

Alt-Moabit 140
10557 Berlin
Postal address
11014 Berlin
Tel +49 30 18 681-12189
Fax +49 30 18 681-512189
M3AG@bmi.bund.de
www.bmi.bund.de

Federal Ministry of the Interior and Home Affairs, 11014 Berlin
To the ministries and federal senate administrations responsible
for right of residence

**Implementation of the Council Implementing Decision (EU) 2022/382 of 4 March 2022
establishing the existence of a mass influx of displaced persons from Ukraine within
the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing
temporary protection**

Berlin, 14 March 2022

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Dear Sir or Madam,

With the entry into force of Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and introducing temporary protection (OJ L 71 of 4 March 2022, p. 1 - hereinafter "Implementing Decision"), § 24 of the Residence Act ("**AufenthG**") will apply to displaced persons from Ukraine.

I hereby provide you with initial information on individual points that are essential for implementation:

1. Persons entitled under Article 2(1) of the Implementing Decision

According to Article 2(1) of the Implementing Decision, temporary protection applies to the following persons:

- (a) Ukrainian nationals who had their residence in Ukraine before 24 February 2022,
- (b) stateless persons and nationals of third countries other than Ukraine who obtained international protection in Ukraine before 24 February 2022. (b) stateless persons and nationals of third countries other than Ukraine who received international protection or equivalent national protection in Ukraine before 24 February 2022; and

(c) family members of the persons referred to in points (a) and (b).

The persons mentioned are then entitled to protection if they were expelled from Ukraine on or after 24 February 2022 as a result of the military invasion by the Russian armed forces which began on that date (see also under point 5.). Unless there are obvious indications to the contrary, all persons mentioned in letters a) to c) are to be assumed to have been displaced without further examination.

Persons entitled to freedom of movement within the meaning of the Freedom of Movement Act/EU are not covered by the granting of protection if and as long as they exercise their right to freedom of movement.

Re 1. a)

In the majority of cases, it should be possible to prove Ukrainian citizenship by means of a passport (with or without biometric features) or passport substitute. Furthermore, the nationality of the person concerned can be established from the overall view of other documents carried, in particular identity cards.

Re 1. b)

This refers to protection under the Geneva Refugee Convention or protection comparable to subsidiary protection as well as equivalent national protection. The presentation of a Ukrainian Travel Document for Refugees or a Travel Document on complementary protection ("Travel Document for Person Granted Complementary Protection") is considered sufficient proof of the protectional status. Information on other means of proof will be provided as soon as it becomes available.

Re 1. c)

The following persons are considered to be family members, provided the family already existed in Ukraine at the time of the circumstances giving reason to temporary protection:

- (1) the spouse of a person referred to in subparagraph (a) or (b) or his or her unmarried partner living in a permanent relationship with that person;
- (2) the minor unmarried children of a person referred to in subparagraph (a) or (b) or his or her spouse, whether born in or out of wedlock or adopted;
- (3) other close relatives who were living within the family circle at the time of the circumstances giving reason to the mass influx and who were wholly or mostly dependent on a person referred to in subparagraph (a) or (b). These family members referred to in Article 2(1)(c) shall be granted a residence permit in accordance with § 24 AufenthG on their own entitlement on the basis of the implementing decision; it is not a case of family reunification. Family reunification to holders of titles under § 24 AufenthG is carried out in accordance with § 29(4) AufenthG (cf. on this also under point 6).

Re 1.c (1):

The status as a spouse results from the provisions of federal law on residence, which have already been adapted to the uniform requirements of EU law and which transpose Directive 2003/86/EC (the so-called Family Reunification Directive). Therefore, also here do apply the principles of § 30, (4) AufenthG.

Unmarried partners (including same-sex partners) who live in a permanent relationship are cohabiting partners within the meaning of Section 1(2)(4)(c) of the Freedom of Movement Act/EU. In order to define the group of persons, compare No. 3.1.5.3 of the application notes of the Federal Ministry of the Interior on the implementation of the Act on the Current Adaptation of the Freedom of Movement Act/EU and Other Acts to Union Law, version 1.0 of 22 January 2021, which can be accessed at the following link:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/verfassung/anwendungshinweise-umsetzung-freizuegigkeitsgesetz.html>

An intended further permanent cohabitation after arrival in the federal German territory is to be rebuttably presumed due to the peculiarities of the displacement situation, whereby the special features of the accommodation as a result of the escape are to be adequately taken into account within the framework of an individual case assessment. Comprehensible gaps in evidence due to displacement are to be taken into account in a conclusive factual presentation in favour of the persons concerned.

Re 1. c (2): The group of persons concerned is also defined by the general provisions of federal law on residence.

Re 1. c (3):

"Close relatives":

- must have been living within the cohabiting family situation at the time of the circumstances giving reason to temporary protection - i.e. on 24 February 2022 - and
- have been wholly or mainly dependent on a person referred to in (a) or (b) above at that time.

A short-term absence from the family unit on the reference date (e.g. due to a holiday or for other personal or professional reasons) is harmless as long as the family has basically lived within the family unit on the reference date. The required dependency can be of a financial or actual nature. In accordance with the requirements in the context of the application of the Freedom of Movement Act/EU, it should be sufficient here:

- the not merely temporary granting of maintenance on 24 February 2022 or shortly before,

or

- personal care given by the person referred to in (a) or (b) above (hereinafter referred to as the "reference person").

Personal care includes, in particular, circumstances in which the caregiver cares for the cared-for person at home due to health impairments of a physical or mental nature. Full personal care by the caregiver is not required. It is sufficient that the care has been organised or that the costs for this have been assumed, if there is an additional reason why the care should take place in the vicinity of the caregiver, in particular because of the psychological need for his or her proximity to the person being cared for.

"Close relatives" in this sense will therefore generally also be children who were still minors on the reference date but have already reached the age of majority at the time of application.

2. Eligible persons under Article 2(2) of the Implementing Decision

According to Article 2(2) of the Implementing Decision, stateless persons and nationals of third countries other than Ukraine who can prove that they have resided lawfully in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and who are not in a position to return safely and permanently to their country or region of origin are also eligible.

These non-Ukrainian third-country nationals can prove lawful permanent residence in Ukraine by means of a Ukrainian residence permit. Residence permits granting permanent residence are considered to be residence permits corresponding to the models attached as annex.

At any rate, non-Ukrainian third-country nationals or stateless persons who are or have been lawfully resident in Ukraine cannot return safely and permanently to their country or region of origin if, in the event that they are neither granted temporary protection nor would be granted another residence permit in Germany, would be eligible to an exceptional leave to remain/tolerance ("Duldung") according to §§ 60 or 60a AufenthG ("AufenthG") (not: exceptional leave to remain/tolerance based on vocational training or work).

Further clarification may follow eventually on the corresponding definition of the characteristic according to which a person is not in a position to return safely and permanently.

The Implementing Decision leaves it up to the Member States to decide how to grant protection to the persons referred to in Article 2(2) of the Implementing Decision; however, Member States have no discretion as to whether to grant protection at all. The basis for granting protection in this case is also § 24 AufenthG.

3. Other non-Ukrainian third-country nationals in accordance with Article 2(3) of the Implementing Decision.

Member States may also grant protection to other stateless persons and non-Ukrainian nationals, who resided lawfully in Ukraine and who cannot return safely and permanently to their home country or region of origin. Germany implements this allowance in the following manner.

Temporary protection under § 24 AufenthG is granted to non-Ukrainian third-country nationals who can prove that they resided legally in Ukraine on 24 February 2022, and not just for a temporary short stay and who are not in a position to return safely and permanently to their home country or region of origin. Temporary short stay is any stay in Ukraine not exceeding 90 days for a correspondingly temporary purpose. This also includes persons who can credibly show that they have been in the Ukraine lawfully for a stay that is not merely temporary but have not yet obtained their protection status or permanent residence title as of 24 February 2022 and who cannot safely and permanently return to their home country or region of origin.

The aforementioned non-Ukrainian third-country nationals are able to prove a lawful temporary residence in Ukraine by means of a Ukrainian residence title. Residence titles granting lawful residence are considered to be residence titles that correspond to the model temporary residence permit attached as an annex. This includes in particular students and persons staying in Ukraine for purposes other than visiting or short-term gainful employment.

According to the following - alternative - criteria, the following persons in particular are not granted temporary protection under § 24 AufenthG unless they fall under No. 1:

- Persons who cannot provide proof of having resided lawfully in Ukraine on 24 February 2022;
- Persons who on 24 February 2022 were only in Ukraine for a short stay as defined above (tourists, business travellers, visitors and similar stays);
- Persons who can return safely and permanently to their home country or region of origin in accordance with the conditions set out in No. 2, 3rd paragraph; or
- Persons who are stateless.

Persons who are stateless and do not receive temporary protection under § 24 AufenthG must be informed of alternative residence options and their right to apply for international protection.

4. Other Ukrainian nationals pursuant to Article 2(3) of the Implementing Decision

Ukrainian nationals who are already residing in the territory of the Federal Republic of Germany with a residence title may apply for a residence permit pursuant to section 24 AufenthG.

This concerns cases in which

- an extension of the existing residence title is not possible due to legal requirements or conditions for issuance that no longer apply, or
- the reason for granting the residence title ceased to exist during its period of validity and its subsequent limitation would have to be considered.

In deviation from No. 5 down below, the date of entry into the Federal territory is irrelevant for the examination of the prerequisites for a residence permit pursuant to Section 24 AufenthG.

5. Date of entry into the federal territory

§ 24 AufenthG does not impose any restrictions in this regard. Entry may have taken place or may take place at any time after 24 February. In addition, temporary protection is extended to persons who fled Ukraine not long before 24 February 2022, when tensions increased, or who were in the territory of the EU shortly before that date (e.g. on holiday or for work) and who cannot return to Ukraine as a result of the armed conflict.

6. Family reunification and family reunification between member states

If family members have their own entitlement to a residence permit under § 24 AufenthG (see 1. above), the family reunification provisions do not apply. Family reunification with the title holder in accordance with § 24 Residence Act is carried out in accordance with § 29(4) Residence Act for **spouses** and **minor unmarried children** or **minor unmarried children of the spouse**, if:

- the domestic family community in the country of origin has been terminated by the refugee situation (see § 29(4)(1) Residence Act), **and**
- **either**
 - o the family members of the title holder are residing in another Member State and are to be taken over (§ 29 sub-section 4 number 2, 1st alt. AufenthG), **or**
 - o the family members of the title holder are staying outside EU territory and are in need of protection (§ 29(4) no. 2, 2nd alt. AufenthG).

The "need for protection" in the present case should be determined in the light of recital 14 of the Implementing Decision: it is given if these persons have been displaced for the same reasons and, like the holders of titles under § 24 AufenthG (irrespective of nationality) come from Ukraine.

In each of the above-mentioned alternatives the requirements of § 5 (1) and § 27 (1) AufenthG must be waived according to § 29 (4) sentence 1 AufenthG.

Separate information will be provided on the application and examination of applications for reunification from other Member States.

The subsequent immigration of other family members of a title holder pursuant to § 24 (1) AufenthG is governed by § 29 (4) sentence 2 AufenthG in accordance with § 36 (2) AufenthG.

§ 24 AufenthG also applies to family members admitted pursuant to § 29 (4) AufenthG (see § 29 (4) sentence 3 AufenthG). This means that they also receive a residence permit under § 24 AufenthG.

Since the persons entitled hereunder have themselves already received a residence title by way of subsequent immigration, further persons who would also fulfil the requirements of § 29 (4) AufenthG cannot join those persons by way of family reunification, because the principle of § 30 (4) 4 AufenthG also applies here. For the sake of clarification, it is added that the principle of accessoriness from § 27 (4) AufenthG and § 27 (2) AufenthG also apply.

7. Exclusion of temporary protection

The granting of temporary protection is excluded under § 24 (2) AufenthG - in transposition of Article 28 of the Directive - if the conditions of § 3 (2) of the Asylum Act (AsylG) or § 60 (8) sentence 1 AufenthG apply. In these cases, the residence permit must be refused. In each case, a personal realisation of the grounds for exclusion is required; general preventive considerations alone do not lead to exclusion.

8. Administrative procedure

• 8.1 Application and registration:

Pursuant to § 24 (1) AufenthG, the foreigner must declare his or her willingness to be admitted to the federal territory. Thus, an application for a residence title pursuant to § 81 (1) AufenthG must be undertaken. The immigration authorities should offer the possibility of a simplified application. The application must be submitted to the locally competent immigration authority ("Ausländerbehörde"). This is the immigration authority of the place of residence; if there is not yet a fixed place of residence, this is the immigration authority/Ausländerbehörde of the place of residence.

If (initially) no application is made to one of the Immigration Authorities / Ausländerbehörde, a request for other support (accommodation, food, medical care) is also deemed a request for protection (“Schutzgesuch”). There is an entitlement to benefits under the Asylum Seekers' Benefits Act (AsylbLG); either after expressing a request for protection in accordance with § 1 (1) no. 1a AsylbLG or after being granted a residence title in accordance with § 24 AufenthG in accordance with § 1 (1) no. 3a AsylbLG. Persons submitting the request for protection or the application are to be treated for identification purposes in the so-called workflow pursuant to § 16 of the Asylum Act, if this has not already been done (legal basis: § 49 (5), no. 6 AufenthG).

Obtaining a national visa prior to entry is initially not required until 23 May 2022 pursuant to § 3 UkraineAufenthÜV (BAntz AT 08.03.2022 V1).

Pursuant to § 91a AufenthG, a register will be set up for foreigners who are to be admitted on the basis of the present implementing decision pursuant to § 24 AufenthG, whereby the data will be automatically processed via the online-asylum-interface upon registration.

At the BAMF as the registering authority, the data listed in part 2 of § 91a AufenthG will be stored after having been transmitted by the Immigration authorities/Ausländerbehörden. The transfer of the data to other offices is regulated in § 91a(5) AufenthG according to the purpose of use. The data is deleted no later than two years after the end of temporary protection. The scope of the data to be stored goes beyond the directive's stipulation with regard to information on occupation and vocational training. These data are collected to ensure the execution of self-employed activity (§ 24 (6) AufenthG). Religious affiliation may only be stored on the basis of consent (Section 4a BDSG).

8.2 Choice of residence title and change of residence status:

Neither the Directive nor § 24 AufenthG contains a provision that excludes the possibility of applying for a different residence title than the one under § 24 AufenthG if the respective requirements are met. The general residence law thus applies to different options or parallel rights of residence.

In particular, residence permits pursuant to §§ 16a, 18a and 18b AufenthG come into consideration. Even after a residence title has been granted in accordance with § 24 AufenthG, there are no restrictions on the following to change to another residence status if the general requirements for issuance are met.

8.3 Type and period of validity of the residence title; fictitious certificate; travel document for foreigners; substitute identity card:

The residence permit shall in principle be issued as an independent document with an electronic storage and processing medium (card in eAT format).

§ 78a (1) sentence 1 Residence Act provides for the possibility of also issuing residence titles in label form according to a standardised form. Should a regulated procedure for issuing residence titles eAT in card format be no longer possible due to the unusually high number of applicants from Ukraine, the federal states ("Bundesländer") shall examine on their own responsibility whether the conditions for issuing residence permits in label form are fulfilled, whether the preconditions for issuing a residence title in the form of a label in accordance with § 78a (1) sentence 1 Residence Act are met. In cases where a travel document for foreigners is issued (see below), the issuance of an eAT in card form should be considered in any case.

No fees should be charged when applying for an eAT.

Residence requirements based on previous assignment decisions should not be noted on the eAT card so that a new eAT card does not have to be ordered in the event of a change or cancellation of the assignment (e.g. after finding a job, training place or place of study). They are to be ordered either in a supplementary sheet or by separate letter.

The validity is to be retroactive from the credible date of entry into the federal territory, at the earliest 4 March 2022, to 4 March 2024. It is thus intended to take into account the period which, according to recital 21 of the implementing decision, also includes the automatic two-time extensions of six months each.

Until the residence title is issued in the eAT format, a fictitious certificate shall be issued free of charge in accordance with § 81(3) sentence 1 in conjunction with § 5 AufenthG; the residence is already lawful according to § 2 of the UkraineAufenthÜV (BANz AT 08.03.2022 V1) until 23 May 2022. The issuance of a fictitious certificate is significant for different purposes outside the right of residence: Above all, analogous to § 81 (5a) AufenthG, the fictitious certificate must contain the remark "gainful employment permitted", enabling the holder to already take up gainful employment (see 8.5 Access to the employment/job market) or - if the other legal requirements are met - to receive family benefits (e.g. child benefit). In order to enable the holder to participate in an integration course in good time, the fictitious certificate should also contain a reference to the granting of residence in accordance with § 24 AufenthG.

According to current knowledge, expired Ukrainian passports are extended by handwriting and information concerning children over 16 years of age is entered by handwriting and the childrens' photos are added to the parents' passports. Handwritten additions / renewals with consular seal / stamp are accepted until further notice. Furthermore, the Ukrainian diplomatic missions abroad issue certificates in the sense of a clarification of identity with a photograph. The following applies to persons who do not possess a valid and recognised passport or passport replacement:

Persons who have a corresponding certificate in the sense of an identity clarification and whose identity has been clarified, shall be issued a travel document for foreigners with an appropriate duration of the residence title.

If the applicants do not have a corresponding certificate, but the identity including the Ukrainian citizenship is clarified, a travel document for foreigners can also be issued for foreigners with a duration corresponding to the residence title. The identity of the persons concerned must be carefully checked. It must be pointed out to these persons to obtain such certificate for identity purposes in their own interest as well as in the interest of legal matters of Ukraine.

Nationals of other third countries who do not possess a valid and recognised passport or passport replacement, are – as far as reasonable- to be referred to their diplomatic representations/embassies in Germany.

With a new or amended allocation decision, the local responsibility of the Immigration Authority/Ausländerbehörde changes. The same applies to any other change of residence. The Immigration Authority/Ausländerbehörde responsible so far must ensure that they are informed about the new Immigration Authority/Ausländerbehörde as well as about the new address of the person concerned. The Bundesländer are to be given the option of determining a central responsibility for cross-border communication.

eATs which have already been applied for by the previously competent Immigration Authority/Ausländerbehörde and which show the previously competent Immigration Authority/Ausländerbehörde as the issuing authority may also be issued unchanged if the competence changes between the time the eAT is produced and the time it is issued. The issuance is to be effected via the newly competent Immigration Authority/Ausländerbehörde. A forwarding to the newly competent Immigration Authority/Ausländerbehörde, if necessary, shall be arranged in an expedited manner.

In analogy to the provision in § 12a AufenthG, a residence requirement pursuant to § 24 (5) sentence 2 AufenthG, which has been imposed on the persons concerned, should be lifted,

- if the person concerned, his or her spouse, registered partner or a minor unmarried child with whom he or she is related and lives in a cohabital family situation takes up or has taken up employment subject to social insurance contributions of at least 15 hours a week, as a result of which the person in question has an income at least equivalent to the average monthly requirement for a single person pursuant to §§ 20 and 22 of Book II of the Social Code, or takes up or has taken up vocational training or is in a study or training relationship (analogous to §12a (1) AufenthG); or

- if the person concerned proves that in another place

o he/she or his/her spouse, registered partner or a minor unmarried child with whom he/she is related and lives in a cohabital family situation has employment subject to social insurance contributions as defined above, an income that secures his/her livelihood, or a place of education or study, or

o he/her or his/her spouse, registered partner or a minor unmarried child with whom he or she is related and lives in a cohabital family situation has a place of education or study at another place. place at university is available, or

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o the spouse, registered partner or a minor unmarried child, to whom the person concerned is related and with whom he or she has previously lived in a home community situation, or

- to avoid hardship; hardship is deemed to exist in particular if, according to the assessment of the competent youth welfare office, services and measures of child and youth welfare pursuant to Book Eight of the Social Code with a local connection would be impaired, if for other urgent personal reasons acceptance by another country or another Member State has been promised or if for other reasons comparable unreasonable restrictions would arise for the person concerned (analogous to § 12a sub-section 5 Residence Act).

If the respective reasons cease to apply within three months of the notification of the lifting of the residence ban, the ban may be re-imposed for the area to which the person concerned has transferred his/her residence.

• 8.4 Briefing/Instruction

According to Article 9 of Directive 2001/55/EC and § 24 (7) AufenthG, foreigners enjoying temporary protection must be informed of significant provisions and of their rights and obligations. This also includes the possibility of applying for asylum (Article 17(1) of Directive 2001/55/EC). Here it should also be pointed out that if the asylum procedure is desired, a waiver of protection pursuant to § 24 AufenthG is required if the foreigner possesses a valid residence title in accordance with § 24 AufenthG. The Federal Ministry of the Interior and Home Affairs will promptly disseminate a proposal for a nationwide leaflet on this subject, which will also deal with initial important information outside the right of residence after an escape to Germany.

• 8.5 Access to the labour market

§ 31 of the Employment Procedure Ordinance (Beschäftigungs-Verordnung - BeschV) stipulates that the approval of the Federal Employment Agency (Bundesagentur für Arbeit) is not required for taking up employment if a residence title in accordance with Chapter 2, Section 5 AufenthG - which includes § 24 AufenthG - has been or will be granted. Since the Directive does not give the Member States the option of referring to residential permit aspect whilst granting an employment permit, the employment is already to be permitted even if there is no prospect of a concrete employment relationship yet. The Immigration Authorities/Ausländerbehörden therefore have no discretion on this point.

§ 24 (6) AufenthG also stipulates that the exercise of self-employment may not be excluded. This means that both employment and the pursuit of self-employed activity must be permitted and the residence title must be issued with the entry "Gainful employment permitted".

9. Proportion of asylum procedure towards the granting of a residence title according to § 24 AufenthG

The mere expression of a request for protection is not sufficient for the Federal Office for Migration and Refugees (BAMF) to open and conduct an asylum procedure. For an asylum procedure, an asylum application must be submitted to the BAMF. Foreigners who issue a request for protection by asking for support (accommodation, food, medical care) and are being registered according to § 91a AufenthG, are therefore not undertaking an asylum procedure, which would be suspended pursuant to § 32a (1) sentence 1 of the Asylum Act.

Only when the foreigner submits a formal application for asylum to the BAMF, an asylum procedure is being started which, however, is immediately suspended due to the provision in § 32a (1) sentence 1 AsylG, if the foreigner already receives protection under § 24 AufenthG. If the foreigner decides to pursue the asylum procedure, he or she is required by the law concerning the suspension of the procedure to waive the protection granted to him/her under § 24 AufenthG. The suspension of the asylum procedure at the BAMF only ends when the protection granted under § 24 AufenthG ends.

In the case of persons who have already applied for asylum before being granted a residence title in accordance with § 24 AufenthG, the asylum procedure in principle has to be conducted but these procedures will not be carried out by the BAMF until residence is granted under § 24 AufenthG. § 24 paragraph 7 AufenthG applies to informing the persons concerned.

If the foreigner does not notify the BAMF within one month after the expiry of the residence permit that he or she wishes to continue the asylum procedure, the asylum application is deemed to be withdrawn (§ 32a (2) Asylum Act). After expiry of the time limit, the foreigner may also file an asylum application at a later date. In the case of an extension of the residence permit pursuant to § 24 AufenthG, it is not the expiry of the period of validity of the first residence permit that is relevant, but the last such residence permit. The foreigner must be informed of this.

10. Access to integration course

Admission to the integration course/classes is possible upon application. This application can either be submitted to the regional office of the BAMF responsible for the place of residence.

Which regional office is responsible and where integration courses are offered can be found out quickly and easily with the help of the BAMF-NAVI information system. The application for admission can also be submitted via the providers of the integration courses. They will be happy to and can be used as the first point of contact.

If initially only a fictitious certificate is available, it should be accompanied by a reference to the future issuance of a title on the basis of a title on the basis of § 24 AufenthG, in order to prove eligibility and to enable timely course attendance.

11. Waiver of instruction according to the Dublin III Regulation

In addition, it is pointed out that in the case of persons who are covered by the scope of § 24 Residence Act, the instruction according to the so-called Dublin III Regulation can be waived when registering as an asylum seeker. The same applies to persons who are included in the scope of the UkraineAufenthÜV, during the period of validity of this regulation.

I request that this information be brought to the attention of the Immigration Authorities in an appropriate manner.

Yours sincerely,

on behalf of

[electronically signed]

Dr. Burbaum

Attachments

Implementing decision