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Act on the General Freedom of Movement for EU Citizens

Freedom of Movement Act/EU

Freedom of Movement Act/EU of 30 July 2004 (Federal Law Gazette I p. 1950, 1986), last amended by Article 6 of the Act of 21 December 2015 (Federal Law Gazette I p. 2557)

The Act was adopted by the Bundestag with the consent of the Bundesrat as Article 2 of the Act of 30 July 2004, I 1950 (Immigration Act). It enters into force in accordance with Article 15 (3) of this Act on 1 January 2005. Section 11, first sentence, enters into force on 6 August 2004.

Section 1

Scope

This Act regulates entry into and residence in the federal territory by nationals of other member states of the European Union (EU citizens) and their dependants.

Section 2

Right of entry and residence

(1) EU citizens and their dependants entitled to freedom of movement shall have the right to enter and reside in the federal territory pursuant to this Act.

(2) The following persons are entitled to freedom of movement under Union law:

1. EU citizens who wish to reside in the federal territory as employees or to carry out vocational training,

1a. EU citizens seeking work, for a period of up to six months and exceeding this period only if they can prove that they continue to seek work and have reason to believe that they will find it,

2. EU citizens who are entitled to pursue an independent economic activity (established self-employed persons),

3. EU citizens who, without taking up residence in the federal territory, wish to render services as self-employed persons pursuant to Article 57 of the Treaty on the Functioning of the EU (service providers), provided that they are entitled to provide the services concerned,

4. EU citizens as the recipients of services,

5. EU citizens who are not gainfully employed, subject to the requirements of Section 4,

6. dependants, subject to the requirements of Sections 3 and 4,

7. EU citizens and their dependants who have acquired the right of permanent residence.

(3) The right pursuant to subsection 1 shall remain unaffected for employees and self-employed persons in the event of

1. a temporary reduction in earning capacity as a result of illness or an accident,
2. involuntary unemployment confirmed by the competent employment agency or the cessation of a self-employed activity due to circumstances over which the self-employed person had no influence, after more than one year of activity,
3. the person concerned taking up vocational training, where a connection exists between the training and the former economic activity; such a connection is not necessary where the EU citizen has lost his job involuntarily.

In the case of involuntary unemployment confirmed by the employment agency after a period of employment of less than one year, the right pursuant to subsection 1 shall remain unaffected for a period of six months.

(4) EU citizens shall not require a visa in order to enter the federal territory or a residence title in order to stay in the federal territory. Dependants who are not EU citizens shall require a visa in order to enter the federal territory according to the provisions for foreigners to whom the Residence Act applies. Holders of a valid residence card issued by Germany or another member state of the European Union pursuant to Article 5 (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, amending regulation (EEC) no. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ EU L 229, p. 35) shall be exempted from the visa obligation.

(5) The possession of a valid identity card or passport shall be sufficient for a stay by EU citizens of up to three months. Dependants who are not EU citizens shall have the same right if they are in possession of a recognized or otherwise approved passport or passport substitute and if they accompany the EU citizen or subsequently immigrate to join the EU citizen in the federal territory.

(6) No charges shall be imposed for issuance of the visa.

(7) If the authorities have established that the person concerned has used forged or falsified documents or presented false information to mislead them into believing that one of the requirements has been met, they may determine that the entitlement pursuant to subsection 1 does not exist. If it has been established that a dependant who is not an EU citizen does not subsequently immigrate to the federal territory to join the EU citizen or does not accompany the EU citizen so that they can live together as a family, the authorities may also determine that the entitlement pursuant to subsection 1 does not exist. In such cases, dependants who are not EU citizens may be denied a residence card or visa, or the residence card may be withdrawn. Decisions taken pursuant to the first to third sentences shall be made in writing.

Section 3 Dependants

(1) Dependants of the EU citizens specified in Section 2 (2), nos. 1 to 5 shall possess the entitlement pursuant to Section 2 (1) if they accompany the EU citizen or subsequently immigrate to the federal territory to join the EU citizen. For dependants of the EU citizens specified in Section 2 (2), no. 5 this entitlement shall apply subject to the conditions stipulated in Section 4.

(2) Dependants are

1. the spouse, the partner in life and relatives in the direct descending line of the persons specified in Section 2 (2), nos. 1 to 5 and 7 or of the spouse or partner in life who are under 21 years of age,

2. relatives in the direct ascending and direct descending line of the persons specified in Section 2 (2), nos. 1 to 5 and 7 or of the spouse or partner in life, for whom these persons or their spouses or partners in life provide maintenance.

(3) Dependants who are not EU citizens shall acquire the right of residence upon the death of the EU citizen if they fulfil the conditions pursuant to Section 2 (2), nos. 1 to 3 or no. 5 and resided in the federal territory as dependants of the EU citizen for at least one year prior to the death of the EU citizen. Sections 3 (1) and Sections 6 and 7 shall not apply to persons pursuant to the first sentence; in these cases, the Residence Act shall apply.

(4) The children of an EU citizen who is entitled to freedom of movement and the parent who actually exercises parental custody of the children shall retain their right of residence following the death of the EU citizen or if the EU citizen leaves the federal territory until the children complete their education, provided the children reside in the federal territory and attend an educational establishment.

(5) Spouses or partners in life who are not EU citizens shall retain their right of residence following divorce or the annulment of their marriage or partnership if they meet the conditions applicable to EU citizens pursuant to Section 2 (2), nos. 1 to 3 or no. 5 and if

1. the marriage or partnership existed for at least three years prior to the start of divorce or annulment proceedings, including at least one year in the federal territory,

2. they have been allocated parental custody of the EU citizen's children by virtue of an agreement between the spouses or partners by a court ruling,

3. such retention is necessary in order to avoid special hardship, in particular because the spouse or partner in life cannot be expected to continue the marriage or partnership due to the infringement of his legitimate interests, or

4. they have been granted the right of access to the minor child in the federal territory only, by virtue of an agreement between the spouses or partners in life or by a court ruling.

Section 3 (1) and (2) and Sections 6 and 7 shall not apply to persons pursuant to the first sentence; in these cases, the Residence Act shall apply.

(6) (repealed)

Section 4

Non-gainfully employed persons entitled to freedom of movement

Non-gainfully employed EU citizens and their dependants who accompany the EU citizen or subsequently immigrate to the federal territory to join the EU citizen shall possess the right pursuant to Section 2 (1) if they have adequate health insurance coverage and adequate means of subsistence. If the EU citizen resides in the federal territory as a student, this right shall extend only to his spouse, partner in life and children for whom maintenance is provided.

Section 4a

Right of permanent residence

(1) EU citizens who have resided lawfully and continuously in the federal territory for five years shall be entitled to enter into and stay in the federal territory, irrespective of whether the other requirements stipulated in Section 2 (2) are fulfilled (right of permanent residence). Their dependants who are not EU citizens shall have this entitlement if they have resided lawfully and continuously in the federal territory together with the EU citizen for five years. Section 3 (1) and (2) shall not apply to persons referred to in the second sentence; in such

cases, the provisions of the Residence Act to regulate the subsequent immigration of dependants joining holders of an EC long-term residence permit shall apply.

(2) By way of derogation from subsection 1, EU citizens pursuant to Section 2 (2), nos. 1 to 3 shall possess the right of permanent residence before the period of five years elapses, if

1. they have resided in the federal territory continuously for at least three years and have pursued an economic activity in the federal territory during the last twelve months at least and
 - a) are 65 years of age or over at the time of retiring from gainful employment or
 - b) end their employment under an early retirement scheme or
2. they give up their gainful employment due to a total and permanent incapacitation for work,
 - a) which has resulted from an occupational accident or an occupational disease and which gives rise to an entitlement to a pension from a body providing pension benefits in the federal territory, or
 - b) after having resided continuously in the federal territory for a minimum of two years or,
3. after having pursued an economic activity in the federal territory for three years, following which they are gainfully employed in another member state of the European Union, retain their place of residence in the federal territory and return to said residence at least once a week; for the purposes of acquisition of the right pursuant to nos. 1 and 2, times of employment in another member state of the European Union shall be deemed to constitute times of employment in the federal territory.

Where the spouse or partner in life of the EU citizen is a German within the meaning of Article 116 of the Basic Law or lost this legal status as a result of marrying the EU citizen before 31 March 1953, the conditions pertaining to the duration of residence and the duration of employment in the first sentence, nos. 1 and 2 shall not apply.

(3) Dependants of a deceased EU citizen pursuant to Section 2 (2), nos. 1 to 3 who permanently resided at the deceased's address at the time of his death shall possess the right of permanent residence if

1. the EU citizen had continuously resided in the federal territory for at least two years at the time of his death,
2. the EU citizen died as a result of an occupational accident or an occupational disease or
3. the surviving spouse or partner in life of the EU citizen is a German within the meaning of Article 116 of the Basic Law or lost this legal status as a result of marrying the EU citizen before 31 March 1953.

(4) The dependants of an EU citizen who acquired the right of permanent residence pursuant to subsection 2 shall also possess the right of permanent residence if they permanently reside at the EU citizen's address.

(5) Dependants pursuant to Section 3 (3) to (5) shall acquire the right of permanent residence if they have resided lawfully and continuously in the federal territory for five years.

(6) The period of continuous residence shall not be affected by

1. periods of absence totalling up to six months per year or
2. absence for the purposes of military service or community service or

3. a single absence of up to twelve consecutive months for compelling reasons, in particular due to pregnancy and childbirth, serious illness, a course of study, vocational training or deployment to another country in connection with work.

(7) Absence for a reason which is per se not of a temporary nature for more than two consecutive years shall result in loss of the right of permanent residence.

Section 5

Residence cards, certificates confirming the right of permanent residence

(1) Dependants entitled to freedom of movement who are not EU citizens shall be issued with a residence card for dependants of EU citizens valid for five years ex officio within six months of said dependants furnishing the necessary information. The dependant shall receive written confirmation forthwith that the necessary information has been furnished.

(2) The competent foreigners authority may require fulfilment of the requirements pertaining to the entitlement pursuant to Section 2 (1) to be substantiated within three months of the foreigner concerned entering the federal territory. The competent registration offices may accept the information and documents needed to substantiate the entitlement at the time of registration. The registration office shall then forward the information and documents to the competent foreigners authority. The registration office shall not process or use the information for any other purposes.

(3) The competent authorities may, for specific reasons, establish whether the requirements for the entitlement pursuant to Section 2 (1) are or continue to be met.

(4) Should the requirements for the entitlement pursuant to Section 2 (1) cease to be met within five years of the person concerned establishing permanent and lawful residence in the federal territory, or should they not be met, the loss of the entitlement pursuant to Section 2 (1) may be declared, the certificate confirming the right of residence under Community law withdrawn and the residence card revoked. Section 4a (6) shall apply accordingly.

(5) EU citizens shall be provided with a certificate confirming their right of permanent residence forthwith, upon due application. Their dependants who are not EU citizens and who are entitled to permanent residence shall be provided with a permanent residence card within six months of filing a corresponding application.

(6) Subsection 4a, seventh sentence, shall apply accordingly to loss of the right of permanent residence pursuant to Section 4, first sentence.

Section 5a

Presentation of documents

(1) For the purpose of issuing the certificate pursuant to Section 5 (2), the competent authority may require an EU citizen to furnish a valid identity card or passport and, in the case of

1. Section 2 (2), no. 1, confirmation of appointment or written confirmation of employment from the employer,
2. Section 2 (2), no. 2, proof of the self-employed activity,
3. Section 2 (2), no. 5, proof of adequate health insurance coverage and adequate means of subsistence.

An EU citizen who is not gainfully employed within the meaning of Section 2 (2), no. 5, who furnishes written confirmation that he is attending a college of higher education or another educational establishment in the federal territory shall only be required to provide substantiation of fulfilment of the conditions pursuant to the first sentence, no. 3.

(2) For the purpose of issuing the certificate pursuant to Section 5 (2) or the residence card, the competent authority may require dependants to furnish a recognized or otherwise approved passport or passport substitute and, in addition:

1. proof of the family relationship, in the case of relatives in the descending and ascending line documentary evidence confirming compliance with the conditions pursuant to Section 3 (2),
2. a registration certificate of the EU citizen whom the dependants are accompanying or joining subsequently in the federal territory.

Section 6

Loss of the entitlement to entry and residence

- (1) Without prejudice to Section 2 (7) and Section 5 (4), loss of the entitlement pursuant to Section 2 (1) can only be determined and the certificate confirming the right of residence under Community law and the EU residence permit withdrawn for reasons of public order, security or health (Article 45 (3), Article 52 (1) of the Treaty on the Functioning of the European Union). Entry may also be refused on the grounds stated in the first sentence. Loss of the entitlement on grounds of public health can only be declared in the cases of illnesses with epidemic potential as defined by the International Health Regulations of the World Health Organisation or other infectious diseases or contagious parasitic diseases provided they are the subject of protection provisions in the federal territory, and if the illness concerned arises within the first three months after entering the federal territory.
- (2) A criminal conviction alone shall not constitute sufficient grounds for the decisions or measures specified in subsection 1. Only criminal convictions which have yet to be deleted from the Federal Central Criminal Register may be taken into consideration, and these only insofar as the circumstances pertaining to the said convictions indicate personal behaviour which constitutes a current threat to public order. There must be a real and sufficiently serious threat to the public order, affecting the basic interests of society.
- (3) For the purposes of the decision pursuant to subsection 1, special consideration shall be accorded to the duration of the foreigner's residence in Germany, his age, state of health, family and economic situation, social and cultural integration in Germany and the extent of the foreigner's ties to his country of origin.
- (4) Following acquisition of the right of permanent residence, a loss of entitlement pursuant to subsection 1 may be declared on serious grounds only.
- (5) In the case of EU citizens and their dependants who have been resident in the federal territory in the past ten years and in the case of minors, a loss of entitlement pursuant to subsection 1 may only be declared on compelling grounds of public security. This shall not apply to minors if loss of the right of residence is necessary to the child's well-being. Compelling grounds of public security can only be invoked if the person concerned has been sentenced non-appealably to a prison term or a term of youth custody of at least five years for one or more intentionally committed offences, or if preventive detention has been ordered in connection with the most recent non-appealable conviction, if the security of the Federal Republic of Germany is affected or if the person concerned poses a terrorist threat.
- (6) Decisions or measures concerning the loss of the right of residence or of the right of permanent residence must not be undertaken for economic purposes.
- (7) Should a passport, identification card or other passport substitute become invalid, this cannot constitute grounds for termination of the holder's residence.
- (8) The person concerned should be heard prior to the decision pursuant to subsection 1. The decision must be issued in writing.

Section 7

Requirement to leave the federal territory

- (1) EU citizens or their dependants shall be required to leave the federal territory if the foreigners authority has established that no entitlement to entry and residence exists. The notice shall include a deportation warning and set a time limit for departure. Except in urgent cases, the time limit shall be at least one month. If an application is filed pursuant to Section 80 (5) of the Code of Administrative Court Procedure, deportation must not take place before a decision is reached on the application.

(2) EU citizens and their dependants who have lost their entitlement to freedom of movement pursuant to Section 6 (1) shall not be permitted to re-enter and stay in the federal territory. EU citizens and their dependants who have been found not to be entitled to free movement pursuant to Section 2 (7) may be denied the right to re-enter and stay in the federal territory. In particularly serious cases, they should be denied the right to re-enter and stay in the federal territory, especially if they have repeatedly misled the authorities into believing that they meet the requirements for entry and residence or if their stay severely harms the public order and security of the Federal Republic of Germany. Where a decision is taken in line with the second and third sentences, Section 6 (3), (6) and 8 shall be applied accordingly. The ban pursuant to first to third sentences shall be temporary ex officio. The time limit shall be determined in view of the circumstances of the individual case and may exceed five years only in the cases of Section 6 (1). The time limit shall begin when the person concerned leaves the federal territory. An application for the ban to be lifted or reduced which is filed after a reasonable period or after three years shall be decided upon within six months.

Section 8

Obligation to carry identification papers

(1) EU citizens and their dependants shall be obliged,

1. to carry a passport or a recognized passport substitute on their person when entering or leaving the federal territory and,
 - a) to carry a passport or a recognized passport substitute on their person and,
 - b) on request, to present such identification papers to a competent official for inspection,
2. to possess the necessary passport or passport substitute for the duration of their stay in the federal territory,
3. to present, upon request, the passport or passport substitute and the residence card, the certificate confirming the right of permanent residence and the permanent residence card to the authorities charged with implementing this Act and to hand over the aforesaid papers and leave them with the said authorities temporarily, should this be necessary in order to enforce or safeguard measures under this Act.

(2) Subject to the conditions stipulated in subsection 1 no. 3, the authorities charged with enforcing this Act may read out the biometric and other data stored on the electronic storage and processing medium of a document in line with subsection 1, obtain the required biometric data from the holder of the document and compare the biometric data. Biometric data pursuant to the first sentence shall include only fingerprints, photograph and iris scan. The police authorities, the customs administration and the registration authorities are authorized to take measures pursuant to the first sentence, insofar as they are permitted to verify the authenticity of the document or the holder's identity. The data collected in accordance with the first and third sentences shall be erased without delay after the authenticity of the passport or the identity of its holder has been checked.

Section 9

Penal provisions

(1) Anyone who uses or furnishes false or incomplete information to procure, either for himself or someone else, a residence card, permanent residence card or a certificate confirming the right of permanent residence, or who knowingly uses a document obtained in this manner for the purpose of deceit in legal matters shall be punishable with imprisonment of up to three years or a fine.

(2) Anyone who enters or stays in the federal territory in violation of Section 7 (2), first sentence, shall be punishable with up to one year's imprisonment or a fine.

(3) Objects related to an offence pursuant to subsection 1 may be confiscated.

Section 10

Provisions on fines

- (1) Anyone who fails to submit a document referred to in Section 8 (1) no. 1 letter b or in violation of Section 8 (1) no. 3, or fails to do so in good time, shall be deemed to have committed an administrative offence.
- (2) Anyone who, with intent or through negligence, is not in possession of a passport or passport substitute in violation of Section 8 (1) no. 2 shall be deemed to have committed an administrative offence.
- (3) Anyone who, with intent or through negligence, does not carry a passport or passport substitute on their person in violation of Section 8 (1) no. 1, letter a, shall be deemed to have committed an administrative offence.
- (4) The administrative offence shall be punishable with a fine of up to two thousand five hundred euros in the cases covered by subsections 1 and 3, and with a fine of up to one thousand euros in the other cases.
- (5) In the cases covered by subsections 1 and 3, the administrative authorities within the meaning of Section 36 (1), no. 1 of the Administrative Offences Act shall be the Federal Police regional offices determined by the statutory instrument pursuant to Section 58 (1) of the Act on the Federal Police.

Section 11

Application of the Residence Act

- (1) Section 3 (2), Section 11 (8), Sections 13, 14 (2), Sections 36, 44 (4), Section 45a, Section 46 (2), Section 50 (3) to (6), Section 59 (1), sixth and seventh sentences, Sections 69, 73, 74 (2), Section 77 (1), Sections 80, 82 (5), Sections 85 to 88, 90, 91, 95 (1), nos. 4 and 8, (2), no. 2, (4), Sections 96, 97, 98 (2), no. 2, (2a), (3), no. 3, (4) and (5) and Section 99 of the Residence Act shall apply accordingly to EU citizens and their dependants who are entitled to enter and stay in the federal territory pursuant to Section 2 (1). Section 73 of the Residence Act shall be applied in declaring grounds pursuant to Section 6 (1). Section 78 of the Residence Act shall be applied accordingly in issuing residence cards pursuant to Section 5 (1), first sentence and permanent residence cards pursuant to Section 5 (5), second sentence. Residence cards pursuant to Section 5 (1), first sentence shall be marked "Residence Card (Dependent EU)" and permanent residence cards pursuant to Section 5 (5), second sentence shall be marked "Permanent Residence Card (Dependant EU)". In the case of residence cards pursuant to Section 5 (1), first sentence, and permanent residence cards pursuant to Section 5 (5), second sentence, the abbreviation "AF" will be used in the machine-readable zone instead of the abbreviations pursuant to Section 78 (2), second sentence, no. 1 of the Residence Act. If the requirements of Section 78a (1), first sentence of the Residence Act are met, residence cards pursuant to Section 5 (1), first sentence, and permanent residence cards pursuant to Section 5 (5), second sentence, may be issued using a standard form. Section 105b of the Residence Act shall apply accordingly to residence cards pursuant to Section 5 (1), first sentence, and permanent residence cards pursuant to Section 5 (5), second sentence. The obligations pursuant to Section 82 (5), first sentence, no. 1 of the Residence Act shall apply accordingly to EU citizens whose photographs are required for the purposes of keeping the foreigners files. Public bodies are required to report to foreigners authorities pursuant Section 87 (2) nos. 1 to 3 of the Residence Act to the extent that the circumstances mentioned therein may be relevant for the determination to be made pursuant to Section 2 (7), Section 5 (4) and Section 6 (1). Section 88a (1) first, third and fourth sentences of the Residence Act shall apply accordingly where the transmission of participant-related data is necessary for conducting integration courses pursuant to Section 44 (4) of the Residence Act, monitoring an integration agreement pursuant to the Social Code, Book II, or conducting the naturalization procedure. The Residence Act shall also apply if it establishes a more favourable legal status than this Act.

(2) Where the foreigners authority has determined that the entitlement pursuant to Section 2 (1) does not exist or has lapsed, the Residence Act shall apply in the absence of any special provisions contained in this Act.

(3) For the purposes of this Act, periods of lawful residence of less than five years shall correspond to the periods of possession of a residence permit; periods of more than five years shall correspond to the periods of possession of a settlement permit.

Section 11a

Authorisation to issue statutory instruments

The Federal Ministry of the Interior shall be authorized to determine, through a statutory ordinance requiring the approval of the Bundesrat, the details concerning the issue of residence cards pursuant to Section 5 (2), first sentence, and permanent residence cards pursuant to Section 5 (6¹), second sentence in line with Section 99 (1) no. 13a, sentence 1, of the Residence Act, details concerning the examination procedure pursuant to Section 34 no.4 of the Identity Card Act, and details concerning electronic ID pursuant to Section 34 nos. 5 to 7 of the Identity Card Act.

Footnote 1: Translator's note: Sic; reference should be made to „Section 5 (5)“.

Section 12

Nationals of EEA states

This Act also applies to nationals of EEA states and their dependants within the meaning of this Act.

Section 13

Nationals of acceding states

Where divergent provisions are applicable in accordance with the Accession Treaty of a member state, this Act shall apply if employment has been approved by the Federal Employment Agency in accordance with Section 284 (1) of the Social Code, Book III.

Section 14

Provisions on administrative procedure

No derogations from the provisions set out in Section 11 (1) in conjunction with Section 87 (1), (2), first sentence and 2, (4), first, second and fourth sentences, and (6), Sections 90, 91 (1) and (2), Section 99 (1) and (2) of the Residence Act shall be permissible by way of *Land* law.

Section 15

Transitional provision

An EU residence permit issued prior to 28 August 2007 shall remain valid as a residence card for dependants of an EU citizen.