

**Act on the General Freedom of Movement for EU Citizens
(Freedom of Movement Act/EU)
of 30 July 2004 (Federal Law Gazette I, p. 1950, 1986)**

last amended by Art. 2 of the Act to Implement Residence- and Asylum-Related Directives of the European Union of 19 August 2007 (Federal Law Gazette I, p. 1970, 1991)

**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 dependents.

**Section 2
Right of entry and residence**

(1) EU citizens 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 Community law:

1. EU citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training,
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 50 of the Treaty establishing the European Community (service providers), provided that they are entitled to provide the services concerned,
4. EU citizens as the recipients of services,
5. non-gainfully employed EU citizens, subject to the requirements of Section 4,
6. dependents, subject to the requirements of Sections 3 and 4,
7. EU citizens and their dependents who have acquired the right of permanent residence.

(3) The right pursuant to sub-section 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 Federal 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 or her job involuntarily.

In the case of involuntary unemployment confirmed by the Federal Employment Agency after a period of employment of less than one year, the right pursuant to sub-section 1 shall remain unaffected for a period of six months.

(4) EU citizens do not require a visa in order to enter the Federal territory or a residence title in order to stay in the Federal territory. Dependents who are not EU citizens shall require a visa in order to enter the Federal territory according to the provisions for foreigners for whom the Residence Act applies. Holders of a valid residence card of 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/EC, 68/360/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Official EU Journal no. 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. Dependents who are not EU citizens shall have the same right where they are in possession of a recognised or otherwise approved passport or passport substitute and where 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 certificate confirming the right of residence and the visa.

Section 3 Dependents

(1) Dependents 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 dependents

of the EU citizens specified in Section 2 (2), no. 5 this entitlement shall apply subject to the conditions stipulated in Section 4.

(2) Dependents are

1. the spouse and relatives in the descending line of the persons stated in Section 2 (2), nos. 1 to 5 and 7 or of their spouses who are under 21 years of age,
2. relatives in the ascending and descending line of the persons specified in Section 2 (2), nos. 1 to 5 and 7 or of the latter's spouses, for whom these persons or their spouses provide maintenance.

(3) Dependents 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 were resident in the Federal territory as dependents of the EU citizen for a period of at least one year prior to the death of the EU citizen. Section 3 (1) and (2) and Sections 6 and 7 shall not apply to persons pursuant to sentence 1; the Residence Act shall thus be applicable to such persons.

(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 upon the latter leaving the Federal territory until the children complete their education, if the children are resident in the Federal territory and attend an educational establishment.

(5) Spouses who are not EU citizens shall retain their right of residence following divorce or the annulment of their marriage 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 existed for at least three years prior to the institution 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 by a court ruling,
3. such retention is necessary in order to avoid special hardship, in particular because the spouse cannot be expected to continue the marriage due to the infringement of his or her legitimate interests
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 by a court ruling.

Section 3 (1) and (2) and Sections 6 and 7 shall not apply to persons pursuant to sentence 1; the Residence Act shall thus be applicable to such persons.

(6) The provisions of the Residence Act pertaining to the partner in life of a German shall apply to the entry and residence of the partner in life of a person who is entitled

to enter and reside in the Federal territory in accordance with Section 2 (2), nos. 1 to 4, if said partner is not himself or herself entitled to freedom of movement.

Section 4

Non-gainfully employed persons entitled to freedom of movement

Non-gainfully employed EU citizens, their dependents and partners in life 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 is resident in the Federal territory as a student, this right shall extend only to his or her spouse, partner in life and children for whom maintenance is provided.

Section 4a

Right of permanent residence

(1) EU citizens, their dependents and partners in life 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).

(2) By way of derogation from sub-section 1, EU citizens pursuant to Section 2 (2), nos. 1 to 3 shall possess the right of permanent residence prior to the period of five years elapsing, if

1. they have been resident in the Federal territory for a continuous period of 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 occupational disability
 - 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 been continuously resident in the Federal territory for a period of two years at least or,
3. after having been continuously resident in the Federal territory for three years, they subsequently take up employment 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 numbers 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 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 entering into marriage to the EU citizen up to 31 March 1953, the conditions pertaining to the duration of residence and the duration of employment in sentence 1, nos. 1 and 2 shall not apply.

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

1. the EU citizen had been continuously resident in the Federal territory for a period of at least two years at the time of his or her death,
2. the EU citizen died as a result of an occupational accident or an occupational disease or
3. the surviving spouse 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 entering into marriage with the EU citizen prior to 31 March 1953.

(4) The dependents of an EU citizen who acquired the right of permanent residence pursuant to sub-section 2 or prior to his or her death shall also possess the right of permanent residence if they were already permanently resident at the EU citizen's address upon the latter acquiring the right of permanent residence.

(5) Dependents 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 a period of 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 instance of 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 on account of 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

Certificates confirming rights of residence under Community law, residence cards

(1) EU citizens entitled to freedom of movement and their dependents who are nationals of a Member State of the European Union shall be issued a certificate confirming the right of residence ex officio forthwith by the competent authority.

(2) Dependents entitled to freedom of movement who are not EU citizens shall be issued with a residence card for dependents of EU citizens with a period of validity of five years ex officio within six months of said dependents furnishing the necessary information. The dependent shall receive written confirmation forthwith that the necessary information has been furnished.

(3) 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 office may take receipt of the information and documents required for substantiation at the time of registration with the said office. The registration office shall then forward the information and documentation to the competent foreigners authority. The registration office shall not process or use the information for any other purposes.

(4) Should special circumstances so require, verification that the conditions pertaining to issuance of the certificate are still fulfilled may be carried out.

(5) Should the requirements pertaining to the entitlement pursuant to Section 2 (1) cease to be met within five years of the person concerned establishing permanent residence in the Federal territory, 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 mutatis mutandis.

(6) EU citizens shall be provided with a certificate confirming their right of permanent residence forthwith, upon due application. A permanent residence card shall be issued to their dependents who are entitled to permanent residence but who are not EU citizens within six months of a corresponding application being filed.

(7) Sub-section 5, sentence 1 shall apply mutatis mutandis to loss of the right of permanent residence pursuant to Section 4a (7).

Section 5a

Presentation of documents

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

1. Section 2 (2), no. 1, where the EU citizen is not a job-seeker, confirmation of appointment or written confirmation of employment from the employer,
2. Section 2 (2), no. 2, proof of the independent economic activity,
3. Section 2 (2), no. 5, proof of adequate health insurance coverage and adequate means of subsistence.

A non-gainfully employed EU citizen within the meaning of Section 2 (2), no. 5, who furnishes written confirmation that he or she is attending a college of higher education or another educational establishment in the Federal territory shall be required solely to provide substantiation of fulfilment of the conditions pursuant to sentence 1, no. 3.

(2) For the purpose of issuance of the certificate pursuant to Section 5 (1) or issuance of the residence card, the competent authority may require dependents to furnish a recognised or otherwise approved passport or passport substitute and

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 certificate pursuant to Section 5 (1) of the EU citizen whom the dependents are accompanying or whom they are subsequently joining in the Federal territory,
3. proof of existence of the partnership in the case of Section 3 (6) or Section 4, sentence 1.

Section 6

Loss of the entitlement to entry and residence

(1) Without prejudice to Section 5 (5), loss of the entitlement pursuant to Section 2 (1) can only be declared, the certificate confirming the right of residence under Community law or confirming the right of permanent residence withdrawn and the residence card or permanent residence card revoked on grounds of public order, safety or health (Article 39 (3), Article 46 (1) of the Treaty on the European Community). Entry may also be refused on the grounds stated in sentence 1. Loss of

the entitlement on grounds of public health can only be declared 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 sub-section 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. A real and sufficiently serious danger must apply which affects a fundamental interest of society.

(3) For the purposes of the decision pursuant to sub-section 1, special consideration shall be accorded to the duration of the foreigner's residence in Germany, his or her age, state of health, family and economic situation, social and cultural integration in Germany and the extent of the foreigner's ties to his or her country of origin.

(4) Following acquisition of the right of permanent residence, a loss of entitlement pursuant to sub-section 1 may be declared on serious grounds only.

(5) In the case of EU citizens and their dependents 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 sub-section 1 may be declared on compelling grounds of public safety only. This shall not apply to minors where loss of the right of residence is necessary to the child's well-being. Compelling grounds of public safety can only apply if the person concerned has been unappealably sentenced to a prison term or a term of youth custody of at least five years for one or more intentionally committed offences or preventive detention has been ordered in connection with the most recent unappealable conviction, the security of the Federal Republic of Germany is affected or 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) Prior to the decision pursuant to sub-section 1, the person concerned should be heard. The decision must be issued in writing.

Section 7

Requirement to leave the Federal territory

(1) EU citizens shall be required to leave the Federal territory, if the foreigners authority has established that no entitlement to entry and residence exists. Dependents who are not EU citizens shall be required to leave the Federal territory, if

the foreigners authority has unappealably revoked or withdrawn the residence card or permanent residence card. A notification announcing deportation shall be served, setting a deadline for departure. Except in urgent cases, a minimum deadline period of one month shall apply. If an application is filed pursuant to Section 80 (5) of the Code of Administrative Court Procedure, deportation must not take place prior to a decision being reached on the application.

(2) EU citizens and their dependents 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. Upon application, the prohibition pursuant to sentence 1 shall be subject to a time limit. The time limit shall begin upon the person concerned leaving the Federal territory. An application for the ban to be lifted 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

EU citizens and their dependents shall be obliged,

1. a) to carry a passport or a recognised passport substitute on their person when entering or leaving the Federal territory and,
b) on request, to hand over such identification papers to a competent official for inspection,
2. to hold the necessary passport or passport substitute for the duration of their stay in the Federal territory,
3. to present the passport or passport substitute and the certificate confirming the right of residence under Community law, 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 for a temporary period, should this be necessary in order to enforce or safeguard measures under this Act.

Section 9

Penal provisions

Any person who enters or stays in the Federal territory in contravention of Section 7 (2), sentence 1 shall be punishable with up to one year's imprisonment or a fine.

Section 10

Provisions as to fines

(1) Anyone who does not hand over a passport or passport substitute or fails to do so in good time in contravention of Section 8 (1), letter b 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 contravention of Section 8 (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 contravention of Section 8 (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 sub-sections 1 and 3, and with a fine of up to one thousand euros in the other cases.

(5) In the cases covered by sub-sections 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.

Section 11

Application of the Residence Act

(1) Section 3 (2), Section 11 (2), Sections 13, 14 (2), Sections 36, 44 (4), Section 46 (2), Section 50 (3) to (7), 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 mutatis mutandis to EU citizens and their dependents 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). The obligations pursuant to Section 82 (5), sentence 1, no. 1 of the Residence Act shall apply mutatis mutandis for EU citizens whose photographs are required for the purposes of keeping the Foreigners Files. The notification requirements pursuant to Section 87 (2), nos. 1 to 3 of the Residence Act shall apply insofar as the circumstances stated therein may be of substantial relevance to decisions in accordance with Section 5 (5) and Section 6 (1). 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 under five years shall correspond to the periods of possession of a residence permit; periods of over five years shall correspond to the periods of possession of a settlement permit.

Section 12

Nationals of EEA states

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

Section 13

Nationals of acceding states

Insofar as divergent provisions are applicable in accordance with the treaty of 16 April 2003 on the accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (Federal Law Gazette 2003 II, p. 1408) or the treaty of 25 April 2005 on the accession to the European Union of the Republic of Bulgaria and Romania (Federal Law Gazette 2006 II, p. 1146), this Act shall apply if employment has been approved by the Federal Employment Agency in accordance with Section 284 (1) of Book Three of the Social Code.

Section 14

Provisions on administrative procedure

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

Section 15

Transitional arrangement

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