

Translation

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**Act to Control and Restrict Immigration and to Regulate the Residence and
Integration of EU Citizens and Foreigners (Immigration Act)
of 30 July 2004**

The Bundestag has adopted the following Act with the approval of the Bundesrat:

S u m m a r y o f c o n t e n t s

- Article 1 Act on the Residence, Economic Activity and Integration of Foreigners
 in the Federal Territory (Residence Act)
- Article 2 Act on the General Freedom of movement for EU Citizens

Article 2
Act on the General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU)

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. persons entitled to remain in the Federal territory pursuant to EEC regulation no. 1251/70 adopted by the Commission on 29 June 1970 on the right of employees to remain in the territory of a Member State after having been employed in that state (official EC Journal no. L 142, p. 24, 1975 no. L 324, p. 31) and directive 75/34/EEC adopted by the Council on 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity (official EC Journal 1975 no. L 14, p. 10),
6. non-gainfully employed EU citizens, subject to the requirements of Section 4,
7. dependents, subject to the requirements of Sections 3 and 4.

(3) The entitlement pursuant to Section 2 (1) shall remain unaffected by temporary disablement for work as a result of illness or an accident. The same shall apply to periods of involuntary unemployment on the part of an employee which are confirmed by the competent local employment agency and for periods during which a self-employed person ceases to pursue an economic activity as a result of circumstances which he or she was unable to influence.

(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 if a legal provision stipulates such a requirement.

(5) EU citizens, their spouses or partners in life and their dependent children who have resided lawfully and continuously in the Federal territory for five years are entitled to enter into and stay in the Federal territory, irrespective of whether the other requirements pertaining to eligibility for general freedom of movement are fulfilled. For children under 16, this shall apply only if a parent or legal guardian is lawfully resident in the Federal territory.

(6) No charges shall be imposed for issuance of the certificate relating to the right of residence, the EU residence permit and the visa.

Section 3 Dependents

(1) Dependents of the persons specified in Section 2 (2), nos. 1 to 3 shall possess the entitlement pursuant to Section 2 (1) if they cohabit with the person entitled to freedom of movement whose dependents they are. Dependents of the persons specified in Section 2 (2), nos. 4 and 5 shall possess the entitlement pursuant to Section 2 (1), the latter in accordance with sub-sections 4 and 5.

(2) Dependents within the meaning of sub-section 1 are

1. the spouse and relatives in the descending line who are under 21 years of age,
2. relatives in the ascending and descending line of the persons specified in sub-section 1 or of the latter's spouse, for whom these persons or their spouses provide maintenance.

(3) Dependents of a deceased gainfully employed person (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 entitlement pursuant to Section 2 (1) if

1. the gainfully employed person had been permanently resident in the territory covered by the scope of this Act for at least two years at the time of his or her death or
2. the gainfully employed person died as a result of an industrial accident or an occupational disease or
3. the surviving spouse of the gainfully employed person is a German within the meaning of Article 16 of the Basic Law or lost this status through marriage to the gainfully employed person up to 31 March 1953.

Permanent residence within the meaning of number 1 shall not be affected by temporary absence of up to a total of three months per year or by a longer absence for military service or community service.

(4) Dependents of a person entitled to remain in the Federal territory (Section 2 (2), no. 5) or of a deceased person entitled to remain in the Federal territory who were permanently resident at the said person's address upon said entitlement accruing shall possess the entitlement pursuant to Section 2 (1). 1.

(5) The dependents' entitlement pursuant to sub-sections 3 and 4 must be exercised within two years of its accrual. The entitlement shall not be prejudiced as a result of said dependents leaving the Federal territory during this period.

(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 5, 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 and their dependents who cohabit with the non-gainfully employed person who is entitled to freedom of movement shall possess the entitlement pursuant to Section 2 (1) if they have adequate health insurance coverage and adequate means of subsistence. Dependents for the purposes of this provision are:

1. the spouse and children for whom maintenance is provided,
2. other relatives in the descending and ascending line and other relatives of the spouse in ascending line for whom maintenance is provided, and the partner in life.

By way of derogation from sentence 1, with regard to the dependents of a student only the spouse, the partner in life and the dependent children possess the entitlement pursuant to Section 2 (1).

Section 5 Certificate confirming the right of residence under Community law, EU residence permit

(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 as standard procedure by the competent authority.

(2) Dependents who are not EU citizens shall be issued an official EU residence permit.

(3) The competent foreigners authority may require fulfilment of the requirements pertaining to the entitlement pursuant to Section 2 (1) to be substantiated within reasonable periods. 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 requirements pertaining to eligibility for 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 EU residence permit revoked. Section 3 (3), sentence 2 shall apply mutatis mutandis.

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 determined, the certificate confirming the right of residence under Community law withdrawn and the EU residence permit 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.

(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) After permanent, lawful residence in the Federal territory for a period of more than five years, the loss of the entitlement to entry and residence can only be determined on particularly serious grounds.

(4) The decisions or measures stated in sub-sections 1 to 3 must not be undertaken for economic purposes.

(5) Should a passport, identification card or other passport substitute become invalid, this cannot constitute grounds for termination of the holder's residence.

(6) 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 indisputably 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 EU residence permit. A notice of intention to deport shall be served, setting a deadline for departure. Except in urgent cases, a minimum deadline period of 15 days must be set if an EU residence permit or a certificate confirming the right of residence under Community law has not yet been issued, while a minimum deadline period of one month shall apply in all other cases.

(2) EU citizens and their dependents who have lost their entitlement to freedom of movement pursuant to Section 6 (1) or (3) shall not be permitted to re-enter and stay in the Federal territory. The prohibition pursuant to sentence 1 is subject to a time limit. The time limit begins upon the person concerned leaving the Federal territory.

Section 8 Obligation to carry identification papers

EU citizens and their dependents shall be obliged,

1. on entering the Federal territory,

- a) to carry a passport or a recognised passport substitute on their person 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 and the EU residence permit 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 by 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 Border Police 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, 74 (2), Sections 77,80, 85 to 88, 90, 91, 96, 97 and 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) or (5). 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) If the foreigners authority has determined that the entitlement pursuant to Section 2 (1) or the entitlement pursuant to Section 2 (5) 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), 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.