



New entry requirements for the Federal Republic of Germany. Additional information to chapter 6 of the brochure “Invest in NRW“



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6. Dealing with authorities and residence

Foreign nationals who wish to live and work in Germany will already have to deal with several authorities and their regulations in advance. The rules vary depending on the country of origin of the person entering Germany. This also applies to driver's licenses. Entry and residence is simplest for citizens of other EU countries. Special regulations apply to them within the European Union. Each EU citizen has the right, independent of any preconditions, to reside for up to 3 months in another member state.

For a period exceeding 3 months, employed or self-employed people from the EU who have sufficient means of subsistence including comprehensive health insurance cover for themselves and their family members, or who are registered with a private or public institution with the main purpose of completing a course of training, including vocational training, are granted the right of residence in another member state.

Family members who are third-country foreigners are to be issued a visa in an accelerated procedure.

EU citizens are now only obliged to register with the registry office, from which they receive an official certificate of their right of residence.

Furthermore, there is an EU ordinance containing a "positive list" of third countries whose nationals are exempt from visa obligation when crossing the outer borders of the European border. These include Argentina, Israel, Canada, the United States, Japan and Korea. Citizens of these countries can move freely within the territory of the Schengen states, but for no more than 3 months within a period of 6 months from their first date of entry. Furthermore, this category of persons may not engage in gainful employment. Exceptions are laid down in Section 17, Paragraph 2, Clause 1 of the Residence Ordinance.

Should this category of persons last mentioned wish to reside in the Schengen states for more than 3 months or intend to take up gainful employment, this category of persons also requires an official permit for entry into and residence in a Schengen state.

For non-EU citizens and persons from countries other than those in the positive list, new legal regulations according to the "**Residence Act**" of the Federal Republic of Germany came into effect on 01.01.2005.

The following remarks apply mainly to persons who are not EU citizens and who do not come from the countries named in the positive list.

(See: http://www.auswaertiges-amt.de/www/de/aamt/buergerservice/faq/kat2/index_html)

6.1 Entry and residence

The new **Residence Act** treats

entry and residence

as one entity.

For entry and residence, foreigners always require a permit which is issued in the form of a residence title (Section 4 Residence Act). The issue of a residence title usually requires that the applicant has a secure income and that there are no grounds for expulsion (Section 5 Residence Act).

In addition, possession of a valid passport is a prerequisite (Section 3 Residence Act).

According to the new Residence Act there are

3 residence titles

(entitling the holder to entry):

- **Visa** (Section 6 Residence Act)
- **Residence permit** (Section 7 Residence Act)
- **Settlement permit** (Section 9 Residence Act)

6.1.1. Visa

A distinction is made between a

"Schengen visa"

for short stays up to 3 months

and a

"national visa"

for longer stays.

The requirements for a Schengen visa are:

- a valid passport;
- where applicable, documents which provide evidence of the residence purpose (e.g. for business people, a letter of invitation from the business partner, where it may be necessary in in-

dividual cases to have the invitation certified by the competent German chamber of trade and industry in order to furnish credible proof of the existence of the company and the signature of the managing director concerned; for private individuals it must be ensured that an official form for a declaration of commitment made by the host is submitted in writing, according to which the host assumes liability for the livelihood of the host – the standard form for Germany can be obtained from foreign nationals authorities and must be completed and handed in at the foreign nationals authority);

- sufficient funds to sustain livelihood during the stay and for the return journey (presentation of ticket);
- health insurance;
- application form.

There are different categories of Schengen visa.

The most significant is the Type C Schengen visa, which entitles the holder to enter the Schengen territory for an uninterrupted stay or different, consecutive stays with a total valid duration of no more than 3 months within a period of 6 months beginning on the date of initial entry.

The visa can be issued for one, two or more entries. The visa is always issued with validity for all Schengen states.

It is common practice, however, for EU countries to issue a **C 1** category visa for business and private persons which is valid for 30 days and permits only one entry.

A Schengen visa can also be issued for short-term stays (up to 3 months) for several stays with a valid duration of up to 5 years, however each stay must not exceed 3 months per six-month period. This visa is particularly useful for the cultivation of permanent business contacts in Germany, the monitoring of subsidiaries in Germany by foreign managing directors, etc.

The decision on the issuing of a Schengen visa lies with the competent diplomatic missions (visa department of the embassies or consulate generals) which examine the requirements named above.

Applications are made using a form issued by the diplomatic mission and, ideally, an application substantiated in writing and including documentation (e.g. a letter of invitation from a German company – wherever possible with confirmation from the responsible chamber of trade and industry that the host company belongs to the chamber, as well as a letter of reference from the applicant's own company and, for private persons, the declaration of commitment named above).

In many cases, questions regarding the business trip or visit also have to be answered credibly by the applicants in an interview organized by the diplomatic mission.

The decision of the diplomatic mission usually takes between 2 and 10 days.

The issuing of a national visa with validity of more than 3 months is dependent on the requirements applicable for the residence and settlement permits (see the following).

6.1.2. Residence permit

The residence permit is a **limited residence title**. It is issued only for the **residence purposes** defined by law and listed below:

- for the purpose of applying to study and studying;
- for the purpose of participation in language courses that do not serve as preparation for study;
- for the purpose of attending school in exceptional cases;
- for the purpose of company training and further training;
- for the purpose of taking up gainful employment;
- for international-law, humanitarian or political reasons;
- for the purpose of family reunion.

The residence permit is limited with consideration given to the concrete residence purpose. Based on past experience, residence permits for managing directors or authorized signatories of newly established foreign subsidiaries, for example, are usually limited to one year.

The period of validity can also be subsequently reduced if an important requirement for the issue, extension or determination of the period of validity ceases to exist – for example, the company has discontinued its business operations or has gone into bankruptcy.

The residence permit can be issued and extended with restrictions and – subsequently, where appropriate – made subject to conditions or be geographically restricted.

It is common practice for residence permits for managing directors of foreign subsidiaries to be made subject to the condition that the residence permit is issued solely for the function of a managing director of a specifically named company.

The extension of the residence permit can be made subject to the same conditions which apply to its issue.

It is common practice for the residence permits of managing directors of subsidiaries to be extended after one year if proof is provided that the company has achieved reasonable sales and, in particular, employed staff from the German labor market, and that its future prospects are positive.

6.1.3. Settlement permit

The settlement permit is the only **unlimited residence title** known by the Residence Act.

The settlement permit is the residence title which puts the foreigner in the strongest legal position.

The settlement permit entitles the holder to take up gainful employment, has no time or spatial restrictions, may not be subject to an incidental provision, and grants the foreigner special protection against expulsion (Section 56 Residence Act).

A foreigner is legally entitled to the issue of a settlement permit if he or she fulfils the prerequisites described in Section 9 Para. 2. In particular, the foreigner must have held a residence permit for five years, and have a secure livelihood and adequate command of the German language.

6.1.4. Gainful employment

According to the Residence Act, foreigners may take up gainful employment only if their residence title entitles them to do so (such as the settlement permit) or if their residence title expressly permits them to do so.

Every residence title must make it clear whether the holder is permitted to take up gainful employment.

With regard to residence for the purpose of taking up gainful employment, the Residence Act provides for a number of new legal instruments:

1. The procedure for access to the labor market (Section 18 Residence Act)
2. The procedure for highly-qualified persons (Section 19 Residence Act)
3. The settlement of self-employed persons (Section 21 Residence Act)

The admission of foreign employees is geared to the requirements of the German economy, according due consideration to the situation on the labor market and the need to combat unemployment effectively (Section 18 Para. 1 Residence Act).

A foreigner may be granted a residence title for the purpose of taking up employment if the Federal Employment Agency has granted approval to the foreign nationals authority.

The Residence Act provides for highly qualified persons to be granted a settlement permit if the Federal Employment Agency has granted approval and there are justifiable grounds to assume that integration of the foreigner into the way of life which prevails in the Federal Republic of Germany and assurance of the foreigner's subsistence without state assistance are guaranteed. The term 'highly qualified' is applied to:

- scientists with special technical knowledge;
- teaching personnel in prominent positions or scientific personnel in prominent positions, or
- specialists and executive personnel with special professional experience who receive a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme.

Section 21 of the Residence Act states that a foreigner may be granted a residence permit for the purpose of self-employment, if

1. an overriding economic interest or a special regional need applies;
2. the activity is expected to have positive effects on the economy and
3. personal capital on the part of the foreigner or a loan undertaking is available to realize the business idea.

The prerequisites specified in nos. 1 and 2 are generally met when at least 1 million euros is invested and ten jobs are created.

If the investment is less than 1 million euros and fewer than 10 jobs are created, the assessment of the prerequisites in 1.-3. above otherwise focuses in particular on the viability of the business idea forming the basis of the application, the foreigner's entrepreneurial experience, the command of the German language, the level of capital investment, the effects on the employment and training situation and the contribution towards innovation and research (Section 21 Residence Act).

Local organizations such as the chamber of trade and industry and the economic development corporation are involved in the decision-making process and examination of the application by the foreign nationals authority.

Self-employment embraces not only activities as sole proprietor, but also comparable activities such as legal representative of a limited liability corporation, managerial employee with general power of attorney or authorized signatory.

Foreigners aged over 45 receive a residence permit only if they possess adequate provision for old age.

The period of validity of the residence permit for self-employed persons is limited to a maximum of three years.

By way of derogation from Section 9 Para. 2, a settlement permit may be issued after three years, if the foreigner has successfully realized the planned activity and his or her livelihood is assured. The foreigner therefore need not wait for five years.

6.1.5. Integration requirement

The Residence Act provides for a legal minimum framework of state integration offers (language courses, orientation courses) (Section 43 ff. *Residence Act and the Integration Course Ordinance issued concomitantly*).

Foreigners who are resident in the Federal territory on a permanent basis are not only entitled, but also obliged to attend integration courses.

Exceptions are possible in accordance with the Integration Course Ordinance Section 4 Para. 2. An exception is generally made if the foreigner holds, for example, a university or technical college degree or equivalent qualification, or if he or she is engaged in gainful employment which regularly requires a qualification equivalent to a university degree.

An exception can also be made if it can be justifiably assumed that the foreigner will become integrated into the economic, social and cultural life of the Federal Republic of Germany without the need for state assistance.

It is common practice for the competent foreign nationals authority to determine upon issuance of the residence permit when the foreigner first enters the country whether the foreigner is entitled or obliged to accept integration offers in accordance with the Integration Course Ordinance. Language courses in particular are among the integration courses.

Adequate command of the German language is a particular prerequisite for the granting of a residence permit on a permanent basis.

6.1.6. Residence for educational purposes

A foreigner may be granted a residence permit for the purpose of applying to study and studying at a state or state-recognized university or comparable educational establishment, including preparatory measures for a course of study (Section 16 Residence Act).

As a general rule, no residence permit for another purpose of residence shall be granted or extended during the stay.

The residence permit entitles the holder to take up employment totaling no more than 90 days or 180 half-days per year, and to take up spare-time student employment.

After successful completion of the studies, the residence permit may be extended by up to one year for the purposes of seeking a job commensurate with this qualification.

6.1.7. Application procedure for the granting of a residence title

The application for a residence title is always to be made prior to entry in the form of a visa.

However, there are also exceptional cases in which the application can be made to the competent foreign nationals authority after entry into the Federal Republic of Germany.

a) Application **prior to** entry

Applications prior to entry are to be made at the competent diplomatic mission, i.e. the diplomatic mission in the applicant's country of origin (Section 71 Residence Act), i.e. the visa department of the embassy or consulate general.

The application is to be made in person or by a legitimate representative (the latter is, however, not recommended). The application presupposes the presence of the applicant in the country concerned, but it may be prepared during a visit by the applicant to the Federal territory and accompanied by a legitimate representative (e.g. lawyer). In this case, the applicant's personal appearance at the embassy is necessary following his or her return to the country of origin.

Provided that no mere short-term stay (up to 3 months) is planned, the diplomatic mission must always obtain the consent of the competent foreign nationals authority for the intended place of residence (Section 31 Residence Act). This consent is a mandatory prerequisite for the granting of the visa. If it is refused, the application must be turned down.

If dependent employment is planned, the Federal Employment Agency which is responsible for the company residence of the future job must give its consent to the employment of foreigners. This consent (or refusal) is usually obtained from the competent Federal Employment Agency by the foreign nationals authority.

Employees from countries included in the positive list who can enter the Federal Republic of Germany without a visa are recommended to make their application prior to entry at the competent foreign nationals authority for the issue of consent to the employment of foreigners. This should ensure that the applicant can commence employment immediately upon entry.

Exceptions are made for scientists who receive a state-subsidized grant or for contract employees doing work obtained through the Federal Employment Agency up to a maximum duration of nine months, in which case the visa is not dependent on the consent of the foreign nationals authority (Sections 34 and 35 Residence Ordinance).

b) Application **after** entry

Section 41 of the Residence Ordinance determines:

Concessions for citizens of certain countries

- 1.) Citizens of Australia, Israel, Japan, Canada, South Korea, New Zealand and the United States of American may also enter the Federal territory for a stay which is not a short-term stay and remain there without a visa. Any residence title required can be obtained in the Federal territory.
- 2.) The same applies to citizens of Andorra, Honduras, Monaco and San Marino who do not intend to take up gainful employment with the exception of the activities specified in Section 17 Para. 2 of the Residence Ordinance.
- 3.) An application for any residence title required is to be made within three months following entry. The application period ends temporarily if the foreigner is expelled or his or her residence is limited in time in accordance with Section 12 Para. 4 of the Residence Act.

In the cases named above, the residence title, including a work permit, can be obtained after entry.

Section 39 nos. 1 and 2 of the Residence Ordinance stipulates that a foreigner already resident in the Federal territory can, in exceptional cases, obtain a residence title from the foreign nationals authority without previously having to leave the country.

According to the new Residence Act, application is also possible after entry within the context of a so-called "reasonableness clause" contained in Section 5 Para. 2, Clause, second alternative, Residence Act – a provision that was not covered by previous law.

This is, however, a distinctly exceptional provision which lies within the discretion of the foreign nationals authority.

The rationale of the regulation is to avoid unnecessary travel and administration costs. Irrespective of the applicant's residence status at the time of the application, the legalization of the stay is therefore possible if the granting of the residence title is deemed permissible and referral to the visa procedure is unreasonable due to special circumstances. Special grounds must therefore be assumed if referral to the visa procedure involves unnecessary costs for the applicant and the approval procedure would in any case result in a positive outcome.

According to the Residence Act, it is permissible, given the presence of all the other prerequisites required for the granting of the residence permit, for the application to be made after entry, given the presence of a legal entitlement to the granting of the residence title (e.g. due to marriage) (Section 5 Para. 2 Clause 2, first alternative, Residence Act).

Overall, the new Residence Act opens up greater and better possibilities for non-EU citizens to enter Germany, reside here and work here.

6.2. Registration

Every citizen who moves to a new address must notify the local registry office accordingly within a week of moving. This is a German peculiarity that is not to be found in this form in many countries. To register, new residents usually have to go the registry office in person.

The addresses and telephone numbers of this and other authorities are to be found on the websites of the towns/cities (usually under [www."name of town/city".de](http://www.nameoftown/city.de); e.g. www.duesseldorf.de) or can be obtained from directory assistance. A telephone call in advance helps to clarify which documents will be required. An ID card and details of the person's residential address in Germany are normally sufficient.

- 1.) When moving within Germany, personal registration at the registry office in the new place of residence and presentation of an ID card and a valid residence permit for Germany are sufficient. Notice of departure at the registry office of the previous place of residence is not necessary.
- 2.) When leaving Germany, the person moving away must give notice of departure at the registry office of the place of residence at the latest upon moving out.

Notice of departure can also be given by letter, fax or e-mail.

This also applies in cases where the previous place of residence has been left, but no new place of residence has yet been found in Germany (e.g. temporary residence in a hotel).