

**Information on
the Statutory Frameworks applicable to
Entry and Residence
by Foreign Students, Academics and Scientists**

Please note:

This English version is a translation of the German original (*Informationen zu den rechtlichen Rahmenbedingungen für Einreise und Aufenthalt von ausländischen Studierenden und Wissenschaftlern*) and is intended for information purposes only. In all cases of doubt or dispute, the German original shall prevail.

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1 Introduction

Questions relating to entry and residence are governed by the "Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners" – in short: Immigration Act – which has been in force since 1 January 2005. The Immigration Act consists of various single laws, of which the Residence Act (for non-EU citizens) and the Freedom of Movement Act/ EU (for EU citizens) are most relevant in terms of entry and residence for foreign students and visiting academics and scientists. Statutory instruments govern the more specific details in many of the Immigration Act's areas of applicability. However, other laws, provisions and regulations may also be of relevance to the information presented here.

This information sheet makes no claim to completeness and reflects the status as of October 2010.

2 General Entry Provisions

In general, foreigners require a visa for entry into Federal territory (Territory of the Federal Republic of Germany).

Only certain "privileged" foreigners may be exempted or relieved of these requirements.

The following generally applies: Through the Freedom of Movement Act, Citizens of the European Union enjoy Freedom of Movement. Within the scope of this Act, they are protected from all discrimination on grounds of their citizenship.

When the visa is issued and entered into the passport, both entry as well as temporary residence is allowed. Those who require a visa must always obtain this from the respective home country prior to entry. Responsibility for issuing visas lies with the German Missions Abroad duly authorised by the German Federal Foreign Office (as a rule, the Embassy or the Consulate General) and for some visas (so-called Schengen Visa) as well as the missions abroad of the other Schengen States at the place at which the foreigner is usually resident.

If a visa is required, entry without a visa is not permitted and hence illegal.

The following groups do not require a visa for entry: they are only required to present a valid travel document (as a rule, a passport):

- EU Citizens: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, Cyprus, United Kingdom: In these cases, proof of identity is required with a valid Personal Identity Card or Identity Card or Passport is sufficient for entry.

- Citizens of the European Economic Area (EEA): Iceland, Liechtenstein, Norway: Here, too, a Personal Identity Card or an Identity Card is sufficient for entry.
- Family members from third countries (spouses, minors, and single children) of EU citizens and EEA citizens, as long as they hold a valid residence title of another EU or EEA state.
- Citizens of Australia, Canada, Israel, Japan, Republic of Korea, New Zealand, Switzerland and the United States: A residence title for more than three months can be applied for in Germany.
- Citizens of Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino do not require a visa, as long as they do not intend to take up gainful employment. This means that students from these countries do not need an entry visa, if prior to and after studying they do not intend to take up gainful employment. Study integrated and other activities not requiring approval remain unaffected by this rule, since studying is the primary purpose of the stay. For stays lasting more than three months, a residence title can also be applied for in Germany on entry without a visa.

If (visiting) scientific activity does not exceed a period of three months in a year, the activity will not be regarded as gainful employment in the sense of the Immigration Act. This then means that citizens from Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino do not require a visa for such activity.

- Citizens of Argentina, Antigua and Barbuda, Bahamas, Barbados, Brunei, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Malaysia, Mauritius, Mexico, Nicaragua, Panama, Paraguay, Seychelles, Singapore, St. Kitts and Nevis, Uruguay, Vatican City and Venezuela: for stays which are shorter than three months and in which gainful employment requiring approval is not planned, citizens of the respective countries can enter Germany without a visa. For (visiting) scientific activity not exceeding three months, it is also possible to enter without a visa (*see above*).

It is not possible to extend these stays beyond three months without a visa. After a period of three months the visa expires and the holder must leave the country. If a longer stay or gainful employment requiring approval is intended, entry with a national visa is an absolute requirement. Holders of national passports who do not need a visa to enter Germany, must also, by principle, not stay in the Federal Territory for any longer than 90 days per six-month period. In addition, they must not take up any gainful employment during this time.

- Researchers registered in another EU member state in accordance with the provisions of the EU Researcher Directive and who travel to Germany within the scope of their research, as long as they otherwise work in a Schengen state, or conduct their research activity in Germany for a maximum of three months within a period of twelve months during their research stay in Germany, do not require a visa.

If a visa is needed, this can be issued as a Schengen Visa or as a National Visa, depending on the length of the stay and the purpose of the stay.

Excursus: Candidates for EU Enlargement

On 1 May 2004, another ten countries joined the EU (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia). Romania and Bulgaria joined the EU on 1 January 2007. Citizens of the former Accession Countries are now EU Citizens in accordance with Article 18 – EC Treaty and

fundamentally enjoy Freedom of Movement within the whole of the European Union. Some restrictions apply only to the Freedom to provide services and the Free movement of services (see Information on the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists).

2.1 Various types of visas

A Schengen visa is issued for short-term stays lasting up to three months per six-month period. A national visa is issued for longer stays planned to last more than three months.

Further differences exist within the two main categories based on the respective purpose of the stay. For example, a Schengen visa is issued for visits, business and tourist trips. A national visa is issued, for example, for educational purposes, such as studying, or for the pursuit of gainful employment.

The German diplomatic missions abroad generally post information on the procedure for issuing visas and on the documents that are required on their website. In many cases, application forms can already be downloaded from the homepage. The addresses of the missions abroad can be found on the website of the German Federal Foreign Office: <http://www.auswaertiges-amt.de/www/de/index.html>.

2.1.1 Schengen visa

A Schengen visa

- is issued for a specific purpose of stay and for up to three months per six-month period;
- entitles the holder to travel freely and to stay in the territory of the Schengen countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Iceland, Luxembourg, Netherlands, Norway, Portugal, Sweden, Spain);
- cannot generally be extended or changed to another purpose of stay. Only in particular exceptions is an extension possible, e.g. when urgent medical treatment is needed;
- is issued by the diplomatic missions abroad of the Schengen countries.

Foreigners wanting to come to Germany to study, to complete a doctoral programme or to complete a research stay or to work as a visiting academic or scientist are strongly advised not to enter Germany on a Schengen visa, because the residence title that is issued together with this visa cannot be extended or changed to another purpose of stay (*cf. above*), regardless of the short-term purpose of the stay for which it was issued (tourist stay, visit or business trip). Foreigners must leave the country after the visa expires.

Depending on the length of the planned language course, the visa can be issued as a national or a Schengen visa to allow the holder to attend a language course (up to three months → Schengen visa, more than three months → national visa; *cf. above* 2.1). If the language course is to be followed directly by a course of study in Germany, this must be stated when applying for the visa. A national visa for

educational purposes (study preparation) is then issued for this purpose of stay. If the foreigner only applied for a Schengen visa or a national visa to complete a language course (without a subsequent study stay), then it cannot be changed into a residence title for educational purposes (studying). The foreigner must leave the country when the visa expires.

Foreigners who enter Germany on a Schengen visa must also be able to prove that they can cover their living expenses (subsistence) for the probable length of their stay in Germany.

2.1.2 National visa

A national visa

- is issued when a longer stay (of three months and more) is planned or when the applicant intends to take up gainful employment;
- can be issued for between three months and up to one year, in exceptions also for a longer period; the visa's period of validity depends on the respective planned purpose of stay;
- only entitles the holder to stay in Germany;
- allows one transit trip (limited to five days) through the Schengen countries to reach the target country;
- can, as a German national visa, only be applied for at the German diplomatic mission abroad in whose area of jurisdiction the foreigner has his/her usual place of residence.

Up until the introduction of the EU Visa Code on 5 April 2010, a national visa could also be issued in the form of a so-called dual visa (D+C visa). Such a dual visa was a national visa for a longer stay and was simultaneously valid as a visa for a short-term stay in the member states of the Schengen agreement. Since, according to the authorities, this visa had failed to prove itself, the Visa Code marked the end of the D+C visa. In response, various flanking legal instruments now aim to have the National Visa placed on the same level as the national residence title for longer-lasting stays and will also facilitate visa-free short stays in the other Schengen States. How this will specifically be implemented remains to be seen.

Excursus: EU Visa Code

The new EU Visa Code aims to establish uniform EU Visa conditions and procedures. It unites all the legal instruments relating to visa decisions. It aims to create more transparency and legal certainty and to guarantee the equal treatment of applicants. For example, it explains why a visa application was rejected and provides opportunities to appeal against negative decisions (rejections).

Furthermore, it is planned that the EU Delegations must be integrated into the coordination of cooperation between member states within the scope of "Local Schengen Cooperation" in third countries. This is also intended to contribute more to a greater harmonisation of the processes and procedures.

To ensure the equal opportunity of applicants, a guide was produced for processing visa applications. This manual was adopted by the Commission on 19 March 2010

and will be made available to all consular staff of the member states. At the same time, the rules, regulations and procedures of the Schengen states which have adopted a common visa policy, will be standardised.

2.1.2.1 Applying to study

Foreigners are considered student applicants when they are interested in studying in Germany, but have not yet been admitted to a public or state-recognised higher education institution, etc. The application for a study place can be combined with learning the German language or with collecting information on the range of study opportunities offered.

In the process of approving the issue of a visa (Article 31, Section 1 Residence Act), the check by the foreigners authority is generally limited to an inquiry at the Central Register of Foreigners. Whether the requirements for admission to a specific educational facility and the proof of financial resources (subsistence) regarding the study stay are given will then only be checked on a case-by-case basis and if an appropriate check is considered necessary in Germany.

According to Article 31 Section 1 Sentence 3 Residence Act, the approval of the foreigners authority is considered to have been given, if no contrary notification has been issued within a no-response deadline of three weeks and two working days, in all cases subject to the condition that the applicant is qualified for admission, has secure financial resources and holds a passport. The no-response deadline does not apply if the foreigners authority has to undertake complementary checks and verifications. The no-response deadline does not prevent the foreigners authority from expressly issuing its approval prior to the deadline in order to accelerate the issue of the visa on a case-by-case basis.

A national student applicant visa can be issued by discretionary decision, when

- the foreigner has not yet been admitted to a pre-study preparatory course (*Studienkolleg*) or a university;
- no compelling general grounds for refusal exist (for example, the lack of a required passport is a general ground for refusal);
- no other public interests conflict with this issue.

Student applicants must present the following documents for a national visa:

- adequate health insurance cover (*cf. Excursus "Health insurance"*);
- proof of sufficient financial resources (subsistence) to cover the visa's full period of validity;
- (for students of minor age), a letter of consent from the person(s) responsible for their care and custody.

Whether the prerequisites for admission to a specific education institution for a subsequent course of studies have been met will be checked on a case-by-case basis. It may then already be necessary to present the following documents together with the application for a student applicant visa:

- proof of a higher education entrance qualification that entitles the holder to study in Germany (or to attend a *Studienkolleg* pre-study preparatory or foundation course);
- proof of any academic achievements or qualifications gained to date.

Excursus: Health insurance

A health insurance policy must cover the following benefits to be considered adequate:

- medical and dental treatment
- medicines/drugs, dressing/bandages, health/medical aids
- hospital treatment
- medical rehabilitation
- pregnancy and childbirth

Persons with health insurance provided by a statutory (public) health insurance agency are in all cases considered to have adequate health insurance cover (Section 2, 3 Residence Act)

Over and above this, student applicants may already be required to present proof of financial resources (subsistence) for a subsequent study stay when they apply for a student applicant visa. This is a discretionary decision. In most cases, the proof of financial resources is only required by the foreigners authority in Germany, namely when the student applicant visa is changed into a residence title for the purpose of study.

Excursus: Proof of financial resources

The proof of financial resources serves to document that the foreigner has sufficient financial resources to cover the subsistence costs and that these resources are initially available for the period of one year to ensure that the foreigner does not have to take recourse to any social security benefits in the host country during the stay. Third-country students and student applicants must prove that they have financial resources equal to the maximum BAföG educational assistance rate (Section 2, 3 Residence Act) available to them. As a rule, this currently amounts to 659 euros per month or 7,908 euros per year. However, experience has also shown that some foreigners authorities demand proof of higher financial resources. Since the level of the verifiable subsistence level is now directly governed by the Act, this should soon no longer occur.

The proof of financial resources can be provided (No. 16.0.8 of the Provisional Administrative Guidelines on the Residence Act) **either** by

- stating the income and assets of the parents,
- **or** by submitting a declaration of commitment (a formal payment guarantee) to the foreigners authority or to the diplomatic mission abroad promising to pay the foreign student's cost of living,
- **or** by depositing a security payment in a blocked account in Germany,
- **or** by depositing an annually renewable bank guarantee at a financial institution (bank) in Germany,

- **or** by presenting a scholarship/grant paid from German public funds, a scholarship/grant awarded by a funding organisation duly recognised in Germany, or a scholarship/grant paid from public funds in the country of origin, if the Federal Foreign Office, the German Academic Exchange Service or another German scholarship/grant-awarding organisation was responsible for placing the student at the German university.

Not all federal states accept each of the above-listed financing options.

If the foreigner who has entered Germany on a national visa for educational purposes (student applicant) decides, during the information and orientation stay, and especially after admission to a higher education institution, to stay for a longer period, the foreigners authority may change the provisional residence title issued together with the national visa into a residence permit for educational purposes (study preparation or studying as such). This is also the point when, at the latest, the proof of admission to an education institution and the documents which were still required for the visa application (*see above*) need to be presented.

The national visa for student applicants is valid for three months. The foreigners authority can extend it by six months in the form of a residence permit. This is subject to the condition that the student applicant proves that he or she has been admitted to studies or has been accepted to a pre-study German language course or a pre-study preparatory course (*Studienkolleg*) within this period. This means that the maximum stay for the study application process is nine months. This length of stay as a student applicant prior to taking pre-study preparatory measures is not added to the length of stay of study preparation measures, such as language courses, foundation courses or preparatory internships.

2.1.2.2 Study preparation and studies

According to the Law on Foreigners, foreigners are considered to have student status when they have been admitted to a course of studies at a state (public) or state-recognised higher education institution (university, university of education, college of art or music, or university of applied sciences = *Fachhochschule*), or to a comparable education institution, or to a higher vocational institution (university of cooperative education = *Berufsakademie*, or to a state-recognised pre-study preparatory course = *Studienkolleg*).

A visa for educational purposes (student visa) is normally issued as a national visa (Type D), because the student intends to complete a longer stay (of more than three months).

Students must fulfil the following prerequisites to receive a national visa for the purpose of studying:

- admission to a duly recognised education institution primarily for the purpose of gaining a professional/vocational qualification. The proof of admission is met by presenting the higher education institution's admissions letter. Conditional admission is accepted (Article 16 Section: 1 Residence Act). The admissions letter may be substituted as a result: (No. 16.1.1.1.1-16.1.1.1.3 of the General Administrative Provision of the Residence Act) by a

- letter from the education institution confirming the student's pre-registration status for a study place,
- letter confirming applicant status, or
- letter from the university or the pre-study preparatory course (*Studienkolleg*) stating that the decision on the admissions application requires the personal presence of the foreigner at the university. This letter must confirm that the applicant's admissions application has been checked and that there are reasonable grounds for expecting the applicant to be admitted.
- adequate health insurance cover (cf. Excursus “Health insurance”)
- proof of sufficient financial resources (cf. Excursus “Proof of financial resources”),
- proof of knowledge of the language of instruction; this is not required, if the language skills were already considered in the admissions decision or if the language skills are to be acquired through pre-study preparation measures.
- (for students of minor age) letter of consent from the person(s) responsible for the student's care and custody, and
- proof of any academic achievements or qualifications gained to date.

The national student visa can be issued for a study stay

- with a validity of three months
- **or** with a validity of one year, if the foreigners authority was involved in the visa process (cf. 2.2).

If the stay by the foreign student is financed with a scholarship/grant, the period of validity for the visa is normally issued in accordance with the length of the scholarship/grant, as long as the scholarship/grant term does not exceed one year.

2.1.2.3 Engaging in gainful employment: Teaching or research work

Foreign (visiting) academics and scientists require a national visa to enter Germany for a planned teaching or research stay lasting more than three months (*exceptions cf. 2*). A visa is required regardless of whether the approval of the Federal Employment Agency for the residence title for the purpose of the respective gainful employment is required or not (cf. *Information on the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics, and Scientists*).

As a rule, (visiting) academics and scientists must present the following documents to obtain a national visa:

- Proof of a concrete job offer (entry for the purpose of applying for a job in Germany is not possible),
- proof of secure financial resources (subsistence), e.g. by presentation of an employment contract or a scholarship/grant award letter
- proof of adequate health insurance cover (cf. Excursus “Health insurance”).

Secure financial resources (subsistence) are considered as given when foreigners can pay their living expenses without having to take recourse to public funds. Child benefit/allowance, supplementary child benefit, child-raising allowance, parenting

benefit or public funds that are based on contribution payments or that are awarded to facilitate a stay (e.g. scholarships or grants) are not considered.

The national visa for a (visiting) academic or scientist stay is normally issued with a validity of three months. Subsequently, the visa can be extended or changed into a longer-term residence title (e.g. residence permit).

2.1.2.4 Research purposes

The implementation of the EU Researcher Directive into national law created the independent residence purpose of "research". But it is still unclear how, in practice, this will be delineated from the general purpose of gainful employment, i.e. the question of who under what conditions receives which residence title when the employment involves teaching or research work. It is clear, however, that certain jobs do not fall under the researcher definition. This includes, inter alia, research work that is part of a doctoral programme (Section 20, 7 Residence Act).

To apply for a visa, researchers must present the following papers and documents:

- An effective admissions agreement for carrying out a research project with a duly recognised research institution (*see below*),
- Statement by the research institution committing itself to cover any costs that arise for public bodies (*see below*),
- Adequate health insurance cover (*cf. Excursus "Health insurance"*), and
- Proof of secure financial resources (subsistence) (*see below*).

As specified in Article 20, Section 1, the research institution must be duly recognised as an institution for carrying out the special admissions procedure for researchers in Germany. Public and private institutions that perform research in Germany receive this recognition on application (Section 38 a, 1 Residence Regulation). The application can be submitted in writing to the Federal Office for Migration and Refugees (BAMF). The BAMF publishes the list of duly recognised research institutions on the internet at www.bamf.de (Section 38 e, Residence Regulation).

According to Section 20, 1 Residence Act, the research institution must commit itself in writing to cover any costs that arise for public bodies up to six months after the end of the admissions agreement to cover the foreigner's subsistence and maintenance costs resulting from the foreigner being unlawfully resident or being deported. This requirement should be waived where the activities of the research institution are financed primarily from public funds or where there is a particular public interest in the research project (Section 20, 2 Residence Act).

According to Section 2, 3 Residence Act, the subsistence level for a stay for research purposes is considered as given when the researcher receives a monthly sum equal to two thirds of the salary as defined in Section 18 of the 4th Social Code – SGB IV. At present this equates to a salary of 1610 euros per month in western Germany. The Federal Ministry of the Interior must announce the level of the required subsistence level income for researchers in each calendar year by 31 December of each year by publishing it in the Federal Gazette (*Bundesanzeiger*).

The residence permit for research purposes facilitates, within certain bounds, EU-wide mobility. So researchers who have been admitted to another EU Member State under the provisions of the EU Researcher Directive receive a visa for carrying out part of their research project in Germany. If the stay lasts longer than three months, the stay in Germany must be completed with a duly recognised research institution (see above). Researchers who otherwise work in a Schengen country can enter Germany without a visa and can, as necessary, apply for the required residence permit in the country. For a period of three months within a 12-month period, employment without a visa is also permitted (cf. 2). So even if a visa were actually needed for entry on account of nationality, this would be waived if the researcher otherwise works in a Schengen country or if the employment or work does not exceed three months.

2.2 Visa issue approval by the foreigners authority

Where a visa is obligatory, the prior approval of the foreigners authority must be obtained for the visa issue if the stay is expected to last more than three months or if the foreigner would like to take up gainful employment or if the foreigner is subject to a security check.

Responsibility lies with the foreigners authority at the planned place of residence. In the event of a security check, approval is deemed as having been given if the foreigners authority does not object to the issue of the visa within 10 days of the request being sent to the foreigners authority (no-response deadline). If the visas for educational or research purposes are not already approval-free (see below), the no-response deadline is three weeks plus 2 working days.

Exceptions. The following are exempted from the approval requirement:

- Foreigners whose study place has been arranged by a German science or research organisation or by a German public body. This organisation or public body must also be able to award scholarships/grants paid from public funds. In connection with the arrangement of this study place, the foreigner must receive a scholarship/grant in Germany for which an award process is used that is similar to that used for the award of public funds. (Section 34 No. 3 Residence Regulation).
This means that the circle of privileged scholarship holders has been extended. It not only includes scholarship/grant holders now whose awards are financed from public funds, but also exempts those from the approval requirement who, for example, receive their scholarship/grant from private sponsors, as long as the above specified conditions are met.
- Academics and scientists whose teaching or research stay has been arranged by a German science or research organisation or by a German public body and who, in connection with this, receive a scholarship/grant in Germany financed from public funds.
- Visiting academics and scientists, teaching staff, and research assistants, and engineers and technicians working on the team of a visiting academic or scientist, if they take up their work at the invitation of the university or of another public research institution.
- Accompanying spouses or (civil) partners and their minor, single children.

- Foreigners wishing to work for up to a maximum of three months for which they receive a scholarship or grant paid from public funds.

All other categories need the approval of the foreigners authority as described above before the visa is issued, meaning that it can take a little longer.

3 Residence

As part of the measures to establish equality with German nationals, the EU Residence Permit for EU citizens and EEA nationals was abolished. These individuals are now only required to register with the authorities, a requirement that also applies to Germans. Depending on the local laws, this registration must be made within the first few days or weeks of arrival. Any documents to prove that the freedom of movement requirements have been met can be presented to the registration authority (*Meldebehörde*). If the stay is going to last longer than three months, the following documents are required:

- proof of adequate financial resources (subsistence), and
- proof of adequate health insurance cover.

Adequate financial resources must be documented to ensure that no social security benefits from the host member state need to be claimed during the stay. EU/EEA students must generally provide credible proof that they have financial resources equal to the maximum educational assistance rate – BAföG – at their disposal (this currently amounts to 585 euros per month). In most cases, a written statement by the student is considered to be adequate. (Visiting) academics or scientists can generally meet the requirement by proving that they have an employment contract or are financed with a scholarship or grant. In addition, students must also present proof that they have been admitted to or registered at a duly recognised education institution for the purpose of gaining a professional/vocational qualification.

If other third-country foreigners plan a stay that extends beyond the visa's period of validity, this stay must be authorised. A residence permit or settlement permit is required for this. Foreigners who entered Germany on a national visa and plan a longer stay must have the temporary entry and residence permit included in their visa changed into a longer-term residence title before it expires.

"Privileged" foreigners who are allowed to enter Germany without a visa must also apply for a residence permit for a longer stay (more than three months) within three months of their arrival in Germany. For shorter stays of up to three months, "privileged foreigners" do not need a residence permit. It is generally not possible for nationals of certain countries only to apply for the longer-term residence title once they are in Germany. This means that they can only enter Germany without a visa for stays that are shorter than three months and, otherwise (in the case of a longer planned stay), need a national visa that can be changed into a residence permit in Germany (*cf.* 2).

The foreigners authority at the place of residence in Germany is responsible for issuing and, as the case may be, extending the residence title for all non-EU nationals.

The Residence Act only provides for two different longer-term residence titles now:

- the temporary residence permit
- the permanent settlement permit.

Foreigners from third countries who hold a valid residence title issued by one of the contracting parties to the Schengen Agreement (for Germany this means a residence permit or a settlement permit) are free to stay in the territory of the other Schengen countries for up to three months with this document and a valid travel document (e.g. a passport).

3.1 Residence permit

A residence permit is a temporary residence title. The residence permit can be issued subject to conditions and can be extended. The residence permit is issued in connection with the respective purpose of residence. The law differentiates between the following purposes:

- educational purposes (education and training, studies, language courses, school education, other education and training, searching for a job after graduating from a German university),
- gainful employment (jobs, self-employment),
- international law, humanitarian or political grounds,
- family reasons (e.g. spouses or children joining their partner/parent(s) already in Germany – known as subsequent immigration),
- special residence rights (e.g. for former Germans).

The following information covers the purposes of residence – education and training, gainful employment, and family reasons – in greater detail, because these reflect typical residence purposes for students and (visiting) academics and scientists.

3.1.1 Residence for educational purposes

A residence permit for educational purposes may be granted to engage in pre-study preparatory measures, to apply for a study place, and to study at a state (public) or state-recognised university or comparable education institution. Furthermore, a residence permit may possibly also be issued for attendance of a language course, even without the intention of studying in Germany.

If the three months of visa validity are not enough to prepare everything for an application, a residence permit for study application may be issued. The prerequisites for a student applicant stay are similar to those for issuing a visa for the purpose of applying to study (*cf.* 2.1.2.1). If the foreigner has entered Germany on a national visa for the purpose of applying to study and decides during the information and orientation stay and, in particular, after being admitted to studies, to stay longer in Germany, the foreigners authority can change the temporary residence title issued together with the national visa into a residence permit for educational purposes, i.e. for studying or for engaging in pre-study preparatory measures. This is when, at the

latest, proof of admission to an education institution and the documents that had not yet been requested during the visa application process need to be presented.

The length of the stay for student applicants is limited to a total of nine months (three months with the visa plus a maximum of six months with the residence permit).

The validity of the residence permit for pre-study preparatory measures – such as attendance of a pre-study preparatory course (*Studienkolleg*), for example, should not exceed two years. A residence permit for pre-study preparatory measures can be changed into a residence permit for the purpose of studying.

As in the case of a visa, proof of admission to a university, adequate health insurance cover and adequate financial resources must also be proven to obtain a residence permit for studying (cf. 2.1.2.2).

The residence permit is valid for at least one year and must not exceed two years. It can be extended each respective time by at least one year and up to a maximum of two years if the purpose of residence has not yet been fulfilled, but is still possible within a reasonable amount of time. This means that the extension of the residence permit depends on the student making proper progress along the study pathway. In addition, the residence permit may be revoked if no proper academic progress is made. It is important that the holder of the student visa ensures that the residence permit is extended prior to the expiry of the respective period of validity.

The implementation of the EU Student Directive (2004/114/EC) makes it possible for third-country nationals who hold a residence title for studying issued by another EU member state to receive a residence permit for the same purpose in Germany. To qualify for this, the foreign student must be obliged, within the scope of a degree programme taken in Europe, to complete part of the studies at an education institution in another European country, or the student must want to continue or complement studies in Germany that had already been started in another member state. This means that the student must either be taking part in a European Union exchange programme or must have been admitted as a student in the country of the (first) place of study for at least two years. In addition, the student must, by presenting suitable documents, prove this. Once the conditions have been met, the foreign student must be issued with a residence permit for the purpose of studying, as long as the student has secure financial resources (subsistence), adequate health insurance cover and has been admitted to a higher education institution.

The residence permit for university graduates, i.e. foreigners who have successfully completed their studies in Germany, can be extended by up to one year for the purpose of looking for a job in Germany. On the one hand, this job must be appropriate to the university degree and, on the other, must be a job which may be filled by foreigners (cf. *Information of the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists*). If a job that fulfils the requirements is found, the residence permit issued for the purpose of looking for a job can be changed into one for the pursuit of gainful employment.

3.1.2 Residence for working in teaching and research

Third-country foreigners wishing to work in Germany need a residence permit which allows the pursuit of gainful employment. This is also issued by the foreigners authority, although in many cases the Federal Employment Agency must give its approval to the issue of such a permit. This takes place internally within the authorities (one-stop government), which means that the foreigners authority in question is the only office to which the applicant must go. The Immigration Act has linked up the residence and employment law provisions even more closely than in the past. This is why we recommend that, if in doubt, the information on the employment law provisions is also consulted (*cf. Information of the Statutory Frameworks applicable to the Pursuit of Gainful Employment by Foreign Students, Academics and Scientists*).

According to the relevant statutory instrument, the residence permit for engaging in gainful employment does not require the approval of the employment authorities if the work involves teaching and research. To obtain the residence permit, the (visiting) academic or scientist must, just as for stays by this group, present proof of a concrete job offer, of adequate health insurance cover, and of adequate financial resources (employment contract, scholarship/grant).

The residence permit may be valid for up to a maximum of three years on first issue and on extension; alternatively, the planned length of the employment contract will serve as a basis. The timeframe of maximum validity may only be used in full by the foreigners authority if the purpose of residence (teaching or research stay by a visiting academic or scientist) is likely to extend beyond the expiry date of the temporary residence permit.

3.1.3 Residence for research purposes

As set out in the EU Researcher Directive, the residence permit for research purposes does not require the approval of the employment agency (*cf. 3.1.2*).

The residence permit for research purposes is issued for at least one year. If the research project requires less time, the term of validity will be limited to the length of the research project.

3.1.4 Residence for family reasons

Spouses and minor, single children of third-country foreigners may receive a residence permit for family reasons. The foreigner to whom the spouse or child(ren) is/are subsequently immigrating must be legally resident in Germany, which means that the foreigner must hold a residence permit or a settlement permit. Furthermore, sufficient living space must be available for the family. Finally, the family must have sufficient financial resources at its disposal. The residence permit for family reasons can be refused if the foreigner, to whom the family members are moving, is reliant on social security benefits for the maintenance of the family. To this end, the contributions made by the family members to the household budget will be taken into account.

The right of residence for spouses and minor, single children only applies as long as the main foreigner (e.g. student or visiting academic or scientist) personally holds a residence permit.

Family members whose nationality is different to that of the main foreigner are subject to the respective entry and residence provisions that apply to the respective nationality of these family members, i.e. privileges regarding the visa requirement and similar aspects.

Special rules apply for the family members of EU citizens and EEA nationals who have the right of freedom of movement. The Act on the General Freedom of Movement for EU Citizens grants the family members (spouses and children under 21 years of age) of EU citizens and EEA nationals a right of residence, even if the family members are not citizens of an EU member state or nationals of an EEA country. Whether a visa is required for entry or not is based on the provisions which apply to persons with the respective nationality, unless they hold a valid residence permit of another EU member state or EEA country (*cf.* 2).

Such third-country family members who are related to EU citizens and EEA nationals are issued ex officio with an EU Residence Permit. Any documents required to prove the fulfilment of the requirements for the spouse's freedom of movement can be presented to the relevant registration authority (*Meldebehörde*). Furthermore, proof of adequate living space for the family must be provided.

3.1.4.1 Subsequent immigration of spouses

The subsequent immigration of spouses is possible if the third-country foreigner to whom the spouse is moving

- holds a settlement permit,
- has an EU Long-Term Residence Permit (*cf. Excursus "European" residence titles*),
- holds a residence permit for research purposes,
- has been in possession of a residence permit for at least two years and extensions have not been ruled out by any collateral clause and the subsequent issue of a settlement permit has not been ruled out by any rule of law,
- holds a residence permit as defined by Section 38 a (*cf. Excursus "European" residence titles*) and the spouses were already married in an EU member state in which the foreigner has the status of a long-term residence holder, **or**
- holds a residence permit, the spouses were already married at the time it was issued, and the term of residence will probably exceed one year.

The spouse subsequently immigrating to join the foreigner must be able to communicate in basic German. Furthermore, both spouses – i.e. the married couple – must be 18 years of age or older. Spouses of researchers and of settlement permit holders for highly-skilled workers (*cf.* 3.2) as well as persons with the legal status of a long-term residence holder in another EU member state (*cf. Excursus "European" residence titles*) do not need to meet these conditions. In some cases, the language proficiency requirement can be waived, for example, if the spouse does not have the right to take part in an integration course as defined by Section 44 Residence Act (this is the case, for example, when the stay is only of a temporary nature, as is the

case for many students and visiting academics and scientists, and so also for their spouses) or if the foreigner is allowed to enter Germany without a visa on account of nationality, even for stays that are not deemed to be short stays (cf. 2).

In exceptions, the subsequent immigration of spouses may be allowed when the foreigner to whom the spouse is moving holds a residence permit. The other conditions may be waived to prevent cases of particular hardship. However, this decision is at the discretion of the authorities.

3.1.4.2 Subsequent immigration of children

Minor, single children who have not yet turned 16 years of age receive a residence permit if both parents or the single parent responsible for their care and custody hold(s) a residence permit, a settlement permit or an EU Long-Term Residence Permit (cf. *Excursus "European" residence titles*) and the child relocates its central focus of life to Germany together with its parents or its single parent responsible for the child's care and custody. Minor, single children who have turned 16 years of age receive a residence permit if they – additionally to the above-specified conditions – have a command of the German language or it appears certain that they will be able to integrate easily.

The minor, single children of a foreigner who holds a residence permit as set out in Section 38 a (cf. *Excursus "European" residence titles*) receive a residence permit as long as the family unit already existed in an EU member state in which the foreigner has the legal status of a long-term residence holder.

3.2 Settlement permit

The settlement permit is a permanent residence title. This residence title has no time limits or geographical restrictions and may only be subjected to a collateral clause in special cases governed by law.

The settlement permit automatically entitles the holder to take up and pursue gainful employment.

This residence permit can normally be granted when the foreigner has been in possession of a residence permit for five years, and has sufficient living space personally and for the family. Furthermore, the foreigner must have made compulsory or voluntary contributions to the statutory pension scheme for at least 60 months, must have an adequate knowledge of the German language as well as of the legal and social system and way of life in Germany, and must be allowed to work (if the foreigner is an employee). Furthermore, no public security or public order reasons must speak against this (Section 9, 2, Residence Act).

Highly-qualified foreigners can receive a settlement permit immediately and without the approval of the Federal Employment Agency if the integration prognosis is positive.

Highly-qualified workers include

- academics and scientists with specialist subject knowledge (chaired professors and institute directors),
- teaching staff and academic/scientific staff in key positions (heads of research and scientific project groups), and
- specialists, professionals and executive staff with particular career or professional experience (receiving a gross income which is at least twice as high as the income limit for the assessment of contributions of the statutory (public) health insurance scheme. At present, this is set at 85,500 euros in total).

This means that the settlement permit opens up the prospect of permanent residence for foreign academics and scientists.

Excursus: "European" Residence Titles

Much as the implementation of the EU directives included a component to facilitate European mobility for students and researchers, the opportunity for inner-European mobility is also to be created for third-country nationals holding long-term residence titles.

To this end, an EU Long-Term Residence Permit was introduced that opens up a longer-term prospect in Europe for third-country nationals. The EU Long-Term Residence Permit is issued under similar – but not identical – conditions to the Settlement Permit, and does not include special rules and regulations for highly-qualified workers. However, the EU Long-Term Residence Permit does include the right to migrate to another member state, where the holder of a "German" EU Long-Term Residence Permit is to be issued with a residence title in accordance with the respective national law.

The "counterpart" to this is a residence permit issued in accordance with Section 38 a Residence Act. The "Residence Permit for Long-Term Residence Holders in other EU Member States" is issued to those foreigners who hold an EU Long-Term Residence Permit in another EU member state and who would like to spend more than three months in Germany.

These two residence titles are not actually meant for students, academics or scientists. However, since it is not impossible for a third-country student, academic or scientist to hold such a residence title, these have been included here.

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This information sheet only aims to provide an overview and so makes no claim to completeness. Although it has been compiled with the greatest possible care, no liability can be accepted for the correctness of the content.

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Anke Geburzyk/ Ref. 112

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