are not fully understandable in terms of language.

In the event of insufficient data, the Board recommends – if the child has been given temporary protection as a refugee, that the child would be examined by the family doctor of his/her location (primary level of medical care). Then it will be possible to direct the child to further examination to specialized doctors. All the respective data will be entered into national digital medical database, where these can be obtained for further action by the medical expertise arranged by the Social Insurance Board. If there is no temporary protection and Estonian ID code, there exists the possibility in the digital medical database to render case-based assistance, including protective measures. On the other hand, in these situations there is no justification for social support payments.

5. Policies in place

5.1. Dedicated action plan and/or integrated measures

At the start of the war, the Social Insurance Board analysed the possibilities for assisting these children and the so-called journeys. Since the number of unaccompanied children was not considerable, no special plan of action was adopted. Children are assisted on the basis of existing regulatory framework, which allows to provide solutions on case-by-case basis, taking into account the personal needs and interests of each child.

The Social Insurance Board department of child welfare has specified on 29 June 2023, in response to request of clarification that the “journey” is a practical guidance how to manage the situation of unaccompanied children, especially for the local municipalities.

5.2. European Child Guarantee

All the activities of the Child Guarantee apply also to those children who have received temporary protection in Estonia.

In addition, the Social Insurance Board has indicated via e-mail exchange on 28 June 2023, that already before the outbreak of the war was adopted the plan of action for the event of Russian-Ukrainian War. All ministries are involved. This plan is not publicly available document. Estonia has joined several international declarations for assisting children from Ukraine, for instance *Declaration on protecting children in Ukraine and in the European Union: EU support for reforming the child protection system in Ukraine*. Allkirjastatud 02.06.2023, kättesaadav: <https://swedish-presidency.consilium.europa.eu/media/ymkph14r/declaration-on-protecting-children-in-ukraine-and-in-the-european-union.pdf>

Declaration of the European Ministers in charge of Children on the situation in Ukraine. Signed: 4.03.2022.

5.3. Budget

At the moment, it is possible to refer to the figure for providing alternate care to unaccompanied adolescents from abroad. The figure is 750 000 euro per year. However, various institutions referred to in section 2.1.1. above have separate budgets for providing the services. There is no centralized calculation for respective expenses.

The Social Insurance Board has given additional explanation via e-mail on 28 June 2023. Additional financial resources have been allocated to different areas (health, social, education etc). The information is divided between various ministries, there is no central counting system.
