

Bird & Bird

Conflict in Ukraine: Employment Crisis Management

Granting of Residence for Temporary Protection
in Germany

April 2022



Employment Crisis Management

What you need to know to help quickly and effectively

The conflict in Ukraine has been a major concern for people and companies in Europe for some time. Many companies have taken precautionary measures to withdraw their employees and look for temporary and permanent employment solutions, some even before the invasion began at the end of February 2022. Given the gravity and face-paced nature of the situation, businesses also need to be able to quickly consider how best to respond, and implement evacuation options for Ukrainian nationals and others living and working in the country.

Ukraine Crisis Response Team

We have outlined below the rules and other important considerations that apply in Germany to provide a residence permit for temporary protection to Ukrainian nationals under Section 24 of the Residence Act (Aufenthaltsgesetz/AufenthG).

We have established a special crisis response team for Ukraine and are able to coordinate advice in all [other jurisdictions that may be of interest](#). In addition to our engagement, we can advise international companies on broader staff crisis management issues, including how to deal with Ukrainian employees who want (or need) to return home to join the military, the implications of the changing sanctions landscape, and the rules for Russian and Belarusian nationals moving to other jurisdictions.

As the situation in each country is developing rapidly, the information in this briefing is correct as at 11 April 2022 and further updates will be available at www.twobirds.com.

Granting residence for temporary protection: What you need to know

Sec. 24 German Residence Act (Aufenthaltsgesetz, “AufenthG”): Granting of residence for temporary protection

Topic	Note	Requirements / ToDos	Legal Bases
Entry / Residence	<p>Ukrainian nationals can enter and stay in the Schengen area, including the Federal Republic of Germany, visa-free with a biometric passport for a short-term stay of up to 90 days. On the occasion of the situation in Ukraine, the Federal Ministry of the Interior has announced that Ukrainian nationals who have entered Germany without a visa for a short-term stay can obtain a residence permit for a further stay of 90 days from the competent foreigners authority in Germany after the 90 days have expired (Section 40 Residence Ordinance, “AufenthV”).</p> <p>The date of entry is considered the first day of stay.</p>	<p>Biometric passport (valid for at least three months after the intended date of departure from the Schengen area)</p>	
	<p>Due to the activation of the Temporary Protective Directive 2001/55/EC for Ukrainian nationals by the decision of the Council of the European Union of 3 March 2022, Ukrainian nationals and their family members can obtain a residence permit according to Sec. 24 AufenthG. The residence permit is limited in time and – as a rule - is issued for an initial period of one year. After expiry of the period, it can be extended if the protection status of Ukrainian nationals continues.</p> <p>Third-country nationals (not Ukrainian and not a national of an EU member state) or stateless persons as well as their family members can also obtain such a residence permit if they had international protection or a comparable national protection status in Ukraine before 24 February 2022. The same applies to third-country nationals and stateless persons with a permanent right of residence in Ukraine who cannot return to their home country.</p>	<p>Application to a foreigners authority (district / city)</p> <p>Location for application can currently still be freely chosen; may be restricted in the future.</p>	24 AufenthG

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	<p>An asylum application is not required and is not recommended at present, as there may initially be an obligation to live in an initial reception centre and assets of the asylum-seeker may be retained for accommodation.</p> <p>If an asylum application has already been filed, however, a residence permit pursuant to Sec. 24 AufenthG can still be applied for subsequently. Once granted, the asylum procedure is suspended for the duration of the temporary protection.</p>	Issuance of the residence permit according to Sec. 24 AufenthG	32a (1) German Asylum Act („AsylG“)
Accommodation / Housing	Checkpoints - privately organised; associations, churches, welfare, foreigners authorities / municipal housing office.		
(Self) Employment	<p>Taking up an employment requires a permit; on application, however, employment must be permitted by the foreigners authorities, whereby, if applicable, necessary professional access requirements (e.g. licence to practise medicine) must be met.</p> <p>The right to pursue self-employment is permitted and does not require permission from the foreigners authorities.</p> <p>Background: Sec. 24 (6) s. 2 AufenthG stipulates that the pursuit of employment requires the permission of the foreigners authority. However, this provision contradicts Art. 12 of the Temporary Protective Directive, according to which Member States shall allow persons enjoying temporary protection to pursue both employment and self-employment. Since the examination as to whether German workers with preferential rights are available is also omitted (Sec. 31 AufenthV), Sec. 24 (6) s. 2 AufenthG may not be applied or must be interpreted broadly in conformity with European law (the decision at the discretion of the foreigners authority must be read as an entitlement due to the primacy of Union law). The foreigners authorities must allow employment.</p>	<p>Application at a foreigners authority (see entry/residence). Record on the residence permit.</p> <p>The Federal Employment Agency is no longer required to give its consent for holders of humanitarian residence permits (including Sec. 24 AufenthG) (Sec. 1 of the German Employment Regulation, "BeschV").</p>	<p>31 BeschV; 4a (2) AufenthG; 39 AufenthG; BeschV; BeschVerfV; 24 (6) AufenthG</p>

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Social / Financial benefits (Cash/in-kind contributions)	<p>Ukrainian nationals are entitled to basic benefits under the Asylum-Seekers' Benefits Act ("AsylbLG") - i.e. benefits to cover the need for food, accommodation, heating, clothing, health care and household necessities (basic benefits) and, in addition, benefits to cover personal needs of daily living (benefits for personal needs) - for the first 15 months from entry.</p> <p>After that, benefits are granted according to the German Social Code XII. If there are special needs, the persons concerned are granted the necessary assistance.</p> <p>Note: As of 01.06., Ukrainian refugees can receive basic income benefits according to Social Security Code II or XII. This is associated with higher benefits (unemployment benefit II or social benefit) than under the AsylbLG and better health care. In addition, they will receive earlier support for integration into the labor market and have a central point of contact for their needs via the job centers.</p>	<p>Application to the competent municipal or district authority (e.g. social welfare office)</p> <p>Registration in the Central Register of Foreigners and submission of a fictitious certificate issued on the basis of the registration or a residence title pursuant to Sec. 24 (1) Residence Act</p>	<p>1 (1) No. 3a AsylbLG; 2 (1) AsylbLG; 6 (2) AsylbLG;</p> <p>Changes to be implemented/expected</p>
Child benefits ("Kindergeld") (not child supplement, "Kinderzuschlag")	<p>There is an entitlement to Kindergeld (but not to Kinderzuschlag) if the applicant</p> <ul style="list-style-type: none"> - has taken up an employment, - is on Parental leave („Elternzeit“), - receives unemployment benefits (Alg-1/SGB III benefits), or - has a 15-month previous stay in Germany (no employment is required in this case). <p>In the case of underage beneficiaries, there is an entitlement without an employment.</p>	<p>Application to the family benefits office ("Familienkasse") or the Federal Employment Agency</p> <p>https://www.arbeitsagentur.de/familie-und-kinder/downloads-kindergeld-kinderzuschlag</p>	<p>62 (2) nos. 3 and 4 Income Tax Act;</p> <p>1 (3) nos. 3 and 4 Federal Child Benefit Act</p>
Parental allowance („Elterngeld“)	<p>There is an entitlement to parental allowance (but not to Kinderzuschlag) if the applicant</p> <ul style="list-style-type: none"> - has taken up an employment, - is on Parental leave („Elternzeit“), - receives unemployment benefits (Alg-1/SGB III benefits), or - has a 15-month previous stay in Germany (no employment is required in this case). 	<p>Application to the competent parental allowance office</p> <p>https://familienportal.de/familienportal/antragsformulare-126232</p>	<p>1 (7) no. 3a Federal Law on Parental Benefits and Parental Leave ("BEEG"),</p>

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	In the case of underage beneficiaries, there is an entitlement without an employment.		1 (7) nos. 3 and 4 BEEG
School	School attendance is compulsory	TBA	
BAföG (student grants)	No entitlement		8 (3) Federal Law Concerning the Promotion of Education and Training ("BAföG")
Vocational training allowance (Berufsausbildungsbeihilfe, "BAB") under the German Social Code III	There is an entitlement if the general requirements are met (education, apartment etc.)	Application to the Federal Employment Agency https://www.arbeitsagentur.de/bildung/ausbildung/berufsausbildungsbeihilfe-bab	
Youth welfare	There is an entitlement for youths	Contacting the responsible youth welfare office	6 (2) German Social Code VIII
Integration course (language course)	No entitlement, but admission possible if capacity exists.	Application to the Federal Office for Migration and Refugees https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Integrationskurse/Kurs Teilnehmer/AntraegeAlle/630-007_antrag-zulassung-integrationskurs-ausl.pdf.html?nn=282388	44 (4) AufenthG; 44a (1) no. 3 AufenthG; 44a (1) no. 2 AufenthG
Vocational / Professional language support (DeuFöV)	No entitlement, but admission is possible , e.g. if the person is registered with the Federal Employment Agency as a job or training seeker or as unemployed, or receives benefits under the German Social Code II.	Application to the Federal Office for Migration and Refugees https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Berufsbeisprache-ESF-BAMF/BSK-Vordrucke-Formulare/antrag-	45a AufenthG; 4 (1) Regulation on professional German

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	Obligation by a Jobcenter (government office where unemployment benefits are administered) possible.	zulassung-beschaefigte-aa-ic.html?nn=282388)	language promotion ("DeuFöV")
Integration aid („Eingliederungshilfe“)	People with a disability or at risk of disability are entitled to integration aid, which is intended to help people mitigate the consequences of their disability and integrate into society	Application to the Federal Employment Agency https://www.arbeitsagentur.de/bildung/ausbildung/berufsausbildungsbeihilfe-bab	23 (1) s. 3 and 4 German Social Code XII, 6 (2) AsylbLG

Additional Information

Further useful resources from the international Bird & Bird team

International HR Task Force Ukraine

Employment Crisis Management in Central Europe

EU/UK (potential) sanctions against Russia and Belarus

SanctionsList App

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